Government of India (भारत सरकार)
Department of Commerce (वाणिज्य विभाग)
Directorate General of Foreign Trade (विदेश व्यापार महानिदेशालय)
Vanijya Bhawan, New Delhi-110011
वाणिज्य भवन,नई दिल्ली
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01/92/180/03/AM26/PC6/49

Date of Order: 03.11 .2026

Date of Dispatch: 03.11 .2026

Name of the Applicant:	M/s Lohadia Warehousing Co., Plot No. 446, Sector-IV, Kandla Special Economic Zone, Gandhidham, (Kutch) 370230.
IEC No.	5568497464
Order Appealed against:	Appeal against Order-in-Original No. KASEZ/19/2024-25 dated 25.02.2025. 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 Lohadia Warehousing Co. ("the Appellant") is a partnership concern holding Letter of Approval (LOA) No. 024/2010-11 dated 25.10.2010 issued by the Development Commissioner, Kandla Special Economic Zone ("the Respondent"/"KASEZ") for undertaking Warehousing Service Activity under Rule 18(5) and Rule 76 of the SEZ Rules, 2006.

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 The Appellant's LOA was renewed vide letter dated 23.03.2018 for the period 01.05.2017 to 30.04.2022, subject, inter alia, to the following additional conditions inserted pursuant to the decision of the 116th Unit Approval Committee (UAC) Meeting held on 19.07.2017: (a) no sub-letting or sharing of the premises or giving space for use to others in any manner would be permitted and only warehousing of goods would be permitted; and (b) no manufacturing activity would be permitted in the warehousing unit operating under Rule 18(5) and Rule 76 of the SEZ Rules, 2006.

3.2 The Preventive & Intelligence (P&I) Section of Customs, Kandla SEZ, vide report dated 21.09.2023, reported that on inspection of the Appellant's premises at Plot No. 446, Sector-IV, KASEZ, bales of worn/used clothing belonging to M/s Flax Apparels Pvt. Ltd., another unit in KASEZ engaged in sorting, segregating and reconditioning of worn/used clothing, were found stored therein. The representative of the Appellant present at the time of inspection confirmed that the goods warehoused belonged to M/s Flax Apparels Pvt. Ltd.

3.3 On the basis of the said report, the Respondent issued Show Cause Notice dated 07.11.2023 ("the SCN") calling upon the Appellant to show cause as to why (i) its LOA should not be cancelled under Section 16 of the SEZ Act, 2005 for persistent violation of the terms and conditions of the LOA, and (ii) penalty should not be imposed under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992 ("the FTDR Act") read with Rule 54(2) of the SEZ Rules, 2006.

3.4 The Appellant submitted a reply dated 28.11.2023 and was granted a personal hearing on 28.11.2023, which was attended by Shri Denu Kapania, Partner of the Appellant firm. The Appellant denied having sub-let the premises and contended that it had merely rendered warehousing services to M/s Flax Apparels Pvt. Ltd., which holds a 33% partnership share in the Appellant firm, and that it had received warehousing charges in convertible foreign exchange.

3.5 The Respondent, after considering the SCN, the reply and the submissions made at the personal hearing, passed Order-in-Original dated 25.02.2025 ("the Impugned Order"), whereby the proposal for cancellation of the LOA was dropped, but a penalty of Rs. 20,88,280/- was

imposed on the Appellant under Section 11(2) of the FTDR Act, 1992 read with Rule 54(2) of the SEZ Rules, 2006.

3.6 Aggrieved by the Impugned Order, the Appellant has preferred the present appeal under Section 15 of the FTDR Act, 1992, praying, inter alia, for setting aside of the Impugned Order, or in the alternative, remand for de novo proceedings, or reduction of the penalty to the bare minimum of Rs. 10,000/-.

