

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

F. No. 01/92/171/07/AM-22/PC-VI/26-27

Date of Order: 20.06.2022

Date of Order: 21.06.2022
Dispatch

Name of the Appellant: **Shreeji Exports,
Plot No. 1/1, Sector-III,
Kandla Special Economic Zone,
Gandhidham.**

IEC Number: **3796000088**

Order appealed against: **Appeal filed against Order-in-Original No.
KASEZ/137/2020-2021 dated 18.12.2020 passed by the
Development Commissioner, Kandla Special Economic
Zone**

Order-in-Appeal passed by: **Santosh Kumar Sarangi, DGFT**

Order-in-Appeal

Shreeji Exports (hereinafter referred to as "the Appellant"), a SEZ unit, has filed an appeal dated 10.06.2021 (received on 23.06.2021) under Section 15 of Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against Order-in-Original No. KASEZ/137/2020-2021, dated 18.12.2020 (issued under F.No. KASEZ/IA/1563/94/Vol.I), passed by the Development Commissioner (hereinafter referred to as "DC"), Kandla Special Economic Zone (KASEZ).

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. Brief facts of the case:

3.1 Shreeji Exports was issued a Letter of Approval (LoA) dated 20.07.1995 by the DC, KASEZ, as amended from time to time, for manufacturing activity and warehousing service activity subject to terms and conditions in the aforesaid LoA.



- 3.2 Appellant confirmed and accepted all the terms and conditions in the LoA and executed a Bond-cum-LUT under Rule 22 of SEZ Rules, 2006.
- 3.3 LoA of the Appellant was extended by the DC for a period of five years from 01.11.2015 to 31.10.2020 vide letter dated 21.10.2016. Later, warehousing service activity was deleted vide letter dated 22.01.2018, as it was noticed from the APRs filed by the unit that they had not been undertaking any such activity.
- 3.4 DC vide letter dated 23.07.2020 asked the unit to furnish documentary evidence of warehousing service activity being undertaken by them. Appellant vide letter dated 31.07.2020 submitted a certificate from a Chartered Accountant evidencing proof of warehousing activity undertaken by them alongwith, copy of one such invoice issued to M/s. Unilever India Exports Ltd. for warehousing charges in Indian Rupees.
- 3.5 Unit Approval Committee (UAC) of DC, KASEZ in meeting held on 04.08.2020 restored the warehousing service activity in the LoA of the Appellant w.e.f. 22.01.2018.
- 3.6 DC noted that SEZ units were required to do all transactions only in convertible foreign currency under Rule 18(5) of SEZ Rules, 2006 mentioning warehousing service charges received separately in their APRs for the period from 2015-16 to 2019-20. Further, Invoice dated 01.11.2016 raised by the unit in favor of M/s. Unilever India Exports Ltd., KASEZ was in INR instead of convertible foreign currency, contravening provisions of Rule 18(5) of Rules.
- 3.7 DC, KASEZ observed that the Appellant violated the conditions of the LoA/Bond-cum-LUT and provisions of SEZ Rules. DC issued a Show-cause notice (SCN) dated 01.09.2020 to the Appellant to show cause as to why a penalty should not be imposed on them under Section 11 of FT(D&R) Act, 1992 as made applicable under Rule 54(2) of SEZ Rules, 2006 for contravention of the said provisions.
- 3.8 DC granted a Personal Hearing on 17.11.2020. Appellant in its oral/written submissions stated they have never imported or exported any goods or held the goods on account of foreign supplier. Further, they never cleared any goods to the DTA or exported any goods stored by M/s Unilever India Exports Ltd. in their warehouse. Appellant was never informed or directed to recover the "storage charges" in convertible foreign currency.
- 3.9 DC, KASEZ observed that all the warehousing units in SEZ are governed under Rule 18(5) of SEZ Rules but Appellant did not comply with the same. As per the LoA, Appellant was to abide by the provisions of the SEZ Act and Rules.
4. DC, KASEZ vide Order-in-Original dated 18.12.2020 imposed a penalty of Rs. 20,000 under Section 11(2) of FT(D&R) Act, 1992, as amended, as made applicable vide rule 54(2) of SEZ Rules, 2006.



