

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

F. No. 01/92/171/10/AM 20/PCVI /42-43, TR.N. 52 Date of Order: 20 .01.2022
Date of Dispatch: 21 .01.2022

Name of the Appellant: **Jindal Fibres,
Plot No. 49 & 58, Sector-H,
Kandla SEZ,
Gandhidham (Kutch) 370230**

IEC No. : **3303001189**

Order appealed against: **Order-in-Original No. KASEZ/06/2019-20 dated
10.04.2019 passed by the Development
Commissioner, Kandla Special Economic Zone**

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

Order-in-Appeal

Jindal Fibres (hereinafter referred to as "the Appellant") filed an Appeal dated 07.05.2019 (received on 08.05.2019) under section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against the Order-in-Original dated 10.04.2019 (issued from F.No. KASEZ/IA/1922/2003-04/Vol. II/792) passed by the Development Commissioner (hereinafter referred to as "DC"), Kandla Special Economic Zone (KASEZ) imposing a penalty of Rs. 8,00,000/- (Rupees Eight Lakhs only).

2.1. Vide Notification No. 101 (RE-2013) /2009-2014 dated the 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. Appellant was issued a Letter of Approval (LoA) by the DC, KASEZ vide F.No. KASEZ/IA/ 1890 /2002-03/20667 dated 03.03.2003 to set up a unit in KASEZ for manufacturing of following items subject to the conditions imposed therein :-

S. No.	Items allowed for manufacturing	Annual Capacity as given in LoA
1	Processing & segregation of textile waste, reconditioning of clothing and manufacturing of yarn and yarn products of every description.	10,000 MTs

3.2. Ministry of Commerce & Industries has framed policy issued vide F.No. C.6/10/2009-SEZ dated 17.09.2013 and BOA in its 60th meeting dated 08.11.2013 has granted in-principle approval for renewal of validity of LOA for processing of worn & used clothing.

3.3. DC, KASEZ vide letter dated 02.05.2014 extended the validity of LoA for a period of five years i.e. from 01.12.2013 to 30.11.2018. The validity of the LoA was further extended for one year upto 30.11.2019 with certain conditions including the following condition mentioned at Para 3(iv) :-

“All other terms and conditions enumerated in the renewal of Letter of Approval dated 02.05.2014 shall remain unaltered. This extension letter may be kept attached with your renewal letter of Approval dated 02.05.2014.”

The following condition was mentioned at S.No. 4 of the renewal letter dated 02.05.2014:-

“The Unit shall be allowed to make import of second hand clothing only after setting up of Yarn Carding, Spinning & Weaving facility in the Zone.”

3.4. Appellant accepted the terms and conditions specified in the LoA and executed a written Bond-cum-Legal Undertaking (LUT) in Form-H as required under Rule 22 of SEZ Rules, 2006. The following condition was mentioned at S.No. 1 of the Bond-cum-LUT :-

“We, the obligors shall abide by all the provisions of the Special Economic Zone, Act, 2005 and the Rules and orders made there under in respect of the goods for authorized operations in the Special Economic Zone.”

