

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

F.No. 01/92/171/05/AM-22/PC-VI/58-59, TR.No.84

Date of Order: 16.12.2022

Date of Dispatch: 19.12.2022

Name of the Appellant: **U. S. Clothing (India) Pvt. Ltd.,
Plot No. 274-281, Sector-IV,
Kandla Special Economic Zone,
Gandhidham-370230.**

IEC Number: **0301052328**

Order appealed against: **Order-in-Original No. KASEZ/03/2021-22 dated
20.05.2021 passed by the Development
Commissioner, KASEZ**

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

Order-in-Appeal

U.S. Clothing (India) Pvt. Ltd., Gandhidham (hereinafter referred to as "the Appellant") has filed an appeal dated 05.06.2021 (received on 15.06.2021) under section 15 of Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against Order-in-Original No. KASEZ/03/2021-22 dated 20.05.2021 (issued from F.No. KASEZ/IA/1865/2001/Vol.I) passed by the Development Commissioner (hereinafter referred to as "DC"), Kandla Special Economic Zone (KASEZ) imposing a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on the Appellant.

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.

3.0 Brief facts of the case:

3.1 U.S. Clothing (India) Pvt. Ltd. was issued a Letter of Approval (LoA) by the DC, KASEZ vide F.No. KASEZ/IA/1865/2001/2128 dated 31.12.2001 as amended/extended from time to time to set up a manufacturing unit in KASEZ, subject to conditions imposed therein.



The items allowed for manufacturing, inter-alia, included reprocessing, sorting, grading, cutting, mutilation etc. of used garments/textiles/clothes/used clothing.

3.2 In terms of conditions of LoA and Bond-cum-Legal Undertaking (BLUT) executed by the Appellant, it was under a legal obligation to comply with the terms and conditions of the LoA as well as BLUT and provisions of SEZ Act, 2005 and Rules made thereunder.

3.3 On 25.03.2021, KASEZ security personnel during the checking of vehicles at gate found some goods packed in two pillow covers in a vehicle bearing Registration No. GJ12DG 1036 being driven by the staff of the Appellant. Security Officer, KASEZ found 3 foot mats and 10-12 pieces of worn and used clothes packed in two pillow covers. The driver stated that they were shifting the material from one godown to another and the said material was left in the vehicle by mistake. The driver of the vehicle was warned and directed to take the goods back to factory premises.

3.4 DGFT vide Notification No. 43/2009-14 dated 19.5.2010 had placed the sale of un-mutilated worn and used clothing in the DTA units by the SEZ units under restricted category for import. It appeared that the Appellant had knowingly attempted to clear the un-mutilated worn and used clothing falling under ITC HS 63090000 into DTA without payment of duty and also without mutilation. Appellant had also failed to obtain necessary permissions from KASEZ Customs before clearing such goods into DTA under Rules 47 and 48 of SEZ Rules, 2006. Thus, the Appellant appeared to have violated the LoA as well as Bond-cum-LUT, SEZ Act and Rules.

3.5 DC, KASEZ observed that Appellant had been rendered liable for imposition of penalty under Rule 54(2) of SEZ Rules, 2006 and Section 11 of FT(D&R) Act, 1992 as amended from time to time. A Show-cause Notice (SCN) dated 28.04.2021 was issued by the DC, KASEZ to the Appellant, as to why LoA issued to them should not be cancelled for violation of terms and conditions of the Bond-cum-LUT and penalty should not be imposed on them under Section 11(2) of Act as made applicable under Rule 54(2) of SEZ Rules.

3.6 DC in its findings recorded that the Noticee was well aware of the clandestine removal of the goods into DTA without payment of duty in contravention of the provisions of SEZ Rules and the conditions of the LoA and Bond-cum-LUT.

3.7 DC vide Order-in-Original dated 20.05.2021 imposed a penalty of Rs. 10,000/- upon the Appellant under Section 11(2) of the Act read with Rule 54 of the SEZ Rules. The proceeding for cancellation of LoA was dropped.