4. In the Appeal the Appellant states that:

4.1 The Appellant has, in substance, urged the following grounds: (i) that the Impugned Order was passed mechanically and in breach of natural justice inasmuch as the Report of Customs Officers dated 21.09.2023, being a Relied Upon Document, was not supplied despite specific request;

4.2 That the activity carried out was warehousing simpliciter for its co-partner unit, M/s Flax Apparels Pvt. Ltd. (holding 33% share in the Appellant firm, duly approved by the Respondent vide letter dated 11.04.2018), and did not amount to sub-letting or renting;

4.3 That no manufacturing activity was witnessed by the inspecting officers, and the finding of manufacturing/reprocessing is conjectural;

4.4 That the conditions restricting sub-letting and manufacturing activity, inserted at the time of renewal of the LOA on 23.03.2018, are ultra vires Rule 18(1) and Rule 19 of the SEZ Rules, 2006, as the UAC is empowered to prescribe conditions only at the stage of initial grant of LOA and not at renewal;

4.5 That the decision of the 152nd UAC Meeting dated 10.01.2020 protects LOAs issued between 21.12.2008 and 11.07.2011 (a category within which the Appellant's LOA, issued on 25.10.2010, falls) from the imposition of the no-manufacturing/no-subletting restriction;

4.6 That penalty under Section 11(2) of the FTDR Act, 1992 is attracted only where there is contravention in respect of import or export, which is not alleged in the SCN;

4.7 That the Appellant has remained NFE-positive and has earned the warehousing charges in convertible foreign exchange, evidenced by Invoice dated 01.09.2023 and the accompanying Foreign Inward Remittance Certificate;

4.8 That, relying on Hindustan Steel Ltd. v. State of Orissa, 1978 (2) ELT J159 (SC), no penalty, or at best only a token penalty, is warranted in the absence of any dishonest or

contumacious conduct, and that the quantum of Rs. 20,88,280/- is disproportionate and excessive for an MSME unit.

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

5.1 The SCN and the Impugned Order were founded on contravention of the LOA, the Bond-cum-Legal Undertaking (BLUT) and the SEZ Act/Rules, and not merely on a general finding of unlawfulness;

5.2 The contents of the Customs officers' report dated 21.09.2023 were reproduced in extenso in the SCN itself, and the plea of denial of natural justice for non-supply of the report is accordingly not tenable;

5.3 The approval accorded to M/s Flax Apparels Pvt. Ltd. becoming a 33% partner vide letter dated 11.04.2018 did not have the effect of modifying, diluting or dispensing with the no-subletting/no-manufacturing conditions of the LOA;

5.4 The conditions restricting sub-letting and manufacturing activity were inserted in the Appellant's LOA vide renewal letter dated 23.03.2018 pursuant to a considered decision of the 116th UAC Meeting dated 19.07.2017, upon due deliberation and legal opinion, and the Appellant, having accepted the renewed LOA without any demur at the relevant time, cannot be permitted to belatedly question the validity of those conditions;

5..5 The decision of the 152nd UAC Meeting dated 10.01.2020 was, on its own terms, confined to the five named units mentioned in Agenda Item No. 152.3.9 (M/s Bajaj Warehousing Services, M/s Global Warehousing & Trading, M/s Sky Enterprises, M/s Easy Warehousing and M/s Oswal Tradex) and did not enure to the benefit of the Appellant, whose LOA had, in any event, already been renewed with the restrictive conditions on 23.03.2018, prior to the 152nd UAC Meeting;

5.6 Even assuming the Appellant were entitled to the benefit of the 152nd UAC decision, that decision, at best, permitted storage of worn/used clothing of one such unit — it did not permit

the wholesale handing over of the entire shed to another unit for carrying out manufacturing/reprocessing activity, which is what was found on inspection;

5.7 Mere receipt of consideration in convertible foreign exchange does not cure a fundamental breach of the terms of the LOA and BLUT;

5.8 The Appellant is not a first-time offender: an identical SCN dated 02.12.2016 concerning the very same practice of sub-letting to M/s Flax Apparels Pvt. Ltd. had culminated in Order-in-Original No. KASEZ/04/2022-23 dated 28.10.2022 imposing a penalty of Rs. 50,000/-, and the Appellant, in its reply dated 30.01.2017 to that earlier SCN, had itself admitted to having rented out the shed "due to ignorance of law"; despite this, the very same conduct continued and was detected afresh in September 2023, demonstrating a persistent and repeated pattern rather than an isolated or bona fide lapse;

5.9 The Appellant has also been a habitual defaulter in payment of lease rental, having been issued eviction notices under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 on more than one occasion; and

5.10 In these circumstances, invocation of Section 11(2) of the FTDR Act, 1992 read with Rule 54(2) of the SEZ Rules, 2006 was fully warranted, and the Respondent, having already taken a lenient view by dropping the proposal for cancellation of the LOA under Section 16 of the SEZ Act, 2005, cannot be said to have acted disproportionately in imposing the penalty in question.