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- 3.5. As per the conditions at S.No. 12 and 14 of renewed LoA dated 02.05.2014, the validity of LoA will henceforth be governed by the provision of Policy dated 17.09.2013 and would be appropriately amended/renewed as per the terms of the policy.
- 3.6. Appellant accepted the terms & conditions of the renewal of LoA letter dated 02.05.2014 & 30.11.2018.
- 3.7. DC observed that the Appellant was engaged in importing second hand worn and used clothing without the setting up of Yarn Carding, Spinning & Weaving facility in the Zone since the operationalization of their LoA. As per the data retrieved from the website of NSDL, SEZ online, it appeared that the Appellant continued to engage in the import of Second hand worn and used clothing but they neither intimated any setting up of Yarn Carding, Spinning & Weaving facility in their premises nor informed any such effort/difficulty in setting up of the said facility.
- 3.8. DC issued a Show Cause Notice (SCN) dated 24.12.2018 asking as to why LoA should not be cancelled and penalty should not be imposed on them under Section 11 of FT(D&R) Act, 1992 and Rule 54 of SEZ Rules, 2006 for the violation of the condition No. 4 of the LoA and S.No. 1 of the Bond-cum-LUT.
- 3.9. DC granted opportunity for personal hearing to the Appellant on 07.01.2019. Appellant vide written submissions dated 03.01.2019 and 15.01.2019 stated that :-
- (i) LOA dated 03.03.2003 was initially granted in favour of Gulab V. Gidwani which later changed its name to M/s Anshitha Clothing N Yarn. Thereafter, name was changed from Anshitha Clothing N Yarn to Jindal Fibers.
 - (ii) Appellant had imported the required machinery under Bill of Entry dated 18.03.2008 from Canada valued at Rs. 31.40 lakhs. The Fiber Opening and Blending machine valued at Rs. 7.51 lakhs was purchased from Aadarsh Woolen Industries, Haryana as per Invoice dated 08.04.2005. After usage for 4 years, this machinery was permitted to be removed in DTA by the Office of DC, KASEZ and was accordingly sold in DTA.
 - (iii) The Yard carding machine has becoming unserviceable and is lying in the factory premises of the Appellant.

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- (iv) Appellant exported fiber/ yarn between the period 2005-09 to the tune of 2200 MT's valued at Rs. 9.50 Crores.
- (v) As per the Condition No. 2 (i) of the original LOA, the Appellant was allowed to import worn/used clothing only after setting-up of a Yarn Spinning facility in their unit. It was only after procuring the set of machineries that the Appellant vide letter dated 04.07.2005 followed by letter dated 11.08.2005 was permitted to import worn/used clothing for segregation vide letter dated 12.08.2005. Thus the Appellant fulfilled the condition of original LOA and only thereafter it was permitted to import worn/used clothing.
- (vi) SCN was issued on mis-understanding that the unit was not supposed to do the authorized operations of sorting/segregation and re-conditioning of worm/used clothing for re-export.
- (vii) LoA of the Appellant was renewed for 5 years from 20.07.2009 to 19.07.2014 and renewal letter showed that the Appellant was allowed to undertake re-processing and segregation of textile waste/ re-conditioning of clothing.
- (viii) Appellant's LOA was once again renewed for a period of 5 years from 01.12.2013 to 30.11.2018 evidencing there was no restriction on it in dealing with sorting/segregation and re-conditioning of worn/used clothing for export. Further, LOA was renewed provisionally for one year from 01.12.2018 to 30.11.2019.
- (ix) The issue of installation of Yarn Carding Machine/Spinning facility was disputed in past also and the same was examined by a team from the office of DC, KASEZ who confirmed that the Appellant had manufacturing facility for making Yarn and it also exported the same during the year 2005-2009.
- (x) After the issuance of the SCN, DC conducted an inspection of the Appellant's unit on 20.03.2019 and found that the Spinning Machine was found installed and the same was in working condition.
- (xi) Appellant sold certain machinery to its sister unit in DTA in the year 2009 owing to its urgent business requirements. However, it cannot be concluded that the entire plant and machinery pertaining to the spinning or manufacturing facility was sold.

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4.0. DC after going through the contents of the SCN and all other related documents proceeded to adjudicate the matter vide Order-in-Original dated 10.04.2019 and dropped the proceedings for cancellation of LoA. DC imposed a penalty of Rs. 8,00,000/- (Rupees Eight Lakhs only) on the Appellant under Section 11(2) of the FT(D&R) Act, 1992 read with Rule 54(2) of the SEZ Rules, 2005 with the following observations :-

