

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

F.No. 01/92/171/11/AM-22/PC-VI/14-15, TR. No. 20

Date of Order: 26.05.2022

Date of Dispatch: 26.05.2022

Name of the Appellant:

Palmon Exports
Shed No. 186 & 187, Sector-I,
Kandla Special Economic Zone,
Gandhidham -370230.

IEC Number:

0304048151

Order appealed against:

Appeal filed against Order-in-Original
No. KASEZ/07/2021-22 dated 21.05.2021 passed by
the Development Commissioner, Kandla Special
Economic Zone

Order passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Appeal

Palmon Exports (hereinafter referred to as "the Appellant") filed an appeal dated 02.08.2021 (received on 16.08.2021) under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against Order No. KASEZ/07/2021-22 dated 21.05.2021 (issued from F.No. KASEZ/IA/Admn/2/858/80/Vol.IV/2586) passed by the Development Commissioner, Kandla Special Economic Zone (hereinafter referred to as "the DC") imposing a penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on the Appellant.

2.1 Vide Notification No. 101 (RE-2013)/2009-2014 dated 5th 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 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.

3.0 Brief facts of the case:

3.1 Palmon Exports was issued a Letter of Approval/Permission (LoA) vide letter F.No. KFTZ/Admn/2/858/80/Vol. II/1098 dated 24.05.2001 by the DC, KASEZ for setting up a unit to undertake manufacturing and trading activity in KASEZ subject to conditions



imposed therein. The LoA was granted for 'all types of readymade garments and made-ups and trading activity including manufacturing of readymade garments'.

- 3.2 Appellant accepted all the terms and conditions specified in the LoA and executed a Bond-cum-LUT in form-H for the purpose as required under Rule 22 of the SEZ Zone Rules, 2006 (hereinafter referred to as "the SEZ Rules").
- 3.3 As per the aforesaid LoA, the Appellant was required to intimate the date of commencement of production, achieve positive Net Foreign Exchange (NFE) and in case of failure to comply with any conditions of the said LoA, it's LoA was liable to be cancelled as per the provisions of the SEZ Act, 2005 and the Rules & orders made there under.
- 3.4 The representative of the Appellant informed in 138th meeting of the Unit Approval Committee (UAC) of the DC held on 12.12.2018 that they were not carrying out any activity of manufacturing garments since 2000.
- 3.5 DC observed that Appellant neither installed any machinery nor created any infrastructure also for the purpose of their manufacturing activity of readymade garments. Accordingly, Appellant violated the terms and conditions of the LoA.
- 3.6 DC issued a Show-cause Notice (SCN) on 26.12.2018 to the Appellant asking it to show cause as to why LoA should not be cancelled and penalty should not be imposed under Rule 25 and 54(2) of the SEZ Rules, 2006 read with FT(D&R) Act for not carrying out authorized operations in terms of LoA.
- 3.7 DC observed that the Appellant was not carrying out the authorized operation of manufacturing of readymade garments in contravention of Rule 54(2) of the SEZ Rules, 2006 and condition of the LoA and Bond-cum-LUT executed by it making it liable for penal action under Section 11(2) of the Act.
- 3.8.1 DC vide Order-in-Original dated 21.05.2021 imposed a penalty of Rs. 50,000/- on the Appellant under Section 11(2) of the Act for not carrying out the authorized activity. However, the proceedings to cancel LoA of the Appellant were dropped.
- 4.0 Aggrieved by the Order-in-Original dated 21.05.2021, the Appellant has filed the present Appeal. Shri Sunil Lahori appeared on behalf of the Appellant in the hearing held on 25.03.2022. Shri Satyadeep Mohapatra, Joint DC was present on behalf of the DC, KASEZ. Appellant in its written/oral submissions has raised the following grounds :-
 - (i) Appellant had removed their machines to DTA and were preparing to buy new machinery. Due to trade conditions of readymade industry, Appellant has violated the provisions of the LoA but have been trying to start manufacturing.



- (ii) Appellant has achieved positive NFE with support of trading activities.

5.0 Comments on the Appeal were obtained from the office of the DC, KASEZ. The DC vide letter dated 06.01.2022 stated as under: -

- (i) Appellant was granted LoA on 24.05.2001 for manufacturing and trading activity subject to terms and conditions mentioned therein.
- (ii) In terms of LoA, the Appellant was under an obligation to carry out the specified authorized operations i.e. 'All Types of Readymade Garments and Made-ups and Trading activity including manufacturing of readymade garments' at their premises in KASEZ.
- (iii) Appellant admitted before the UAC that they were not carrying out any activity of manufacturing garments since 2000. It was further noticed that the Appellant neither installed any machinery nor created any infrastructure also for the purpose of manufacturing of readymade garments,
- (iv) DC issued SCN dated 26.12.2018 to the Appellant for not carrying out authorized operations in terms of LoA.
- (v) DC, KASEZ vide Order-in-Original dated 21.05.2021 observed that the Appellant had failed to carry out authorized operations i.e. manufacturing activity of readymade garments in terms of LoA thereby confirming the allegations made in the SCN and violated the terms and conditions of LoA and Bond-cum-LUT. DC imposed a penalty on the Appellant.

6.0. I have considered the Order-in-Original dated 21.05.2021 passed by DC, KASEZ, Appeal and oral submissions, comments given by the DC and all other aspects relevant to the case. It is noted that :-

- (i) DC, KASEZ had issued a LoA on 24.05.2001 to the Appellant for 'All types of readymade garments and made-ups and Trading activity including manufacturing of readymade garments.' However, DC has confirmed that Appellant is yet to install any machinery or create any infrastructure for the manufacture of readymade garments. Appellant has not denied this assertion of the DC.
- (ii) Appellant had accepted the terms and conditions specified in the LoA and executed Bond-cum-LUT as required under Rule 22 of the SEZ Rules, 2006.
- (iii) As per Rule 54(2) of the SEZ Rules, Appellant has rendered itself liable for failing to comply with the terms and conditions of the LoA. Hence, the action taken by the DC against the Appellant for not manufacturing readymade garments in violation of the LoA and later imposing a penalty for contravening the provisions



of the SEZ Act and the LoA is in accordance with the provisions of the FT(D&R) Act, 1992.

- (iv) As regards the quantum of penalty imposed, Adjudicating authority could not have imposed a penalty less than Rs. 10,000/- and not more than five times of the value of goods for which contravention has been made or is attempted to be made, whichever is more, as per the Section 11(2) of the FT(D&R) Act, 1992.
- (v) The penalty of Rs. 50,000/- imposed by the DC is reasonable and deserves no intervention.

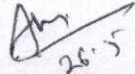
7.0. In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014 dated the 5th December 2014, I pass the following order :-

Order

F.No. 01/92/171/11/AM-22/PCVI


Dated: 26.05.2022

The Appeal is dismissed.


(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:

1. ✓ Palmon Exports, Shed No. 186 & 187, Sector-I, Kandla Special Economic Zone, Gandhidham -370230.
2. ✓ Development Commissioner, KASEZ for information and to make recoveries.
3. ✓ Additional Secretary (SEZ Division), DoC, New Delhi for information.
4. ✓ DGFT's website.


(Randheep Thakur)
Joint Director General of Foreign Trade