

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

F.No. 01/92/171/12/AM-22/PCVI/12-13, TR.No 19 Date of Order: 17.05.2022
 Date of Dispatch: 18.05.2022

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/08/2021-22 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/08/2021-22 dated 21.05.2021 (issued from F.No. KASEZ/IA/Admn/2/858/80/Vol.IV/2589) 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.



- 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 Special Economic 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) as prescribed in the SEZ Scheme for the period it operated as a unit in the SEZ from the commencement of production/activity, as required under Rule 53 of the SEZ Rules 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 On completion of fifth year for five years block period on 31.03.2021, the Appellant submitted its Annual Performance Report (APR) for 2016-21. After review of the performance of the unit, DC observed that the NFE of the unit during 2020-21 was 'Nil'. Therefore, DC decided to take necessary action against the Appellant as per the provisions of the SEZ Act and Rules.
- 3.5 DC issued a Show-cause Notice (SCN) on 13.04.2021 to the Appellant asking it to show cause as to why LoA should not be cancelled and penalty should not be imposed under Rules 25 and 54(2) of the SEZ Rules, 2006 read with FT(D&R) Act, 1992 and Rules for not achieving positive NFE in the block period 2016-21.
- 3.7 DC, KASEZ observed that the Appellant was guilty of non-achievement of positive NFE as required under Rule 53 of the SEZ Rules, 2006 and condition no. 8 of the Bond-cum-LUT executed by it making it liable for penal action under Section 11(2) of the FT(D&R) Act, 1992.
- 3.8 DC, KASEZ vide Order-in-Original dated 21.05.2021 imposed a penalty of Rs. 50,000/- on the Appellant under Rule 54 of SEZ Rules, 2006 for non-achievement of positive NFE. 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) In 2016, Appellant was issued one LoA for trading, warehousing and manufacturing of readymade garments. In 2018, DC decided to issue 3 separate LoPs, so their LoPs were split and following LoPs were issued;
- (a) Manufacturing garments, LoA F.No. KASEZ/Admn/2/858/80/Vol.III/865 dated 16.04.2018.
- (b) Trading, LoA F.No. KASEZIA/09/2018-19/6208 dated 30.08.2018
- (c) Warehousing LoA F.No. KASEZ/IA/2016-17/920 dated 18.04.2016

- (ii) Appellant could not operate NSDL so they could not submit their data as their record could not be found.
- (iii) APR filed shows a positive NFE of more than Rs. 48 Crores while taking into account all the 3 LoPs. If their single LoA was not splitted into three LoAs, their NFE could have been shown as positive.
- (iv) Due to Covid Pandemic all their operational activities were badly affected and they even could not submit the letter of commencement of the manufacturing activity as stipulated in LoA and Bond-Cum-LUT. During the last 2 years, it has been unable to restart its business and has suffered huge losses.

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) DC, KASEZ observed that the Appellant failed to achieve positive NFE during 2016-2021 and had 'Nil' NFE in the period.
- (ii) Appellant failed to achieve positive NFE in terms of Rule 53 and 54 of SEZ Rules read with Bond-cum-LUT warranting imposition of penalty under the FTDR Act.
- (iii) After grant of personal hearing, DC observed that the Appellant had zero NFE during 2016-21 in violation of Rule 53 of SEZ Rules and terms and conditions of Bond-cum-LUT. Hence, DC imposed a penalty of Rs. 50,000/- vide Order-in-Original dated 21.05.2021.
- (iv) The NSDL of Appellant was blocked from 20.04.2021 to 14.07.2021 due to non-renewal of LoA and this ground is not relevant to the period of 2016-2021 for which SCN was issued.
- (v) No reason/explanation has been given by the Appellant as to why it has not been unable to achieve positive NFE during the period 2016-21.

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 has confirmed that for the five year block period from 2016 to 2021, Appellant has failed to carry out any authorized operations and as a result the NFE achievement was zero. Appellant has not denied that it had zero NFE in the said period.
- (ii) As per the policy/procedure, the NFE is calculated cumulatively for a period of five years and Appellant was found to have zero NFE for the five year block period from 2016 to 2021. Accordingly, it has failed to comply with the Rule 53



of the SEZ Rules, 2006 and the conditions mentioned in the LoA. Thus, it has rendered itself liable for imposing of the penalty as per the Rule 54(2) of the SEZ Rules. Hence, the action taken by the DC, KASEZ for imposition of penalty for contravening the provisions of the SEZ Act and conditions of the LoA is in accordance with the Act.

- (iii) DC has held the Appellant guilty of having zero NFE during the period 2016-21 and imposed a penalty of Rs. 50,000/-.
- (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) Appellant was unable to undertake any manufacturing business during 2016-21 due to an adverse impact on the working of its unit in KASEZ due to various reasons. I am inclined to take a lenient view for deciding the quantum of penalty.


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. 01/92/171/12/AM-22/PCVI


Dated: 17.05.2022

Partial relief is granted. Amount of penalty imposed vide Order-in-Original Order No. KASEZ/08/2021-22 dated 21.05.2021 by DC, KASEZ is reduced from Rs. 50,000 to Rs. 10,000 (Rupees Ten Thousand Only).


(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