6. The parties were granted a personal hearing in the matter on 14.07.2026 through Video Conferencing. Shri Denu Kapania appeared on behalf of the Appellant, Rajtamil Solanki was present from the side of KASEZ.

7. During the hearing, the Appellant reiterated the mitigating circumstances set out in its appeal and the respondent reiterated the submissions made in their written arguments.

8. Observation and findings

8.1 I have carefully perused the Memorandum of Appeal along with its annexures, the Impugned Order, the Show Cause Notice, the record of personal hearing dated 28.11.2023, the para-wise comments filed by the Respondent, and the material placed on record by both sides.

8.2 The first contention advanced on behalf of the Appellant, viz. that the proceedings are vitiated for non-supply of the Relied Upon Document (the Customs officers' report dated 21.09.2023), does not survive scrutiny. A perusal of the SCN dated 07.11.2023 shows that the substance of the said report namely, that bales of used/worn clothing belonging to M/s Flax Apparels Pvt. Ltd. were found stored in the Appellant's premises, and that on being questioned the Appellant's own representative confirmed this fact was set out verbatim in the body of the SCN itself. The Appellant was, therefore, at all material times aware of the precise case it was called upon to meet, and did in fact submit a detailed reply dealing with the allegation on merits, and appeared at the personal hearing through its partner. No prejudice of the kind contemplated in matters of breach of natural justice has been demonstrated. This ground is accordingly rejected.

8.3 On the central question whether the Appellant's conduct amounted to warehousing simpliciter, as claimed, or to impermissible sub-letting coupled with unauthorised manufacturing activity the material on record squarely supports the latter conclusion. The Appellant's own Invoice dated 01.09.2023 describes the consideration as being for "Intra Zone Storage & Handling Services" computed on the basis of the entire area of the shed (36,000 sq. ft.) on a lump-sum basis, which is indicative of the entire shed having been made over to M/s Flax Apparels Pvt. Ltd., rather than of specific goods being warehoused on the Appellant's account as bailee under Rule 18(5) of the SEZ Rules, 2006. This is consistent with the Respondent's finding, in the Impugned Order, that the Appellant had, in substance, rented its premises rather than rendered warehousing services strictly so called.

8.4 The contention that no manufacturing activity was witnessed does not assist the Appellant. The unrebutted position on record is that M/s Flax Apparels Pvt. Ltd. is a unit specifically engaged in sorting, segregating and reconditioning of worn/used clothing, and that its bales of such clothing were found stored in bulk in the Appellant's shed. Rule 18(5) of the SEZ Rules, 2006 permits a Free Trade and Warehousing Zone unit to hold goods only on account of the foreign supplier/DTA supplier for dispatch as per the owner's instructions, with

trading, labelling, packing or repacking, "without any processing". Handing over the entire shed to a unit whose very business is reprocessing of used and worn clothing, for that unit's own operations, is not an activity contemplated by Rule 18(5) at all.

8.5 The Appellant's challenge to the validity of the no-subletting and no-manufacturing conditions inserted in its LOA at the time of renewal on 23.03.2018 is also without merit. Rule 19(2) of the SEZ Rules, 2006, read with the first proviso thereto, and Rule 19(6B), confer sufficient power on the Approval Committee/Development Commissioner to impose conditions and restrictions in connection with the continuation and renewal of a unit's authorised operations, and the said conditions were inserted only pursuant to the considered decision of the 116th UAC Meeting held on 19.07.2017. It is significant that the Appellant accepted the renewed LOA containing these very conditions in March 2018 without protest, and continued to operate under it for over five years before raising this challenge for the first time in the reply to the SCN issued in November 2023, by which date the alleged contravention had already been detected. A party cannot avail of a Letter of Approval on stated terms for years together and then, upon being proceeded against for breach of those very terms, turn around and assail their validity. This ground is rejected.

