

**Government of India**  
**Ministry of Commerce & Industry**  
**Directorate General of Foreign Trade**  
**Udyog Bhawan, New Delhi -110011**

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F.No. 01/92/171/46/AM-20/PC-VI/242027

Date of Order: 09.12.2021

Date of Dispatch: 09.12.2021

Name of the Appellant: **Safari Fine Clothing Private Limited,  
Shed No. 280-281, Sector-III,  
Kandla SEZ,  
Gandhidham (Kutch)-370230**

IEC No. : **0501040927**

Order appealed against: **Order-in-Original No. KASEZ/56/2019-20 dated  
31.07.2019 passed by the Development  
Commissioner, Kandla Special Economic Zone**

Order-in-Appeal passed by: **Amit Yadav, DGFT**

**Order-in-Appeal**

Safari Fine Clothing Pvt. Ltd. (hereinafter referred to as "the Appellant"), a SEZ unit, filed an appeal dated 09.09.2019 (received on 13.09.2019) under section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against Order-in-Original No. KASEZ/56/2019-20 dated 31.07.2019 (issued from F.No. KASEZ/IA/SF/33/2018-19/5211) passed by the Development Commissioner (hereinafter referred to as "DC"), Kandla Special Economic Zone (KASEZ) imposing penalty of Rs. 5,00,000 on the Appellant and Rs. 1,00,000/- each on its Directors, Shri Manjit Singh Makkar and Shri Manmohan Singh under section 11 of the Act.

2.1. Vide Notification No. 101 (RE-2013)/2009-2014 dated the 5<sup>th</sup> December 2014, the Central Government has authorized the Director General of Foreign Trade aided by one Addl. DGFT in the Directorate General of Foreign Trade to function as Appellate Authority against the orders passed by the Development Commissioner, Special Economic Zones as Adjudicating Authorities. Hence, the present the Appeal is before me.

2.2. Any person/party deeming himself/itself aggrieved by this order, may file a review petition under the provisions of Section 16 of the FT(D&R) Act, 1992 before the Appellate Committee, Department of Commerce, New Delhi.



3. **Brief facts of the case:**

3.1. Appellant was issued a Letter of Approval (LoA) No. KASEZ/IA/1852/2001-02/9780 dated 05.10.2001 by the DC, KASEZ, as amended from time to time and valid upto 30.11.2019, to import old and used clothing for manufacturing of T-shirts Wipers, Clothing, Towel Rags, Fleece Wipers and Colour T-Shirt Wipers. It was also engaged in clearing the mutilated old and used rags not worthy of export in the DTA on payment of Customs duty.

3.2. In terms of condition of LoA and Bond-cum-Legal Undertaking (BLUT) executed by the Appellant, it was under a legal obligation to comply with the terms and conditions of the LoA as well as BLUT and to comply with the provisions of SEZ Act, 2005 and Rules made thereunder.

3.3. On 11.08.2018, KASEZ Security personnel, during patrolling, found some suspicious activities happening near the unit of M/s Syndicate Printers at Sector-IV, KASEZ and some unknown persons were found gathered there. On enquiry, they started running and pelting stones towards security personnel. The security personnel tried to catch them but they managed to flee away. At the site of incident, 10 Bales of worn clothing having a printed label of M/s Safari Fine Clothing i.e. Appellant on all of them, along with two trollies, were found lying. These Bales were brought to the customs check post for safe custody and later on seized.

3.4. After investigation, it appeared that these Bales were not prepared in the factory of Appellant as there was no machinery for making small bales of worn clothing in that unit. It also appeared that these Bales might be owned by Flax Apparels Pvt. Ltd. who used to make Bales with the logo of Appellant and who was also regularly making transactions of purchase/sale of un-mutilated worn clothing with the Appellant.

3.5. Flax Apparels Pvt. Ltd. vide letter dated 17.08.2018 informed DC that Appellant was implicating Flax Apparels Pvt. Ltd. in the theft which took place on 10.08.2018. It feigned ignorance about ownership of the Bales and stated that it's premises are well guarded by security staff and CCTV cameras. However, later on, vide letter dated 22.10.2018, Flax Apparels Pvt. Ltd. informed that during the course of calculating its stocks, 15 Bales of export material weighing 45 kg. each were found missing from it's warehouse. Flax Apparels Pvt. Ltd. vide letter dated 28.10.2018, submitted a copy of FIR dated 27.08.2018 lodged with Police for theft of 15 Bales of old and used clothes of 45 kgs. each and each amounting to Rs. 2,000/-.