- (i) Appellant was granted LOA in 2003 for carrying out manufacturing activities of processing and segregation of textile waste, reconditioning of clothing and manufacturing of yarn and yarn product of every description.
- (ii) Appellant was not undertaking its authorized activity to fulfill their export obligation in violation of the terms and conditions of the LOA and Bond-cum-LUT.
- (iii) As per the condition No. 2(i) of the original LOA, without setting up of yam carding, spinning and weaving facility, the Appellant was not allowed to import second hand used and worn clothing. But it continued to import second hand and worn clothing without setting up of the spinning/weaving facility.
- (iv) DC dropped the proceedings for non-compliance of condition No. 2(i) of LoA after Appellant provided a copy of the letter dated 12.05.2008 of DC, KASEZ wherein it was allowed to import second hand & used clothing for segregation and export.
- (v) After 2009, the Appellant has neither manufactured yarn and yarn products nor they had cleared any such manufactured goods either for exports or for DTA. Their main manufacturing machine for weaving and spinning were already sold into DTA. The Appellant had contravened the condition of LoA and BLUT.

5.0. Aggrieved by the Order-in-Original dated 10.04.2019, the Appellant has filed the present Appeal. The following grounds have been raised in the written submissions and oral submissions made by Shri S.C. Jain, Advocate on behalf of the Appellant in the Personal hearing held on 18.11.2021 :-

- (i) SCN issued to the Appellant on 24.12.2018 gave a time of 15 days to file a detailed reply on merits and accordingly, the personal hearing in the matter was fixed on 07.01.2019. Appellant filed a reply on 05.01.2019. Appellant was not given an opportunity to represent itself personally despite making a written request.

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- (ii) The only allegation levied against the Appellant was that it had neither set up nor intimated about any yarn manufacturing or spinning facility. Hence, it violated condition of the LoA dated 03.03.2003 as it had imported worn or used clothing without setting up the spinning facility. Appellant however, provided a detailed proof regarding establishment of such a facility and the exports made from the products manufactured from it.
- (iii) Appellant submitted the details of the 90 shipping bills with a total FOB value of about Rs. 9.50 Crores in order to substantiate the fact that it exported yarn during the period from 2005 to 2009.
- (iv) DC travelled beyond the SCN because there was no allegation of making any export in the last 10 years. It is well settled legal position that the Adjudicating Authority has to limit its finding only on the allegations leveled in the SCN.
- (v) LoA issued to the Appellant permitted them to carry on following activities
 - (a) processing and segregation of textiles waste
 - (b) reconditioning of clothing, manufacturing of yarn and yarn products.

If it was to be assumed that the Appellant carried out the first activity but did not carry out the second activity for some period, it did not result in contravention of the LOP in any manner.

5.0. Comments on the Appeal were obtained from the office of the DC, KASEZ. The DC vide letter dated 07.10.2019, inter-alia, stated as under:-

- (i) Appellant was granted three opportunities of personal hearing on 07.12.2018, 25.04.2019 and 06.05.2019.
- (ii) SCN was issued to the Appellant for violation of terms and conditions of the renewal letter dated 02.05.2014 and Bond-cum- LUT submitted by the unit.
- (iii) S.No. 4 of the renewal letter dated 02.05.2014 allowed the Appellant to import second hand clothing only after setting up of Yarn Carding, Spinning & Weaving facility in the Zone.
- (iv) After installing the facility of weaving and spinning in the year 2005, the Appellant in the year 2008 sold the machinery in DTA along with other machinery. Therefore, the weaving and spinning facility of the Appellant was operational only for a brief period of 4 years.

- (v) An inspection was carried out on 18.12.2013 stating that the Appellant had one machine (Rag pulling machine) with it in the compound outside the factory and no spinning facility was present in the factory premise. Once the inspection was done, the Appellant was informed that it did not fulfill the condition of the LoA.
- (vi) Appellant vide letter dated 15.01.2019 accepted that its yarn carding machine was unserviceable and in scraped condition.

