

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

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F. No. 01/92/171/12/AM-21/PC-VI/36 to 39, TR.No. 50

Date of Order: 20.01.2022  
Date of Dispatch: 21.01.2022

Name of the Appellant: **Shah Nanji Nagasi,**  
**Plot Number 72,**  
**Block 203, Salasar Palace Apartment,**  
**Gangabhai Ghat Square,**  
**Nagpur- 440009**

IEC No. : **0392059959**

Order appealed against: **Order-in-Original No. KASEZ/P&C/46/Phy.**  
**Inspection/ 2020-21/ 4152 dated**  
**17.11.2020 passed by the Development**  
**Commissioner, Kandla Special Economic Zone**

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

**Order-in-Appeal**

Shah Nanji Nagasi (hereinafter referred to as "the Appellant") has filed an appeal dated 17.11.2020 under Section 15 of Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against Order-in-Original dated 17.11.2020, (issued from F.No. KASEZ/P&C/46/Phy. Inspection/2020-21/4152) passed by the Development Commissioner (hereinafter referred to as "DC"), Kandla Special Economic Zone (KASEZ) imposing a penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only).

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 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 (Shah Nanji Nagasi), Plot No. 72, Block 203, Salasar Palace Apartment, Gangabhai Ghat Square, Nagpur-440009 is engaged in the business of processing, trading, exporting and importing allied activities of pulses, food grains etc.
- 3.2. Pursuant to the DGFT Notification dated 17.03.2020 and Trade Notice No. 56 and 57/2019-2020 dated 19.03.2020 which invited applications online from the intending millers/refiners in order to allot the quota for import of Urad, the Appellant filed an application for import of restricted items in ANF-2M with the Office of the Joint DGFT, Nagpur.
- 3.3. Office of the Joint DGFT, Nagpur vide email dated 04.08.2020 requested for an inspection report from the office of the DC, KASEZ in respect of the Appellant's existence at the address i.e. Plot No. 6/A, Sector 12, Unit 6, Ambika Weigh Bridge, Kandla Port, Gandhidham for their milling capacity, machinery/equipment installed for milling etc..
- 3.4. Preventive Officer, DC, KASEZ conducted an inspection and submitted in report dated 05.08.2020 that the Appellant's factory did not exist at the address declared in application.
- 3.5. Office of DC, KASEZ inferred that the Appellant had declared false address with a malafide intent to obtain import license thus making it liable for proceedings under Section 8 of the FT(D&R) Act, 1992 for suspension/ cancellation of its IEC.
- 3.5. Show cause Notice (SCN) was issued by the DC on 28.08.2020 to the Appellant to show cause as to why :-
- a) IEC No 0392059959 should not be suspended/cancelled in terms of Section of the FT(D&R) Act, 1992 on the ground that they had declared false information before the concerned authority for grant of import license under Section 9 of the Act.
  - b) A penalty should not be imposed under Section 11(3) of the FT(D&R) Act, 1992 for making a false declaration before the concerned authority for import license under Section 9 of the Act.

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3.6. In reply to the SCN and during personal hearing before the DC, the Appellant stated that :-

- It rented its factory premises from M/s Rajdeep Enterprises, Gandhidham through its partner Shri Narendra Bhai Thakkar for carrying out processing of grain and pulses with a hope that it would succeed in getting an import license from the DGFT.
- Based on the above agreement, Appellant applied for the Amendment of its IEC on 13.04.2019 to include the above mentioned address and the same was renewed till 26.01.2021.
- While obtaining FSSAI license, the Appellant specifically mentioned that it had obtained the premises by means of leave and license agreement.
- The inspection was done at the premises by District Industries Center based on a reference received from Joint DGFT, Nagpur wherein an inspection was done of the plant and machinery. The unit was not operating at that time there was no stock of pulses was found for processing.
- The pulses are imported by them as per the quota allotted by DGFT and the processing and packaging is done at the factory premises.
- Appellant submitted pictures of purchase invoices, job cards/ GRN, pictures of incoming and outgoing register, weigh bridge slips, fumigation certificates etc. and also requested for a re-inspection of the factory premises with prior notice.

3.7. On examination of the Appellant's submissions, the DC found that :-

- An application for import of restricted item in form ANF-2M was filed by the registered office of unit at Nagpur, with office of the Jt. DGFT, Nagpur declaring their Gandhidham premises as factory address and as desired by the office of the Jt. DGFT, Nagpur, inspection of the said premises was conducted by the office of Development Commissioner, KASEZ on 05.08.2020.
- During the inspection it was found that no unit existed on the address declared by the unit. Thus, it appeared that the unit had declared false/incorrect address with malafide intent.

