

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

File Number: 01/92/171/45/AM-20/PC-VI/3-4

Date of Order: 10.06.2021

Date of Dispatch: 10.06.2021

Name of the Appellant: **Safari Fine Clothing Private Limited,
Shed No. 280-281,
Sector-III, Kandla SEZ,
Gandhidham (Kutch) - 370230**

IEC No.: **0501040927**

Order appealed against: **Order-in-Original No. KASEZ/54/2019-20
dated 29.07.2019 passed by the Development
Commissioner, Kandla SEZ Zone**

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

Order-in-Appeal

Safari Fine Clothing Pvt. Ltd. (hereinafter referred to as 'the Appellant'), a SEZ unit filed an appeal on 13.09.2019 under section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against Order-in-Original No. KASEZ/54/2019-20 dated 29.07.2019 (issued from F.No. KASEZ/1A/SFC/38/2018-19/5089) passed by the Development Commissioner (hereinafter referred to as "DC"), Kandla Special Economic Zone (KASEZ), Gandhidham imposing a penalty of Rs. 75,000/- (Rupees Seventy Five Thousand 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 the 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. The Appellant was issued a Letter of Approval (LoA) by the DC, KASEZ vide F.No. KASEZ/IA/1852/2001-02/9780 dated 05.10.2001, as amended/extended from time to time, to set up a unit in KASEZ for manufacturing of the following items :-

S. No.	Items allowed for manufacturing	Annual Capacity as given in LoA
1	T- shirt Wipers, Clothing, Towel Rags, Fleece Wipers, Colour T-shirt Wipers	5616 MTs

3.2. Appellant accepted and confirmed the terms specified in LoA and executed a written Bond-Cum-Legal undertaking as required under Rule 22 of SEZ Rules, 2006. The Appellant was permitted to import old and used clothing and after segregation according to quality, nature and use, the old and used clothing were to be exported. Appellant is also engaged in clearing the mutilated old and used rags into the DTA on payment of Customs duty. Appellant started commercial production from 03.03.2003 and affected duty free imports.

3.3. Appellant filed a Bill of Entry No. 1011526 dated 10.08.2018 for import of raw materials having description "Old and Used Worn Clothes Unmutilated and Fumigated" under Customs Tariff Heading 63090000 for a quantity of 190250 Kgs in eight containers.

3.4. On 19.08.2018, one container of the aforesaid accessed Bill of Entry by SEZ Customs (accompanied with transit SEZ Cargo trans shipment permit issued by Mundhra Customs regarding permission for shifting of container) was examined and the seal affixed and intact on the container was found to be different from the seal declared in the Bill of lading which arrived at Kandla SEZ entry gate. The examination of the container was done in the presence of the Manager and Assistant Manager of the Appellant who confirmed that the consignment brought in the container are "mutilated old and used worn cloth in the form of Chindi and Garbage" and do not match with the description given in the Bill of Entry No. 1011526 dated 10.08.2018.

3.5. Accordingly, a Show cause notice (SCN) dated 13.09.2018 was issued to the Appellant by the DC as to why:-

- (i) The LoA for their authorized operations should not be cancelled for violation of provisions of the SEZ Act, 2005 and SEZ Rules, 2006 under Section 16 of the SEZ Act.
- (ii) A penalty should not be imposed under Section 11 of FT(D&R) Act, 1992 for violation of the terms and conditions of the LoA and Bond-cum-LUT.
- (iii) The penalty should not be imposed on all partners of the said Unit under Section 25 of the SEZ Act, 2005 for their role in abetting the offence.

- (iv) The impugned mis-declared goods should not be confiscated under the provision of Section 11(8) of Act read with Rule 17 of FTDR, 1993.

3.6. The Appellant was not present in the personal hearings on 26.09.2018 and 25.04.2019 before the DC. The Appellant in its written submissions dated 10.10.2018 and 24.04.2019 stated that due to mistake on part of their supplier, one container out of eight containers was found to have mutilated worn clothing. Appellant was not aware of the contents of the impugned container and did not mis-declare in the Bill of Entry.

3.7. DC after going through the contents of the SCN and all other related documents, proceeded to adjudicate the matter and imposed a penalty of Rs. 75,000/- on the Appellant vide Order-in-Original dated 29.07.2019 under the Section 11(2) of the FTDR Act read with Rule 54(2) of the SEZ Rules, 2006 for mis-declaration of imported goods of worn & used clothing and contravening the provisions of SEZ Act, 2005, SEZ Rules, 2006 and the conditions of LoA and Bond-cum-LUT executed by them.

4.0. Aggrieved by the Order-in-Original dated 29.07.2019, the Appellant has filed the present Appeal. Opportunities of Personal hearings were given to the Appellant on 03.04.2020, 13.08.2020, 27.11.2020 and 12.03.2021. The hearing on 03.04.2020 could not take place due to lockdown. Appellant neither availed the subsequent Personal hearings nor filed any additional written submissions. The Appellant, in its appeal has made the following submissions:-

- (i) Appellant imported a consignment of 190.250 Mts. of "old and used worn clothes un-mutilated and fumigated" in eight containers shipped under Bill of lading dated 30.06.2018 issued by Hapag-Lloyd. The goods were supplied by M/s. Central Express, Tunisia against the purchase order of the Appellant. Based on the documents received from the supplier, the Appellant filed a Bill of entry No. 1011526 dated 10.08.2018 declaring the goods to be "Old & Used Clothes Un-Mutilated & Fumigated".
- (ii) After assessment by an officer of Kandla SEZ, the goods moved from Mundra port to Kandla SEZ. Out of eight containers, there was a discrepancy in the seal number of one container supposed to have seal no. HLD-1546069 as per the Bill of lading. When the sealed container reached the Kandla SEZ it was found that the container had seal No. G-5498334.
- (iii) After examination of the container by the Customs Officer, goods were found to be "mutilated old/used clothing in the form of chindi and garbage".
- (iv) DC called the appellant for a hearing on 26.09.2018. Appellant filed a reply to the SCN on 10.10.2018 and sought an adjournment. The next hearing was fixed by the DC on 25.04.2019 but the Appellant sought an adjournment vide letter dated 24.04.2019 due to non-availability of their Advocate. However, they did not receive any further order for adjournment

and Order-in-Original was passed ex-parte by the DC, KASEZ and deserves to be set aside in the interest of justice.

