

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

F.No. 01/92/171/15/AM-22/PC-VI/20-21

Date of Order: 08.06.2022

Date of Dispatch: 08.06.2022

Name of the Appellant: **Kruti Garments Pvt. Ltd.**
Plot No. 26, Ahmedabad
Apparel Park SEZ, Khokhara,
Ahmedabad - 380008

IEC Number: **0805005625**

Order appealed against: **Appeal filed against Order-in-Original No. 02/KASEZ/AAP-SEZ/2021-22 dated 21.12.2021 passed by the Development Commissioner, Kandla Special Economic Zone**

Order passed by: **Santosh Kumar Sarangi, DGFT**

Order-in-Appeal

Kruti Garments Pvt. Ltd (hereinafter referred to as "the Appellant") filed an appeal dated 29.01.2022 (received on 09.02.2022) under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against Order No. 02/KASEZ/AAP-SEZ/2021-22 dated 21.12.2021 (issued from F.No. KASEZ/DCO/AAP-SEZ/II/01/2011-12) passed by the Development Commissioner, Kandla Special Economic Zone (hereinafter referred to as "the DC") rejecting their application for renewal of the Letter of Approval and imposing a penalty of Rs. 10,000/-. Appellant was also asked to return the different benefits availed by it.

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.


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3.0 Brief facts of the case:

- 3.1 Kruti Garments was issued a Letter of Approval (LoA) by the Joint Development Commissioner, KASEZ, Ahmedabad vide LoA No. KASEZ/DCO/AAP/II/01/2011-12/120 dated 24.05.2011 for manufacturing of kid's garment (Girls Top, Girls Bottom and Boys bottom) subject to conditions imposed therein.
- 3.2 Appellant accepted all the terms and conditions specified in the subject LoA and executed a Bond-cum-Legal Undertaking in Form-H dated 06.06.2011. They intimated commencement of production w.e.f. 27.01.2012. The validity of LoA was extended for five years upto 26.01.2017, as per Rule 19(6) of the SEZ Rules, 2006.
- 3.3 Rule 19(6A)1 of SEZ Rules, 2006 stipulates that Units which intend to renew the validity of the LoA shall submit request to the DC before two months from the date of expiry.
- 3.4 Rule 53 of the SEZ Rules, 2006 provides that the unit shall achieve positive Net Foreign Exchange (NFE) earnings. As per the Rule 54(2) of the SEZ Rules, 2006, in case of failure to achieve the positive NFE earnings, the said unit is liable for penal action under the provisions of the FT(D&R) Act, 1992. The Unit of Appellant failed to achieve positive NFE as per the terms and conditions of the LoA.
- 3.5 LoA issued to the Appellant expired on 26.01.2017. Appellant applied for renewal of LoA on 11.01.2021 stating that they could not apply for renewal within the time frame due to the Covid-19 pandemic.
- 3.6 Since the Appellant was not doing any commercial activity and had applied for renewal/extension of their LoA after the completion of the time period prescribed under the Rules, DC issued a Show-cause Notice (SCN) dated 24.09.2021 to the Appellant show cause as to why :-
 - a. The application dated 11.01.2021 made for renewal/extension of LoA / LoP under Rule 19(6A)(1) of the SEZ Rules, 2006 should not be rejected;
 - b. LoA dated 24.05.2011 should not be treated as lapsed, as provided under Rule 19(6A)(2) of the SEZ Rules;
 - c. Penalty should not be imposed under the provisions of Rule 54(2) of the SEZ Rules, 2006, as the Appellant had defaulted in achieving positive NFE earnings, as required under Rule 53 of the SEZ Rules;
 - d. The refund of an amount equal to the benefits of exemptions, drawback, cess, and concessions, etc. availed by them should be demanded and recovered as per the provisions of Rule 25 of the SEZ Rules, 2006, along with applicable interest and the penalty under the provisions of FT(D&R) Act and the rules made thereunder.
 - e. The LoA dated 24.05.2011 should not be canceled/revoked and the penalty under Section 11(2) of the FT(D&R) Act should not be imposed upon them for not filing of APR for the years 2018-19, 2019-20 and 2020-21.


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3.7 DC granted a Personal Hearing on 24.11.2021. In its written/oral submission, the Appellant stated as under :-

- (i) They are trying to revive the unit and because of the Covid-19 scenario in the last two years, they were unable to conduct any business.
- (ii) Their DTA unit was getting benefits such as duty drawback which were not available to their SEZ unit due to which their SEZ unit had become uncompetitive. They shut down their factory in 2016 because it was not viable to continue their operations.
- (iii) The duty drawback is now reduced to 2% and they are ready to open their factory and require an extension of LoA.