5. Aggrieved by the Order-in-Original dated 18.12.2020, the Appellant filed the present Appeal and informed that it has already deposited the penalty of Rs. 20,000/-. Shri Rajesh Devpura appeared on behalf of the Appellant in the Personal hearing on 09.05.2022. Shri Dipak Zala, DDC appeared on behalf of the DC, KASEZ.

6. Appellant in oral/written submissions has raised the following grounds :-

- (i) Unilever India Exports Ltd are storing their raw materials and other goods in the warehouse of the Appellant for want of sufficient space in their building. The items which are stored are taken back as and when required for production/export.
- (ii) Appellant has never made any import or export transaction in their warehouse and only permitted Unilever India Exports Ltd to store their goods for a temporary period.
- (iii) Appellant were never informed or directed to recover the storage charges in convertible foreign currency. The storage and warehousing service provided to another domestic SEZ unit does not mandatorily involve any forex exchange transaction.

7. Comments on the Appeal were obtained from the office of DC, KASEZ. The DC vide letter dated 13.04.2022 stated as under :-

- (i) Appellant has contended that the unit never made any import or export transaction in their warehouse but only permitted M/s Unilever India Exports Ltd., a unit in KASEZ for storage of their goods for temporary period.
- (ii) The act of not making any import or export transaction and merely allowing another SEZ unit for storage of goods without following the regulations relating to Warehousing amounts to sub-letting of the premises which is not permitted under the SEZ scheme.
- (iii) SEZ units are required to do all transactions only in convertible foreign currency as provided under Rule 18(5) of SEZ Rules, 2006 in respect of warehousing service activity and that the unit had not mentioned warehousing service charges received separately in their APRs filed for the period of 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20.
- (iv) As per the Invoice dated 1.11.2016 raised by the unit in favour of M/s. Unilever India Exports Ltd., KASEZ as submitted vide letter dated 31.07.2020, the unit had raised such invoice in INR, instead of convertible foreign currency, contravening the provision of Rule 18(5) of SEZ Rule 2006.


20.6

8. I have considered the Order-in-Original dated 18.12.2020 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) The Rule 18(5) of SEZ Rules, 2006 stipulates as under :-

“(5) The Units in Free Trade and Warehousing Zones or units in Free Trade and Warehousing Zone set up in other Special Economic Zone, shall be allowed to hold the goods on account of the foreign supplier for dispatches as per the owner’s instructions and shall be allowed for trading with or without labelling, packing or re-packing without any processing:

Provided also that all transactions by a Unit in Free Trade and Warehousing Zone shall only be in convertible foreign currency.”

(ii) Appellant has admitted that the goods were stored in their warehouse by M/s. Unilever India Exports Ltd. for taking out later as per their requirement. DC, KASEZ has observed that the Appellant has received warehousing charges from the aforesaid firm in Indian Rupees instead of convertible foreign currency.

(ii) Appellant has failed to comply with the proviso to the Rule 18(5) of SEZ Rules, 2006 which stipulates mandatory receipt of all warehousing service charges in foreign currency resulting in violation of the conditions of LoP and the Bond-cum-LUT executed by it.

(iii) 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. The penalty of Rs. 20,000/- is reasonable and deserves no intervention.

9. 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. 01/92/171/07/AM-22/PC-VI

Dated: 20.06.2022

The Appeal is dismissed.


20.6.

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:

1. Shreeji Exports, Plot No. 1/1, Sector-III, Kandla Special Economic Zone, Gandhidham.
2. Development Commissioner, KASEZ for information and compliance.
3. Additional Secretary (SEZ Division), DoC, New Delhi for information.
4. DGFT's website.



(Randheep Thakur)
Joint Director General of Foreign Trade