8.6 On the question of quantum and the plea founded on Hindustan Steel Ltd. v. State of Orissa, 1978 (2) ELT J159 (SC), it is well settled that the said decision emphasizes that no penalty ought to be imposed for a technical or venial breach, or where the breach flows from a bona fide belief. On the facts of the present case, however, the plea of bona fide belief is not available to the Appellant. The record shows that an identical Show Cause Notice dated 02.12.2016, concerning the very same conduct of renting the shed to M/s Flax Apparels Pvt. Ltd., had previously been adjudicated vide Order-in-Original dated 28.10.2022 with imposition of a penalty of Rs. 50,000/-; in its reply dated 30.01.2017 to that earlier notice, the Appellant had itself admitted that it had rented out the shed "due to ignorance of law" and represented that it had rectified the position. Despite this admission and the subsequent adjudication, the identical conduct was found to be continuing on inspection in September 2023. This establishes a repeated and persistent default rather than an isolated or inadvertent lapse attributable to bona fide belief, and takes the case out of the protective principle laid down in Hindustan Steel Ltd. (supra).

8.7 As regards proportionality, I have carefully examined the Impugned Order to ascertain the basis on which the specific figure of Rs. 20,88,280/- was computed. The Impugned Order records its findings on contravention in considerable detail but does not, at any point, set out the arithmetical basis, valuation, or other rational criterion by which this particular figure as opposed to, for instance, a materially higher or lower figure was arrived at, nor does it explain the relationship between that figure and the value of the goods/services said to be involved in the contravention, or the duration of the default, or any other quantifiable parameter.

8.8 Further, I note that the immediately preceding penalty imposed on the Appellant for what the Respondent itself describes as "the same violation" the SCN dated 02.12.2016, culminating in Order-in-Original dated 28.10.2022 was Rs. 50,000/-.

8.9 Given the Appellant's continued NFE-positive status, the much lower Rs. 50,000/- penalty for the earlier identical contravention, and its MSME status with verified investment of Rs. 190.13 lakhs (APR FY 2021-22), I find the contravention, namely sub-letting the licensed premises to M/s Flax Apparels Pvt. Ltd. in breach of Condition (a) of the LOA (renewed 23.03.2018), Rule 18(5) of the SEZ Rules and Condition No. 1 of the BLUT dated 18.11.2011, to be well-founded on the record. The appeal fails on its primary prayer for setting aside or remand.

However, in view of these mitigating factors, I consider that halving the penalty imposed by the Respondent adequately serves justice and the deterrent purpose of Rule 54(2). Reducing it to the statutory minimum of Rs. 10,000/- would be disproportionate given the repeat and persistent default, and would not deter recurrence

8.10 Accordingly, the penalty of Rs. 20,88,280/- (Rupees Twenty Lakhs Eighty-Eight Thousand Two Hundred and Eighty only) imposed under Section 11(2) of the FTDR Act, 1992 read with Rule 54(2) of the SEZ Rules, 2006 is reduced by fifty percent (50%) to Rs. 10,44,140/- (Rupees Ten Lakhs Forty-Four Thousand One Hundred and Forty only).

ORDER

In the result, the appeal filed by M/s Lohadia Warehousing Co. against Order-in-Original No. KASEZ/19/2024-25 dated 25.02.2025 passed by the Development Commissioner, Kandla Special Economic Zone is PARTLY ALLOWED. The finding recorded in the Impugned Order that the Appellant has contravened Rule 18(5) of the SEZ Rules, 2006 and the terms and conditions of its Letter of Approval and Bond-cum-Legal Undertaking, and its consequent liability to penalty under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 54(2) of the SEZ Rules, 2006, is upheld and confirmed. However, for the reasons recorded at paragraph 9.10 above, the quantum of penalty imposed by the Impugned Order is reduced from Rs. 20,88,280/- (Rupees Twenty Lakhs Eighty-Eight Thousand Two Hundred Eighty Only) to Rs. 10,44,140/- (Rupees Ten Lakhs Forty-Four Thousand One Hundred and Forty Only). The Impugned Order stands modified to this extent, and the Appellant shall pay the penalty of Rs. 10,44,140/- accordingly.

This Order is issued without prejudice to any other action that may be taken against the Appellant, its partners, or the unit under any other law, rule or regulation for the time being in force.

(Lav Agarwal)

Director-General of Foreign Trade

Copy To:

1. M/s Lohadia Warehousing Co., Plot No. 446, Sector-IV, Kandla Special Economic Zone, Gandhidham, (Kutch) 370230
2. The Development Commissioner, Kandla SEZ. The Development Commissioner is requested to ensure compliance with this Order and take note of the directions regarding future defaults.
3. DGFT's Website

(Sumit Verma)

Deputy Director General of Foreign Trade