6.0. I have considered the Order-in-Original dated 10.04.2019 passed by DC, KASEZ, written submissions made by the Appellant, comments received from DC, KASEZ and all other aspects relevant to the case. It is noted that :-

- (i) DC issued a Show-cause Notice dated 24.12.2018 to the Appellant for violation of terms and conditions of the renewal of LoA letter dated 02.05.2014 and Bond-cum-LUT as it was engaged in import of second hand worn and used clothing without the setting up of Yarn Carding, Spinning & Weaving facility in the KASEZ.
- (ii) Order-in-original was issued on 11.4.23019 by the Development Commissioner, with a finding that the appellant have contravened the conditions of Letter of Approval and conditions of Bond cum Legal Undertaking.
- (iii) The Development Commissioner has imposed a penalty of Rs 8,00,000/- on Appellant.
- (iv) Appeal filed by Appellant and a stay was granted to the Appellant vide Order-in-Appeal (Interim) dated 08.08.2019 and Appellant has furnished the Bank Guarantee for Rs. 2.00 lakhs being 25% of the amount of penalty imposed by the DC.
- (v) DC, KASEZ issued to the Appellant a Letter of Approval (LoA) vide F.No. KASEZ/IA/1890/2002-03/20667 dated 03.03.2003 for

“processing & segregation of textile waste, reconditioning of clothing and manufacturing of yarn and yarn products of every description”

As per the condition No. 2(i) of the LoA dated 03.03.2003, *“The Units shall be allowed to make imports only after setting up of Yarn Spinning facility in the Zone Unit....”* The LoA was renewed from time to time.

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- (vi) The validity of the LoA was extended for the period from 01.12.2013 to 30.11.2018 vide renewal letter dated 02.05.2014 wherein there was the following condition at S.No. 4 :-

“The Unit shall be allowed to make import of second hand clothing only after setting up of Yarn Carding, Spinning & Weaving facility in the Zone.”

- (vii) The LoA was further extended by the DC for a period of one year from 01.12.2018 to 30.11.2019 vide renewal letter dated 30.11.2018 on the same terms and conditions mentioned in the renewal letter dated 02.05.2014. Appellant accepted the terms and conditions of the renewal of LoA letters dated 02.05.2014 and 30.11.2018.
- (viii) The weaving and spinning facility was operational for a period of about four years only from 2005-2008 i.e. prior to the issue of renewal LoA dated 02.05.2014. After this brief period, weaving and spinning facility was not operational. When facility was not operational, it amounts to non-fulfillment of conditions of the LoA and Bond-cum-LUT.
- (ix) Appellant has not denied that despite not having any machinery for spinning and weaving installed/operational in its units, it imported second hand clothing after issue of the renewal of LoA letter dated 02.05.2014. This action of the Appellant is in contravention to the terms of the conditions of the LoA which were duly accepted by it.
- (x) The contention of the Appellant that reprocessing and segregation of textile waste/re-conditioning of clothing, should be treated as independent authorized operation is not acceptable since in the LoA, *“Processing & segregation of textile waste, re-conditioning of clothing and manufacturing of yarn and yarn products of every description”* appears under S.No. 1 of LoA dated 02.05.2014 and not as separate entries. Also, the condition under S.No. 4 of said LoA is very clear, that *“The Unit shall be allowed to make import of second hand clothing only after setting up of Yarn Carding, Spinning & Weaving facility in the Zone.”* There is no exception provided for this condition in the LoA.

- (xi) Therefore, Appellant is liable for penal action and imposition of penalty for violation of the conditions mentioned in the LoA and Bond-cum-LUT under the provisions of the FT(D&R), Act 1992. DC, KASEZ has imposed a penalty of Rs. 8,00,000/- which is a reasonable amount and does not deserve any intervention.

7.0. In view of the above, in the 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. 01/92/171/10/AM 20/ PC-VI

Dated: .01.2022

The Appeal is dismissed.

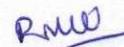


(Amit Yadav)

Director General of Foreign Trade

Copy to:

1. Jindal Fibres, Plot No. 49 & 58, Sector-H, Kandla SEZ, Gandhidham (Kutch) 370230.
2. Development Commissioner, KASEZ with an advice 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