4.0 Aggrieved by the Order-in-Original dated 20.05.2021, the Appellant has filed the present Appeal. Shri Saddam Talu, Director appeared on behalf of the Appellant in the hearing held on 24.11.2022. Shri Satyadeep Mahapatra, Joint DC appeared on behalf of the DC, KASEZ. The Appellant in its written and oral submissions raised the following grounds :-

- (i) On 25.03.2021, Shri Ismail Saicha, employee of the Appellant while going out in the vehicle No. GJ12DG1036 was allegedly found to be carrying two pillow covers filled with 03 foot mats and 10-12 pieces of worn and used clothes and this

incident was reported by the Security Officer (S.O.), KASEZ on 16.04.2021. Upon explanation to the S.O. and considering him to be genuine, the S.O. allowed him to return with goods to factory with a warning. The S.O did not record any statement or draw any panchnama or make any seizure, considering this to be a petty case without any malafide intent.

(ii) S.O. did not make any valuation of the alleged offending goods, which is a prime requirement for adjudicating any case under the Customs Act, 1961 and FT(D&R) Act, 1992.

(iii) For a lapse committed by the employee the management cannot be punished.

Appellant had informed that the entire amount of penalty has already been deposited vide Challan dated 27.05.2021.

5.0 Comments on the Appeal were obtained from the office of DC, KASEZ. The DC vide letter dated 27.10.2022 stated as under :-

(i) Appellant had attempted to clear impugned goods into DTA without payment of duty.

(ii) Appellant attempted to project the entire incident as a mistake and tried to mislead the authority when in fact it was a deliberate attempt of clandestine removal in the absence of evidence on record to the contrary.

(iii) After having satisfied himself that the present case is a case of clandestine removal of goods as alleged in the SCN, the DC has imposed the penalty vide Order-in-Original on the Appellant under Section 11(2) of the FTDR Act.

6.0 I have considered the Order-in-Original dated 20.05.2021 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) DC has held that an employee of the Appellant was trying to take out the restricted items (un-mutilated worn & used clothing falling under ITC HS 63090000) into DTA without payment of duty and also without mutilation.

(ii) Appellant has pointed out that the Security Officer, KASEZ did not record any statement of their employee or draw any panchnama or make any seizure of the goods considering this to be a petty case without any malafide intent.

(iii) Appellant has stated that the Appellant or its Directors were not involved in the incident, therefore, for a lapse committed by the employee the management cannot be penalized. However, this contention of the Appellant has no merit as any SEZ unit cannot be absolved of any action of its employee resulting in

violation of SEZ Act and Rules and terms and the conditions of the Bond-cum-LUT.

- (iv) In the present case, it has been observed that incident which happened on 25.03.2021 was reported by Security Officer, KASEZ much later on 16.04.2021. There was no seizure of the goods nor any assessment of the goods alleged to being taken out illegally from the SEZ into DTA.
- (v) Further, the value of offending goods was not mentioned in the SCN issued by the DC. Moreover, as per the submissions made by the Appellant before the DC, the total value of the alleged offending goods should be Rs. 120/- only. DC in Order-in-Original has also accepted the aforesaid self assessed value of offending goods. No earlier violation of the firm has been reported by the DC.
- (vi) Taking into account that the goods in question are used clothing having a petty value of Rs. 120/-, a lenient view is being taken and the company management absolved of any penal action arising out of the isolated incident.

7. 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. 01/92/171/05/AM-22/PC-VI

Dated: 16.12.2022

The Appeal is upheld and Order-in-Original No. KASEZ/03/2021-22 dated 20.05.2021 of the DC, KASEZ is set aside.


16.12

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:

1. U.S. Clothing (India) Pvt. Ltd., Plot No. 274-281, Sector-IV, Kandla Special Economic Zone, Gandhidham - 370230, Gujarat.
2. Development Commissioner, Kandla SEZ for information and necessary action.
3. Additional Secretary (SEZ Division), DoC, New Delhi for information.
4. DGFT's website



(Randheep Thakur)
Joint Director General of Foreign Trade