- (v) Appellant had informed in the reply to the SCN issued by the DC that the documents had been sent by supplier from Tunisia confirming and admitting the mistake in loading at port of shipment by the supplier. The goods sent by the supplier were received intact and the goods were loaded mistakenly by the supplier. When seven containers were received with the goods as declared there was no reason to have goods wrongly declared in one container which was due to lapse on part of the supplier/shipper.

5.0. Comments on the appeal were obtained from the DC. The DC vide letter bearing F.No. KASEZ/IA/1852/2001/Vol.III/-8645 dated 05.11.2019 has, inter-alia, stated the following:-

- (i) DC followed the principle of natural justice and granted opportunities of personal hearings on 26.09.2018 and 25.04.2019 but Appellant was not present. Appellant submitted written submissions dated 10.10.2018 and 24.04.2019. The Order-in-Original was passed after considering all the facts and material evidences on record.
- (ii) Taking into consideration the facts that there was willful mis-declaration of the imported cargo by the Appellant, the adjudicating authority has imposed the penalty.
- (iii) The present issue is not related to seal mismatch or being intact but it is a case of mis-declaration. It was a clear betrayal of the self certification and trust given to Appellant under the SEZ scheme.
- (iv) Since not all the containers were examined, it cannot be stated that declared goods as in Bill of entry were in them.
- (v) Appellant never informed the department even after passage of 50 days from the shipment about the mistake nor did they file any amendment before arrival of the container at KASEZ. Appellant had sufficient time to file an amendment in the said Bill of Entry before entry of goods in KASEZ or inform the department about the mistake on part of their supplier but did not do so and talked with the supplier only after it was found out by the officers of KASEZ.

6.0. I have considered the Adjudication Order dated 29.07.2019 passed by DC, KASEZ, comments received from the DC, KASEZ and all other aspects relevant to the case. It is noted that :-

- (i) Despite being granted opportunities of personal hearings on 13.08.2020, 27.11.2020 and 12.03.2021, the Appellant failed to appear and/or file any



additional written submissions. Therefore, the appeal is being decided on the basis of the available records.

- (ii) Appellant had filed a Bill of Entry No. 1011526 dated 10.08.2018 for import of raw materials having description " Old And Used Worn Clothes Un Mutilated And Fumigated " under Customs Tariff Heading 63090000 for a quantity of 190250 Kgs in eight containers. After mismatch of the seal affixed on one container came to notice, Customs the imported goods in the container in the presence of the officials of the Appellant who admitted that the consignment was "mutilated old and used worn cloth in the form of Chindi and Garbage" and do not match with the description of the goods given in the Bill of Entry dated 10.08.2018. Later, the officials of the company also put their signature on the report dated 19.08.2018 of the Examining Preventive Officers.
- (iii) The goods imported by the Appellant were mis-declared and it was neither the raw material required for their authorized operations nor were they authorized to do trading of the said imported goods.
- (iv) Rule 75 of the SEZ Rules, 2006 provides that all inward/outward movement of goods shall be made on self-certification and no routine examination shall be made unless specifically ordered by the DC. In other words, Rule 75 adequately suggests that SEZ scheme is a trust-based scheme with minimum examination and control of operations of the units within an SEZ. The units in an SEZ are under an obligation to maintain proper records and keep strict vigilance on day-to-day movement of their goods. Any deviation needs to be dealt strictly with penal action.
- (v) The Appellant is engaged in the business of reprocessing of used and worn clothing out of the imported worn clothing falling under chapter heading 63090000, which is otherwise not allowed for import. In terms of Rule 18(4) of the SEZ Rules, 2006, no new unit of worn and used clothing is allowed to be established after the SEZ Act 2005 came into force w.e.f. June 23, 2005. Accordingly, the Appellant was under an additional responsibility/onus to be law compliant and such facts need to be taken into consideration in case any violation of the SEZ Act and SEZ Rules is detected.
- (vi) DC followed the principle of natural justice by granting opportunities of personal hearings on 26.09.2018 and 25.04.2019 but Appellant was not present. DC has informed that it has taken into account the written submissions dated 10.10.2018 and 24.04.2019 filed by the Appellant.



(vii) In view of the above, Appellant has failed to comply with provisions 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 under Section 11 of FT(D&R) Act, 1992 read with Rule 54(2) of the SEZ Rules, 2006.

(viii) In spite of being granted three opportunities of Personal hearings in the Appeal, the Appellant failed to appear and submit any additional written submissions. This shows that the Appellant is not interested in pursuing the Appeal.

(ix) DC has imposed a penalty of Rs. 75,000/- which is a reasonable amount and does not deserve any intervention.


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. 01/92/171/45/AM-20/PC-VI

Dated: 10.06.2021

The Appeal is dismissed.


10/06/2021
(Amit Yadav)

Director General of Foreign Trade

Copy to:

1. Safari Fine Clothing Private Limited, Shed Number 280-281, Sector-III, Kandla SEZ, Gandhidham (Kutch) - 370230
2. Development Commissioner, Kandla SEZ with an advice to make recoveries.
3. DGFT's web site.



(Randheep Thakur)

Joint Director General of Foreign Trade