Government of India (भारत सरकार)
Department of Commerce (वाणिज्य विभाग)
Directorate General of Foreign Trade (विदेश व्यापार महानिदेशालय)
Vanijya Bhawan, New Delhi-110011
वाणिज्यभवन,नईदिल्ली
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01/92/180/03/AM26/PC6/35

Date of Order: 13.07.2026

Date of Dispatch: 13.07.2026

Name of the Applicant:	M/s S.R. Warehousing & Trading Co., Plot No. 1 (Part), Sector-II, Kandla Special Economic Zone (KASEZ), Gandhidham - 370 230, Gujarat
IEC No.	AAQFS5393G
Order Appealed against:	Appeal against Order-in-Original No. KASEZ/17/2024-25 dated 12.02.2025 passed by the Development Commissioner, Kandla Special Economic Zone
Order passed by:	**Shri Lav Agarwal** **Director General of Foreign Trade**

Order-in-Appeal

M/s S.R. Warehousing & Trading Co. (hereinafter "the Appellant") is a partnership firm operating as a Special Economic Zone (SEZ) unit at Plot No. 1 (Part), Sector-II, Kandla Special Economic Zone (KASEZ), Gandhidham. The Appellant holds Letter of Approval (LOA) No. KASEZ/IA/044/2010-11/2352 dated 05.01.2011 for Warehousing Service Activity under Rule 18(5) and Rule 76 of the SEZ Rules, 2006. The said LOA was renewed from time to time and was valid up to 19.06.2026.

2. Vide Notification No. 101 (RE-2013)/2009-2014 dated 05.12.2013, the Central Government has authorized the Director General of Foreign Trade, aided by one Additional DGFT, to function as Appellate Authority against orders passed by the Development Commissioner, Special Economic Zones, functioning as Adjudicating Authority. Accordingly, the present appeal is properly before this Authority.

3. **Brief Facts of the Case**

3.1 On 23.11.2023, the Preventive Officer (PO) of KASEZ Customs conducted an inspection of the Appellant's premises and found that imported old and used plastic waste scrap belonging to M/s Eco Plastics, another SEZ unit operating in KASEZ, was stored therein. Manual sorting of plastic waste was being carried out at the premises. Mr. R.D. Shah, the owner, informed the PO that warehousing services were being provided to M/s Eco Plastics under a warehousing agreement.

3.2 The Appraiser forwarded the PO's report on 30.11.2023 to the Development Commissioner, KASEZ, concluding that sub-letting/renting of premises was being carried out. Thereafter, Show Cause Notice No. KASEZ/IA1/43/2023 dated 11.01.2024 was issued proposing: (a) cancellation of the LOA under Section 16 of the SEZ Act, 2005; and (b) imposition of penalty under Sections 11 and 13 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter "FT(D&R) Act"), read with Rule 54(2) of the SEZ Rules, 2006.

3.3 The Appellant filed a reply dated 30.01.2024 to the SCN. A personal hearing was held on 28.02.2024, wherein the Appellant's authorized representative Shri Chellani appeared.

3.4 Thereafter, Order-in-Original No. KASEZ/17/2024-25 dated 12.02.2025 (hereinafter "the impugned OIO") was passed by the Development Commissioner, KASEZ, imposing a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) under Section 11(2) of the FT(D&R) Act, 1992 read with Rule 54(2) of the SEZ Rules, 2006. The proceedings for cancellation of LOA were dropped with a warning.

3.5 Aggrieved by the impugned OIO, the Appellant preferred the present appeal before this Authority.

4. In the appeal the Appellant states that:

4.1 The arrangement with M/s Eco Plastics was a genuine warehousing service permitted under Rule 76 of the SEZ Rules, 2006 read with Section 2(z) of the SEZ Act, 2005. Formal invoices were raised, and warehousing service charges were received in foreign exchange. A warehousing service provider and a sub-lessor are legally distinct, and the DC's characterization of the arrangement as subletting was legally incorrect.