3.6. Subsequently, the DC gathered that the Appellant and Flax Apparels Pvt. Ltd. were aware of the fact of goods of restricted export quality were being secretly removed for the purpose of sale into DTA which otherwise was not permissible. A Show-cause Notice (SCN) dated 29.11.2018 was issued to the Appellant, Flax Apparels Pvt. Ltd. and

By



Directors of these two units, to show cause as to why penalty should not be imposed on them under the Act.

3.7 DC, in its findings, recorded that the Noticees were well aware of the clandestine removal of the goods but they tried to hush up the matter in order to mislead the Department and also withheld the key material facts and thus they have contravened the provisions of Rules 22(2) and 75 of the SEZ Rules, 2006 and the conditions of the LoA and BLUT as per which they were under legal obligation to conduct their business as per the provisions of the SEZ Rules, 2006. On the basis of the evidences available on record and the reply submitted by the Appellant, the DC, KASEZ, inter-alia, imposed penalty of Rs. 5,00,000/- on the Appellant under Section 11(2) and Rs. 1,00,000/- each on Shri Manjit Singh Makkar and Manmohan Singh, Directors, of the Appellant under Section 11(3) of the Act.

4.1. Aggrieved by the Order-in-Original dated 31.07.2019, the Appellant and its Directors filed the present Appeal. The opportunities of personal hearing were given on 08.10.2020, 27.11.2020, 08.01.2021, 26.03.2021, 01.07.2021 and 22.07.2021 but nobody appeared on behalf of the Appellant.

4.2. On 12.07.2021, the Appellant submitted written submissions and requested to decide the case on the basis of their Appeal and written submissions. The following has been submitted in the Appeal/written submissions :-

- (a) The provisions of the Section 11(2) of Act have neither been alleged in the SCN nor proved in the O-in-O. For a person to be penalized under the Section 11(2) of Act, such person has to be covered under the scope of "makes or abets or attempts to make any export or import in contravention of any provision of this Act".
- (b) For the goods seized on 11.08.2018 i.e. 10 bales of worn and used clothing and two trolleys, Flax Apparels Pvt. Ltd. has filed an FIR on 27.08.2018 in "A" Division Police Station, Gandhidham. Since the offending goods belonged to Flax Apparels Pvt. Ltd., the Appellant cannot be held responsible and therefore the penalty imposed is bad in law.
- (c) Appellant was directed to appear for a Personal Hearing on 07.12.2018 and 25.04.2019 before the DC, KASEZ. However, it informed the Adjudicating Authority that it would not be able to appear due to some personal difficulty and requested for a later date. However, a chance of Personal Hearing was not given to the Appellant.

*My*



- (d) The penalty imposed on Appellant and Director has already been deposited by challan dated 03.02.2021 for an amount of Rs. 7 lakhs.

5.0. Comments of DC were also obtained on the appeal filed by the Appellant. The DC vide letter bearing F.No. KASEZ/IA/SF/33/2018-19 dated 05.11.2019 has stated the following :-

- (a) DC passed the O-I-O after taking into consideration all the facts and material evidences available on record and in compliance with the provisions of the relevant Acts & Rules.
- (b) Appellant was granted personal hearings on 07.12.2018 and 25.04.2019 but nobody appeared. The written submissions were submitted by the Appellant on 06.12.2018, 03.01.2019 and 24.04.2019. The O-in-O was passed after considering all the facts and material evidences on record.
- (c) Rule 54 of the SEZ Rules read with Section 11(2) of the FTDR Act, empowers the adjudicating authority to impose penalty on the erring units and their authorized officer subject to terms and conditions mentioned therein. Therefore, the penalty imposed by the adjudicating authority was in terms of provisions of the Section 11(2) of the FTDR Act on the unit as well as on the Directors of the Appellant under the Section 11(3) of the Act.
- (d) Even though Flax Apparels Pvt. Ltd. had registered an FIR at the police station and subsequently the accused were arrested, the proceedings against Appellant are independent of the proceedings in question and it did not in any way substantiate the averment of Appellant that it was not aware about such illegal and unauthorized removal of goods from KASEZ.
- (e) The logo imprinted on seized goods was that of the Appellant in common trade parlance and it was also involved in sale/purchase of goods along with Flax Apparels Pvt. Ltd.
- (f) The worn and used clothing falling under CTH 63090000 was a restricted material for import and that the same was not permissible to be sold in un-mutilated condition in DTA under the prevailing Foreign Trade Policy.
- (g) Initially, the logo was being used by the Appellant and subsequently being used by Flax Apparels Pvt. Ltd. Appellant never informed the concerned authorities that it was no longer using the logo and that it was

