

**Government of India**  
**Ministry of Commerce & Industry**  
**Directorate General of Foreign Trade**  
**Udyog Bhawan, New Delhi -110011**  
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F. No. 01/92/171/50/AM-20/PC-VI/71-72

Date of Order: 25 .01.2021  
Date of Dispatch: 25.01.2021

Name of the Appellant: M/s Rekha Superfine Exporters,  
Shed No. 395, Sector-II,  
Kandla Special Economic Zone,  
Gandhidham, Gujarat - 370230

IEC No.: 1300008016

Order appealed against: Order-in-Original No. KASEZ/58/2019-20 dated  
23.10.2019 passed by the Development  
Commissioner, Kandla Special Economic Zone.

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

**Order-in-Appeal**

M/s Rekha Superfine Exporters, Gandhidham, Gujarat (here-in-after referred to as "the Appellant") filed an Appeal on 11.12.2019 under the Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (here-in-after referred to as "the Act") against the Order-in-Original (O-i-O) No. KASEZ/58/2019-20 dated 23.10.2019 (issued from F.No. KASEZ/IA/1930/2003-04/8560) passed by the Development Commissioner (here-in-after referred to as the "DC"), Kandla Special Economic Zone (KASEZ), Gandhidham, imposing a penalty of Rs. 2,00,000/- on the Appellant.

2. 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 the appeal is before me.

3. **Brief facts of the case:**

3.1. The Appellant was granted a Letter of Approval (LoA) vide Letter No. KASEZ/IA/1930/2003-04/1056 dated 02.05.2003 as amended/extended from time to time, to set up a unit in KASEZ to manufacture Furniture & Handicraft Items and Trading

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activities of Handicrafts and all items except plastic waste/scrap, second hand clothing, metal scrap, polyester yarn, prohibited, canalized & restricted item in KASEZ, as amended from time to time and subject to conditions imposed therein. The Appellant commenced commercial production w.e.f. 18.06.2003 and affected duty free imports.

3.2. As per provisions of the Rule 54 the SEZ Rules, 2006 and the conditions laid down in the LoA/ Bond-cum-Legal undertaking (BLUT), the Appellant was under an obligation to achieve positive Net Foreign Exchange Earning (NFE) to be calculated cumulatively for a period of 5 years as per the formula given therein. Further, as per Rule 54(2) of the said Rules, if the Appellant fails to achieve positive NFE, it shall be liable for penal action under the Act. The Appellant accepted the terms specified in the LoA/BLUT as required under Rule 22 of SEZ Rules, 2006.

3.4. On completion of third five-year block period on 18.6.2018, the Appellant applied for renewal of its LoA. The DC reviewed performance of the Appellant on the basis of Annual Performance Reports (APRs) submitted by it for the five-year block period commencing from 19.06.2013 to 18.06.2018. The DC noticed that the NFE of the unit at the end 5-year block ended on 18.6.2018 was negative by Rs. 4.32 lakhs.

3.5. Accordingly, DC issued a Show-Cause Notice (SCN) dated 03.08.2018 to the Appellant to show cause as to why, for the above said violation, penalty should not be imposed on it under Rule 25 and Rule 54(2) of SEZ Rules, 2006.

3.6. Three opportunities of Personal Hearing were given to the Appellant on 10.08.2018, 13.08.2019 and 06.09.2019. However, it neither availed the same nor it filed a written reply. Rather it resorted to delaying tactics. Hence, the DC proceeded to decide the matter, ex-parte and imposed a penalty of Rs. 2,00,000/- on the Appellant under Section 11(2) of the Act read with Rule 25 and Rule 54(2) of the SEZ Rules, 2006 for contravening provisions of Rule 53 and condition no. 8 of the BLUT executed by it.