4.2 The Appellant submitted that the PO's report dated 23.11.2023, which forms the sole evidentiary foundation of these proceedings, categorically records only manual sorting without any machinery or electricity. The report does not use the word "manufacturing." The Adjudicating Authority's conclusion of manufacturing activity was, therefore, an inference unsupported by evidence.

4.3 The Appellant relied on the definition of "manufacture" under Section 2(r) of the SEZ Act, 2005 which requires production of a new product with a distinctive name, character, or use to argue that manual sorting of plastic waste scrap does not satisfy this test and cannot legally constitute manufacturing.

4.4 The Appellant contended that the restrictions placed by the 116th Unit Approval Committee (UAC) Meeting of KASEZ dated 19.07.2017 were prospective in nature and were never specifically communicated to or formally incorporated into the Appellant's LOA by way of amendment. Accordingly, the Appellant was not bound by those conditions.

4.5 The Appellant submitted that Section 11(2) of the FT(D&R) Act, 1992, applies exclusively to contraventions relating to import or export. Since no import or export transaction was alleged to have been made in contravention of any provision, invoking this section to impose penalty was legally misconceived.

4.6 The Appellant relied on the Supreme Court's judgment in Hindustan Steel Ltd. 1978 ELT (J159) to contend that penalty should not be imposed where the breach flows from a bona fide belief. The Appellant submitted that it genuinely believed its warehousing service to M/s Eco Plastics was permitted, there was no dishonest or contumacious conduct, and as an MSME unit with a clean record, a penalty of Rs. 10 lakhs was wholly disproportionate.

5. In reply to this DC, KASEZ, the Respondent provided a chronological overview of the case and stated:

5.1 The entire allotted shed/space was handed over to M/s Eco Plastics, preceded by a similar arrangement with M/s Canam International Pvt. Ltd. from 20.09.2022. This pattern of successively placing different third-party units in possession of the allotted premises establishes sub-letting, which is an infrastructure service reserved exclusively for Developers/Co-Developers under Section 3(13) of the SEZ Act, 2005.

5.2 At the personal hearing on 28.02.2024, the Appellant's own authorized representative Shri Chellani admitted on record that "manufacturing as well as storing was being carried out" at the premises and undertook to stop such activities. This admission on record substantially undermines the Appellant's denial.

5.3 The MOU/Agreement dated 24.02.2023 between the Appellant and M/s Eco Plastics itself records that M/s Eco Plastics was "facing acute shortage of space in its existing premises and looking for warehousing facilities to store raw material and carry out manufacturing." This language conclusively establishes that the premises were being used as an extension of M/s Eco Plastics' manufacturing operations, not as a warehousing service arrangement.

5.4 The 116th UAC Meeting of KASEZ dated 19.07.2017 specifically resolved that LOAs issued to warehousing units prior to 11.07.2011 shall carry a condition that no subletting or sharing of premises shall be permitted and that no manufacturing activity shall be allowed in warehouse premises. The Appellant's LOA was issued in 2011 and squarely falls within the coverage of this UAC decision. The Appellant, as a sophisticated SEZ unit that had signed the Bond-cum-Legal Undertaking (BCLUT) to abide by all conditions of the LOA and SEZ Act/Rules, is bound by these conditions.

5.5 The renewal letter dated 14.02.2018 of the Appellant's LOA itself expressly stated that "no manufacturing activity is permitted in their warehouse unit operating under Rule 18(5) and Rule 76 of SEZ Rules, 2006." This removes any ambiguity and negates any claim of bona fide belief.

5.6 The penalty of Rs. 10 lakhs under Section 11(2) of the FT(D&R) Act, 1992 read with Rule 54(2) of the SEZ Rules, 2006 is proportionate given the deliberate and repeated nature of the violation. The Respondent drew a distinction between "bona fide default" as defined by the Ministry of Commerce vide letter No. C-2/2/2018-SEZ dated 20.01.2019 (defaults that are not repeated) and the present case which involves a continuing practice from at least September 2022.