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- Appellant submitted a copy of its FSSAI License, Udyog Aadhar, Leave and lease agreement etc. in support of its contention. But, it failed to produce water or electricity bill issued in the name of its firm.
- A re-inspection of the factory premises was done during which, a unit was found functioning in the name of M/s. Shah Nanji Nagasi at rented premises with plant and machinery of M/s. Rajdeep Enterprises. But the rent agreement which was provided by the Appellant was neither notarized nor was the water and electricity bills in the name of the Appellant.
- The authorized person on behalf of the Appellant who was present at the time of inspection admitted before the inspecting officer that it carried out its operations from the said premises whenever it got the permission.
- Appellant could not produce any proof regarding actual capacity of plant and machinery. It did not have Registration-cum-Membership Certificate (RCMC) for the aforesaid premises and could not produce documents before the inspecting officer to check the correctness of the details of the past import/turnover mentioned by them in ANF-2M.

3.8. DC, KASEZ vide Order-in-Original dated 17.11.2020 passed the following Order :-

- i) IEC No. 0392059959 of the unit M/s. Shah Nanji Nagasi, P No. 72, Block 203, Salasar Palace, Apartment, Gangabai Ghat Square, Nagpur is recommended for cancellation by the local jurisdictional authority in terms of Section 8 of the FT(D&R) Act, 1992 on the ground that they had declared false information before the concerned authority for grant of import license under Section 9 of the FT(D&R) Act.
- ii) A penalty of Rs 5,00,000/- (Rupee Five Lakhs only) is imposed under the Section 11(3) of the FT(D&R), Act for making a false declaration before the concerned authority for import license under Section 9 of the FT(D&R), Act.
- iii) It is recommended not to allot any quota of restricted item to their Directors under the name of any firm unless sufficient address proof is provided.

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4.0. Aggrieved by the Order-in-Original dated 17.11.2020, the Appellant filed the present Appeal. Shri Shivam Mishra appeared on behalf of the Appellant in the Personal hearing held on 13.08.2021. Appellant in its written/oral submissions stated that :-

- i) The impugned order is incorrect and has been passed without any reason and is contrary to the submissions made by it.
- ii) Appellant has been carrying out the processing of goods imported against various licences obtained in past in the same factory premises. Hence, it has not declared false information in its Licence Application dated 26.03.2020 for grant of import quota in the instant case.
- iii) Appellant was issued licences for import of Urad and other items in the past few years. The factory address declared by the Appellant in the application for these licenses was same as mentioned in the License Application dated 26.03.2020.

S. No.	Licence No. And Date	Import Item	Import Quantity (In MT)	Factory Address declared in application
1	5019002133 02.07.2019	Urad Dal	135	Plot no 6/A Sector 12 unit 6 Ambika weigh bridge Kandla port Gandhidham Kutch Gujrat 370201
2	5019002133 02.07.2019	Moong	150	Plot no 6/A Sector 12 unit 6 Ambika weigh bridge Kandla port Gandhidham Kutch Gujrat 370201
3	5019002133 02.07.2019	Pigeon peas	171	Plot no 6/A Sector 12 unit 6 Ambika weigh bridge Kandla port Gandhidham Kutch Gujrat 370201
4	5019002468 26.08.2019	Pigeon peas	190	Plot no 6/A Sector 12 unit 6 Ambika weigh bridge Kandla port Gandhidham Kutch Gujrat 370201



- iv) Appellant has processed 646 MT (quantity) of import items at the said factory address till date after leasing the same from M/s Rajdeep Enterprises on leave and license basis from 26.03.2019.
- v) The non-mentioning of said factory address in RCMC cannot be a ground to say that said premises were not used or intended to be used by the Appellant for processing of the imported goods.
- vi) The contention that leave and licence agreement is not notarized is not correct since not notarizing the lease agreement cannot be ground to say that there is no lease at all.
- vii) The electricity and water charges are on account of the lessor (i.e. M/s Rajdeep Enterprises) and not the lessee (i.e. the Appellant). The bills are paid by the lessor.
- viii) DC has travelled beyond the scope of SCN with respect to the recommendation of not allotting any future quota to Appellant as the SCN dated 31.08.2020 did not propose for non-allotment of future quota to Appellant. SCN only proposed for cancellation of IEC and imposition of penalty.
- ix) DC was empowered to take action only under SEZ Act, 2005, within his functional jurisdiction i.e., within territorial jurisdiction of Kandla SEZ. DC ought to have carried out the inspection and thereafter referred and reported on the same to the RA, Nagpur. But the DC preferred to extend its jurisdiction and adjudicated the case in unlawful manner.