4.0. Aggrieved by the Order-in-Original dated 23.10.2019, the Appellant filed the present Appeal. Opportunities of Personal Hearings were given to the Appellant on 15.10.2020 and 4.12.2020. However, the Appellant neither availed the same nor it filed any additional written submission. The Appellant, in its Appeal, made the following submissions: -

- (i) The DC adjudicated the order ex-parte against the principles of natural justice.
- (ii) While calculating the NFE, the DC did not consider the figure from 1.4.2018 to 18.6.2018. By considering the figures of complete five-year period from 19.6.2013 to 18.6.2018, it has achieved positive NFE to the tune of Rs. 23.64 Lakh.

5.0 Comments of DC were also obtained on the appeal filed by the Appellant. The DC vide letter dated 20.01.2020 has stated the following: -

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- (i) The DC followed the principle of natural justice and granted three opportunities of personal hearings on 10.08.2018, 13.08.2019 and 06.09.2019. However, the Appellant neither availed the same nor it filed any reply.
- (ii) Figures of NFE were taken from the Annual Performance Reports submitted by the Appellant, for the five-year block period from 19.06.2013 to 18.06.2018. While submitting APRs for this period, the Appellant had taken wrong figures of NFE position at the end of previous year and cumulative NFE for the five-year period in column 8 and 9. Putting the figures correctly, it is found that the appellant has failed to achieve positive NFE for the said five-year block period.

6.0. I have considered the Adjudication Order dated 23.10.2019 passed by DC. KASEZ, comments received from the DC. KASEZ and all other aspects relevant to the case. It is noted that: -

- (i) Despite opportunities granted for Personal Hearing on 15.10.2020 and 04.12.2020, the Appellant failed to appear and/or file any additional written submission. Therefore, the Appeal is being decided on the basis of available records.
- (ii) In the Appeal, it has been claimed that the APR filed for the period 01.04.2018 to 18.06.2018 reflects positive NFE of Rs. 23.64 lakhs. It is seen that the Appellant showed wrong cumulative figures for the four years period, in the APR of fifth year of the block. However, the following picture emerges as per the APRs filed by the party: -

Sr. No.		19.06.2013 to 31.03.2014	2014-15	2015-16	2016-17	2017-18	01.04.2018 to 18.06.2018	Cumulative Current Block
1.	Physical Exports	32.45	0.00	0.00	45.66	13.65	141.18	232.94
2.	Deemed Exports	0.00	0.00	0.00	0.00	0.00	0.00	0.00
3.	Imported RM/inputs used	32.45	6.19	24.68	126.67	34.92	12.35	237.26
4.	Other outgo of Forex	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5.	Total Imports (3+4)	32.45	6.19	24.68	126.67	34.92	12.35	237.26
6.	NFE [1+2 - 5]	0.00	-6.19	-24.68	-81.01	-21.27	+128.83	-4.32

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- (iii) In view of the above, the Appellant has failed to comply with Rule 53 of the SEZ Rules, 2006 and the conditions mentioned in the LoA, renewed from time to time. Thus, it has rendered itself liable for penal action u/a 11 of the Act, read with Rule 54(2) of the SEZ Rules, 2006.
- (iv) As per section 11(2) of the Act, the Adjudicating Authority could have imposed a penalty up to five times of the value of goods for which contravention has been made. In the instant case, the value of goods under contravention is of Rs. 4.32 Lakh. Therefore, the penalty amount could have been up to Rs. 21.60 Lakh whereas the Adjudicating Authority imposed a penalty of Rs. 2 Lakh only. By any stretch of imagination, such a penalty cannot be termed as unreasonable.

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. 01/92/171/50/AM-20/ PC-VI

Dated: 25 . 01.2021

The Appeal is dismissed.

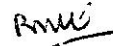


(Amit Yadav)

Director General of Foreign Trade

**Copy to:**

- (1) Rekha Superfine Exporters, Shed Number 395, Sector-II, Kandla Special Economic Zone, Gandhidham, Gujarat – 370230.
- (2) Development Commissioner, SEZ, Kandla to make recoveries.
- (3) Addl. Secretary (SEZ Division), DoC, New Delhi for information.
- (4) DGFT's website.



(Randheep Thakur)

Joint Director General of Foreign Trade