6. Personal hearing on the matter was granted to the parties on 27.03.2026 at 3:00 PM. In the Personal hearing the Appellant and the Respondent reiterated the position taken in their submissions.

7. **Observations and Findings**

7.1 The Appellant contends that it was rendering a warehousing service under Rule 76 of the SEZ Rules, 2006. A careful examination of the facts and documents on record does not support this contention. The critical distinction between a warehousing service and a sub-letting arrangement lies in whether the warehousing unit retains custody, control, and operational responsibility over the goods. In a legitimate warehousing arrangement under Rule 18(5) of the SEZ Rules, the warehousing unit holds goods on behalf of clients, maintains records, and dispatches them as per the owner's instructions. The unit does not surrender possession of its premises.

7.2 In the present case, the record reveals that the Appellant handed over its entire allotted shed/space to M/s Eco Plastics for an extended period commencing 24.02.2023, having done the same with M/s Canam International Pvt. Ltd. from 20.09.2022. The PO report dated 23.11.2023 found goods belonging to M/s Eco Plastics stored at the premises with sorting activity being carried out by M/s Eco Plastics' personnel. There is no evidence on record that the Appellant maintained any independent custody or operational control over the goods of M/s Eco Plastics. The Appellant did not produce any documentation establishing that it exercised the duties of a warehousing unit. The absence of such documentation, in a regulated SEZ environment where documentation norms are well-defined, is telling.

7.3 More significantly, the MOU dated 24.02.2023 between the Appellant and M/s Eco Plastics expressly records that M/s Eco Plastics was "facing acute shortage of space in its existing premises and looking for warehousing facilities to store raw material and carry out manufacturing." This language leaves no doubt that what was being sought and provided was storage space for another unit's manufacturing operations an arrangement that goes to the core of what sub-letting means in the SEZ context. Renting out infrastructure within an SEZ allotment to another unit is an activity that is reserved exclusively for Developers and Co-Developers under Section 3(13) of the SEZ Act, 2005 and cannot be carried out by a unit holder.

7.4 The Appellant's reliance on Rule 76 to justify the arrangement is misplaced. Rule 76 permits a SEZ unit to earn income from warehousing services but this does not authorize the unit to transfer possession of its allotted premises to another unit and allow that unit to conduct its own operations therein. The argument would, if accepted, effectively permit any warehousing unit to sublet its entire premises to another party, label it a "warehousing service," and thereby wholesale circumvent the authorized operations framework and SEZ zoning structure. Such an interpretation cannot be countenanced.

7.5 This Authority finds that the arrangement between the Appellant and M/s Eco Plastics was, in substance, a subletting of the allotted warehouse premises, and not a warehousing service within the meaning of Rule 18(5) or Rule 76 of the SEZ Rules, 2006.

7.6 The Appellant has further argued that the PO's report records only manual sorting without machinery, and that manual sorting does not constitute manufacturing under Section 2(r) of the SEZ Act, 2005. This contention requires examination.

7.7 It is noted that Section 2(r) of the SEZ Act defines "manufacture" as "to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use." The definition specifically includes the phrase "by hand or by machine" which negates the Appellant's submission that the absence of machinery renders the activity non-manufacturing. More critically, whether or not the activity technically satisfies the precise definition of manufacturing, it is indisputable that the activity of manually sorting imported plastic waste/scrap is a processing activity that goes beyond what is permissible under Rule 18(5) of the SEZ Rules, 2006.

7.8 Rule 18(5) of the SEZ Rules, 2006 permits a warehousing unit only to "hold the goods for packing or repacking." The provision does not permit the warehousing unit to allow sorting, processing, or any other value-adding activity to be carried out on the goods stored in its premises, whether by itself or by a third party. The activity observed by the PO that is manual sorting of plastic waste scrap falls outside the scope of permissible operations under Rule 18(5). The Respondent's position is accordingly sustained on this count, regardless of whether the activity legally qualifies as "manufacturing" in the strict definitional sense.