3.9 DC, KASEZ observed that the Appellant had applied for renewal of their LoA after four years instead of time period of two months given in the Rule 19(6A)(1) of the SEZ Rules 2006 without any reasonable delay or merits in its argument that it could not apply due to Covid-19. It has also not carried out its authorized operations and did not have a positive NFE.

3.10 DC, KASEZ vide Order-in-Original dated 21.12.2021 adjudicated as under :-

- (i) Rejected the Application submitted by the Appellant on 11.01.2021 for renewal of LoA dated 24.05.2011 in terms of Rule 19(6A) (1), 19(6A)(2) & 19(6B) of the SEZ Rules, 2006.
- (ii) Imposition of a penalty of Rs.10,000/- on Appellant under section 11(2) of the Act read with Rule 25 and Rule 54(2) of the SEZ Rules, 2006 for contravention of Rule 53 of the SEZ Rules.
- (iii) Appellant to remit an amount equal to the exemption, concession, drawback, and any other benefit availed in respect of the capital goods, finished goods lying in stock, and unutilized raw materials relatable to them, as provided under Rule 25 of the SEZ Rules, 2006 read with Section 16(3) of the SEZ Act, 2005, along with applicable interest.

4.0 Aggrieved by the Order-in-Original dated 21.12.2021, the Appellant has filed the present Appeal. Shri R.R. Dave, Supdt of Customs (Retd) appeared on behalf of the Appellant in the hearing held on 18.05.2022. Shri Shashank Digamber Shende, Joint DC, Ahmedabad SEZ cluster was present on behalf of the DC, KASEZ. Appellant in its written/oral submissions has raised the following submissions/grounds :-

- (i) Appellant shut its factory in 2016 because it was not viable to continue the operation. One of the reasons was that the Duty Drawback on DTA was 8-9% while there was no Duty Drawback in SEZ. It made a huge difference to their costing and made them less competitive in operating from SEZ. The other reason was that documentation in SEZ was lengthier than in DTA.



- (ii) Appellant is now ready to open factory because Duty Drawback in DTA has been reduced to 2% and makes negligible difference in costing.
- (iii) The penalty of Rs. 10,000/- imposed by the DC has already been deposited.

5.0 Comments on the Appeal were sent by the Specified Officer, Electronic Park SEZ, Gandhinagar vide e-mail dated 28.03.2022. It has been submitted that Appellant filed the APR as per the Rule 54 of SEZ Rules, 2006. Appellant had nil export activities since 2015 and failed to have a positive NFE during 2012-17 as given below :-

S. No.	Period of LOA (From -to)	NFE Rs. in Lakh
1	27.1.2012-31.03.2012	3.02
2	01.04.2012-31.3.2013	-2.67
3	01.04.2013-31.3.2014	-5.26
4	1.4.2014-31.3.2015	-2.89
5	1.4.2015-31.3.2016	00
6	1.4.2016-31.3.2017	00
	Total	-7.80

6.0 I have considered the Order-in-Original dated 21.12.2021 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) Rule 19(6A)1 of SEZ Rules, 2006 stipulates that Units which intend to renew the validity of the LoA shall submit their request to the DC before two months from the date of expiry.
- (ii) Even though the LoA of the Appellant expired on 26.01.2017, the application for renewal was submitted only on 11.01.2021 i.e. almost after four years. The reasons given by the Appellant do not merit condonation of delay and the DC was justified to not entertain the request for renewal of LoA and cancel the LoA.
- (iii) Rule 53 of the SEZ Rules, 2006 provides that the unit shall achieve positive NFE earnings. As per the Rule 54(2) of the SEZ Rules, in case of failure to achieve the positive NFE earnings, the said unit is liable for penal action under the provisions of the FT(D&R) Act, 1992.
- (iv) DC, KASEZ has confirmed that for the five year block period from 2012 to 2017, the Appellant had negative NFE of Rs. 7.80 lakhs. 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


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imposition of penalty for contravening the provisions of the SEZ Act and conditions of the LoA is in accordance with the Act.

- (v) 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. Therefore, the penalty of Rs. 10,000/- does not deserve intervention.
- (vi) In view of the foregoing, Appellant is also liable to return the various benefits, exemptions, drawbacks, and concessions on goods and services procured for the authorized operations at their unit premises.

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. 01/92/171/15/AM-22/PC-VI

Dated: 08.06.2022

The Appeal is dismissed.



(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:

1. ✓ Kruti Garments Pvt. Ltd., Plot Number 26, Ahmedabad Apparel Park SEZ, Khokhara, Ahmedabad - 380008
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