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being used by Flax Apparels Pvt. Ltd. It even purchased similar goods with the said logo from Flax Apparels Pvt. Ltd. and exported the same.

- (h) Section 11(2) of the FT(D&R) Act, 1992, as amended, empowers the Development Commissioner to impose penalty on a person who makes export/import or abets it subject to terms and conditions mentioned therein. The relevant extract of Act is reproduced below :-

*“ (2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made there under or the foreign trade policy he shall be liable to a penalty of not less than ten thousand rupees and not more than five times the value of the goods or services or technology in respect of which any contravention is made or attempted to be made, whichever is more ”*

Therefore, any person who makes or abets or attempts to make any export or import in contravention of any provision of the Act or rules or order made thereunder of FTP shall be liable for penalty.

6.0. I have considered the Adjudication Order dated 31.07.2019 passed by DC, KASEZ, written submissions made by the Appellant, comments received from the DC, KASEZ and all other aspects relevant to the case. It is noted that :-

- (a) The bales which were intercepted and seized were having mark of Appellant which is also used by the Flax Apparels Pvt Ltd. The Flax Apparels Pvt Ltd first tried to mislead by feigning ignorance about the ownership of the seized bales. It stated that its premises are well secured as it has security guards and also CCTV cameras. It also tried to put blame on Appellant. However, later-on, it admitted that 15 Bales are missing from it's unit due to theft. It also filed an FIR with the Police but in the said FIR, the date of incident of theft was mentioned much later than the date on which 10 Bales were intercepted and seized.
- (b) Appellant admittedly had regular business dealings with The Flax Apparels Pvt Ltd which used to put Safari brand name as marking on its goods.
- (c) The seized bales admittedly belonged to the Flax Apparels Pvt Ltd. The chain of events shows that the Flax Apparels Pvt Ltd was trying to take the Bales out of its unit. It would have been successful had the security guards not noticed it. It tried to mislead the authorities first by denying any involvement and then later on by filing a Police complaint. Despite



CCTVs and security guards, the Flax Apparels Pvt. Ltd. took a long time in coming forward to admit shortage of Bales from its stock.

- (d) Appellant never informed the concerned authorities that it was no longer using the logo and that it was being used by Flax Apparels Pvt. Ltd. It even purchased similar goods with the said logo from Flax Apparels Pvt. Ltd. and exported the same.
- (e) Any violation in respect of restricted goods (worn and used clothing CTAH 63090000) cannot be condoned and is liable for penal action under the relevant provisions of the SEZ Act, 2005 and FT(D&R) Act, 1992.
- (f) Shri Manjit Singh Makkar and Manmohan Singh, Directors cannot escape the responsibility as they were in control of operations of the Appellant and hence are also liable for action under the SEZ Act, 2005 and FT(D&R) Act, 1992.

7.0. In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014, dated the 5<sup>th</sup> December 2014, I pass the following order :-

**Order**

F. No. 01/92/171/46/AM-20/PC-VI/

Dated: 09.12.2021

The Appeal is dismissed.



(Amit Yadav)

**Director General of Foreign Trade**

Copy to:

1. Safari Fine Clothing Private Limited, Shed Number 280-281, Sector-III, Kandla SEZ, Gandhidham (Kutch) – 370230.
2. Shri Manjit Singh Makkar, Director, Safari Fine Clothing Private Limited. KASEZ
3. Shri Manmohan Singh, Director, Safari Fine Clothing Private Limited. KASEZ
4. Development Commissioner, Kandla SEZ for compliance and further necessary action.
5. DGFT's web site.



(Randheep Thakur)

**Joint Director General of Foreign Trade**