7.9 Furthermore, even if the narrow definitional argument on manufacturing were to be conceded to the Appellant, the Appellant's own authorized representative made a categorical admission at the personal hearing on 28.02.2024 that "manufacturing as well as sorting was being carried out" at the premises. This admission is on record in the impugned OIO at Paragraph 12. An admission made at a personal hearing before the Adjudicating Authority is a significant piece of evidence that cannot be lightly brushed aside. The admission substantially undermines the Appellant's subsequent denial of manufacturing activity before this Authority.

7.10 The Appellant in its appeal has also invoked the principle in Hindustan Steel Ltd. 1978 ELT (J159) to argue that penalty should not be imposed where the breach flows from a bona fide belief and that the penalty of Rs. 10 lakhs is disproportionate.

7.11 The Hindustan Steel principle offers no assistance to the Appellant in the present facts. The Supreme Court in that case held that penalty is a discretionary remedy and should not be imposed merely because it is technically lawful, particularly where the violation flows from genuine uncertainty or a bona fide belief. However, the applicability of this principle depends fundamentally on whether the claim of bona fide belief is credible on the facts.

7.12 In the present case, the Appellant's claim of bona fide belief is untenable for the following reasons: First, the LOA renewal letter dated 14.02.2018 specifically and unambiguously stated that no manufacturing activity is permitted in the Appellant's warehouse unit. Second, the Appellant had signed the BCLUT undertaking to comply with all conditions of the LOA and SEZ Act/Rules. Third, the violation was not an isolated or inadvertent event it was a continuing practice from at least September 2022 (M/s Canam International) and then from February 2023 (M/s Eco Plastics). The Ministry of Commerce & Industry's definition of "bona fide default" vide letter No. C-2/2/2018-SEZ dated 20.01.2019 expressly excludes defaults that are repeated and continuing. The present violation is precisely of this character. Fourth, the Appellant's own authorized representative admitted at the personal hearing that manufacturing and storing were being carried out, which is inconsistent with the claim of a bona fide belief that the activity was permissible. Thus, the penalty imposed is proportionate.

8. In view of the above, this Authority finds as follows:

8.1 The arrangement between M/s S.R. Warehousing & Trading Co. and M/s Eco Plastics constituted sub-letting/renting of SEZ premises and not a warehousing service under Rule 18(5) or Rule 76 of the SEZ Rules, 2006. This is established from the MOU language, the pattern of successive sub-letting and the absence of documentation of actual warehousing operations.

8.2 The activity carried out at the Appellant's premises sorting of imported plastic waste/scrap by M/s Eco Plastics is unauthorized processing activity beyond the scope of permissible operations under Rule 18(5) of the SEZ Rules, 2006, irrespective of whether it technically constitutes "manufacturing" under Section 2(r) of the SEZ Act. The Appellant's own authorized representative admitted manufacturing and sorting activity at the personal hearing before the Adjudicating Authority.

Order

01/92/180/03/AM26/PC6

Dated: 13.07. 2026

Accordingly, the appeal filed by M/s S.R. Warehousing & Trading Co. is hereby dismissed. Order-in-Original No. KASEZ/17/2024-25 dated 12.02.2025 passed by the Development Commissioner, Kandla Special Economic Zone stands confirmed in its entirety.

(Lav Agarwal)
Director-General of Foreign Trade

Copy To:

1) M/s S.R. Warehousing & Trading Co., Plot No. 1 (Part), Sector-II, Kandla Special Economic Zone (KASEZ), Gandhidham - 370 230, Gujarat
2) Development Commissioner, Kandla SEZ for taking necessary action.
3) DGFT's website.

(Sumit Verma)
Deputy Director General of Foreign Trade