

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

F.No. 01/92/171/13/AM-22/PC-VI/24-25

Date of Order: 14.06.2022

Date of Dispatch: 15.06.2022

Name of the Appellant: **Krushna Casual Wears Pvt. Ltd.**
Plot Number 12,
Ahmedabad Apparel Park SEZ,
Khokhara,
Ahmedabad-380008,

IEC Number: **0805010076**

Order appealed against: **Appeal filed against Order-in-Original No. 03/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

Krushna Casual Wears Pvt. Ltd. (hereinafter referred to as "the Appellant") filed an appeal dated 26.01.2022 (received on 01.02.2022) under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter referred to as "the Act") against Order No. 03/KASEZ/AAP-SEZ/2021-22 dated 21.12.2021 (issued from F.No. KASEZ/DCO/AAP-SEZ/II/01/2015-16) 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 directing 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.



3.0 Brief facts of the case:

- 3.1 Krushna Casual Wears was issued a Letter of Approval (LoA) dated 27.08.2009 by the Joint Development Commissioner, KASEZ, Ahmedabad. No activity was carried out by them and their LoA lapsed.
- 3.2 Appellant applied for a fresh LoA vide application dated 15.02.2016 and LoA No. KASEZ/DCO/AAP-SEZ/II/001/2015-16 dated 26.03.2016 was issued for manufacturing of Denims & Jeans and Trousers subject to conditions imposed therein.
- 3.3 Appellant could not commence production and applied for an extension of validity of LoA which was extended till 24.03.2018. Later, Appellant applied for a second extension which was granted till 23.03.2019. Appellant thereafter applied for and was granted a third extension upto 23.03.2020 by the Board of Approval (BOA) in its 89th meeting held on 22.04.2019 in terms of Rule 19(4) of SEZ Rules 2006.
- 3.4 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.
- 3.5 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.
- 3.6 LoA issued to the Appellant expired on 23.03.2020. Appellant applied for renewal of LoA on 08.01.2021 stating that they could not apply for renewal within the time frame due to the Covid-19 pandemic.
- 3.7 Since the construction of the unit was not complete due to which the Appellant had not started production till the expiry of the extended validity period as prescribed under the Rules, DC issued a Show-cause Notice (SCN) dated 24.09.2021 to the Appellant to show cause as to why :-
- a. The application dated 08.01.2021 made for renewal/extension of LoA / LoP under Rule 19(6A)(1) of the SEZ Rules, 2006 should not be rejected;
 - b. LoA dated 26.03.2016 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.

3.7 DC granted a Personal Hearing on 22.11.2021. In its written/oral submissions, the Appellant stated as under :-

- (i) They are trying to start the unit and because of the Covid-19 scenario in the last two years, they were unable to revive the business.
- (ii) Their DTA unit was getting more benefits such as drawback/FTP/RODTEP compared to their SEZ unit due to which their SEZ unit was not competitive in the market.
- (iii) They have invested Rs. 2.50 crores in their SEZ unit and 75% of the construction of their building has been completed.

3.8 DC, KASEZ observed that the Appellant had applied for renewal of their LoA after more than nine months 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. The unit has also been unable to start its activities till date.

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

- (i) Rejected the Application submitted by the Appellant on 08.01.2021 for renewal of LoA dated 26.03.2016 in terms of Rule 19(6A) (1), 19(6A)(2) & 19(6B) of the SEZ Rules, 2006.
- (ii) 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.

Since the Appellant had not made any imports, therefore, proceedings for not having a positive NFE were dropped.

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 24.05.2022. 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 could not apply for renewal of LoA in terms of Rule 19(6A)(1) of the SEZ Rules, 2006 due to the Covid pandemic.
- (ii) Appellant will commence the commercial production of the product duly authorised in LoA within six months.

5.0 Comments on the Appeal were sent by the Specified Officer, Electronic Park SEZ, Gandhinagar. It has been submitted that Appellant appeared to have been least bothered about its export activities since 2016 onwards and never progressed in commencing the manufacturing activities even after DC considering and extending the LoA thrice with validity upto 23.03.2020.

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) Appellant was issued a LoA dated 27.08.2009 by the JDC, KASEZ, Ahmedabad. No activity was carried out by them and their LoA lapsed as per Rule 19 of SEZ Rules, 2006.
- (ii) Later, Appellant was issued a LoA dated 26.03.2016 by the JDC, KASEZ, Ahmedabad. Since the Appellant could not commence production, the LoA was extended twice by the DC for a period of one year each till 23.03.2019 and further extension was granted by the BoA upto 23.03.2020 in its 89th meeting held on 22.04.2019, in terms of the SEZ Rules 2006.
- (iii) 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. Even though the LoA dated 26.03.2016 of the Appellant expired on 23.03.2020, the application for renewal was submitted only on 08.01.2021 i.e. almost after nine months. 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.
- (iv) 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.

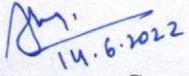
7.0. In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014 dated the 5th December 2014, I pass the following order :-

Order

F.No. 01/92/171/13/AM-22/PC-VI


Dated: 14.06.2022

The Appeal is dismissed.


(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to

1. ✓ Krushna Causal Wears Pvt. Ltd., Plot Number 12, 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