5.0. Comments on the appeal were also obtained from the office of the DC, KASEZ. The DC vide letter dated 28.05.2021, stated that :-

- i) Appellant failed to provide water or electricity bills in the name of their business. On basis of specific request from the Appellant, re-inspection of factory premises was carried out, however, it failed to provide necessary details with documentary evidence in support thereof.
- ii) Appellant had no Registration-cum-Membership Certificate (RCMC) for premises and did not provide any evidence regarding the capacity of plant and machinery established at the premises. Also, the Appellant could not produce evidence substantiating past records of import/turnover.

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- iii) Appellant was operating from the premises on basis of lease deed. However, the lease deed provided was not notarized and executed on oath, which raised doubts about the authenticity of the lease deed.
- iv) Appellant admitted before the inspecting officer that it operates through the said premises as and when they get permission to operate. No documents could be produced for purpose of inspection and verification in respect to factory premises.
- v) Appellant has stated in its written submissions before DC that they had no stock then and have not placed any order during that time.
- vi) The factory premises of the Appellant is located at Plot No. 6/A, Sector 12, Unit 6, Near Ambika Weigh Bridge, Kandla Port Road, Gandhidham, Kutch, Gujarat 370201 which is within the jurisdiction of the DC, KASEZ. In terms of provisions of the FT(D&R) Act, the concerned authority is empowered to initiate appropriate legal proceedings against the erring unit/entity for violations as specified under the Act.

6.0. I have considered the Order-in-Original dated 17.11.2020 passed by the DC, KASEZ, Appeal preferred by the Appellant, oral/written submissions made by the Appellant, comments given by the DC on the appeal and all other aspects relevant to the case. It is noted that :-

- (i) The argument made by the Appellant that the DC, KASEZ was empowered to take action only under SEZ Act, 2005 is not correct as DC, KASEZ is also functioning as Regional Authority under the DGFT.
- (ii) An application for import of restricted item was filed by the registered office of unit of Appellant with office of RA, Nagpur declaring their Gandhidham premises as the factory address. Based on the request of the RA, Nagpur, an inspection of the said premises was conducted by the Office of the DC, KASEZ.
- (iii) During the first inspection, nobody was found at the factory address. Upon the request of the Appellant, inspection was carried out again and a unit was found functioning in the name of the Appellant by the DC at premises with plant and machinery of M/s. Rajdeep Enterprises.

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- (iv) Appellant has submitted the following documentary evidences to support its claim that it existed at the Address declared in its Application :-
- (a) License Number: 10019021004341 dated 20.05.2019 under Food Safety and Standards Act, 2006 issued by the FSSAI to the Appellant.
- (b) E-Way Bills dated 04.11.2019 and 05.03.2020 generated by Central India Poly Sack Private Limited for supplying PP Woven Bags (HSN Code 3923) to the Appellant.
- (v) Some of the documentary evidences filed by the Appellant were dated prior to the inspection of the premises of the DC which suggests that the Appellant's Unit was pre-existing at the Address declared by the Appellant i.e. Plot No. 6/A, Sector 12, Unit 6, Ambika Weigh Bridge Kandla Port, Gandhidham.
- (vi) It would not be justifiable to penalize the Appellant if the facts/documentary evidences having a legal bearing on the case are not considered.

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. 01/92/171/12/AM-21/ PC-VI/

Dated: 20 .01.2022

Order-in-Original No. KASEZ/P&C/46/Phy.Inspection/2020-21/4152 dated 17.11.2020 is set aside.



(Amit Yadav)

**Director General of Foreign Trade**



Copy to :

1. ✓ Shah Nanji Nagasi, Plot Number 72, Block 203, Salasar Palace Apartment, Gangabhai Ghat Square, Nagpur- 440009.
2. ✓ Shah Nanji Nagasi, Shital Sadan Building, Anaj Bazar, Itwari, Nagpur - 440002.
3. ✓ Shah Nanji Nagasi, Plot No. 6/A, Sector 12, Unit 6, Ambika Weigh Bridge, Kandla Port, Gandhidham.
4. ✓ Development Commissioner, Kandla Special Economic Zone for compliance and information.
5. ✓ Additional Secretary (SEZ Division), DoC, New Delhi for information.
6. ✓ DGFT's web site

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**(Randheep Thakur)**  
**Joint Director General of Foreign Trade**