

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/PCVI /36-37, TR.No. 51

Date of Order: 12.08.2022

Date of Dispatch: 12.08.2022

Name of the Appellant: **Mahavir Tex Fab,**
Plot No. 16, GIDC, Apparel Park (SEZ),
Khokhara, Ahmedabad

IEC Number: **0811022030**

Order appealed against: **Appeal filed against Order-in-Original No. 01/KASEZ/AAP-SEZ/2021-22 dated 22.12.2021 passed by the Development Commissioner, Kandla Special Economic Zone**

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

Order-in-Appeal

Mahavir Tex Fab (hereinafter referred to as "the Appellant") filed an appeal dated 28.01.2022 (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. 01/KASEZ/AAP-SEZ/2021-22 dated 22.12.2021 (issued from F.No. KASEZ/DCO/AAP-SEZ/II/04/2011-12) 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. 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.

3.0 Brief facts of the case:

3.1 Mahavir Tex Fab was issued a Letter of Approval (LoA) by the Joint Development Commissioner, KASEZ, Ahmedabad vide LoA No. KASEZ/DCO/AAP/II/04/2011-12 dated 05.01.2012 for setting up of manufacturing unit for Shirts, Bermuda (Shorts), Digital Printed Scarves, Stitched Lungis (Sarongs) and Made-ups subject to conditions imposed therein.



- 3.2 The validity of LoA was extended from time to time. Appellant commenced production w.e.f. 01.01.2015. The validity of LoA was extended for five years upto 31.12.2019, as per Rule 19(6) of the SEZ Rules, 2006. Due to stoppage of export activities since 2018 onwards, it was decided to renew LoA for only three months i.e. upto 31.03.2020.
- 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 LoA issued to the Appellant expired on 31.03.2020. Appellant applied for renewal of LoA on 19.01.2021 stating that they could not apply for renewal within the time frame due to the Covid-19 pandemic.
- 3.5 Since the Appellant was not doing any commercial activity since 2018 onwards and had applied for renewal 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 19.01.2021 made for renewal/extension of LoA / LoP under Rule 19(6A)(1) of the SEZ Rules, 2006 should not be rejected;
 - b. LoA dated 05.01.2012 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.
- 3.6 DC granted a Personal Hearing on 23.11.2021. In its written/oral submissions, 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) They have invested Rs. 83.11 lakhs in their SEZ unit and had positive NFE of Rs. 8.77 lakhs during the block period from 01.01.2015 to 31.12.2019.
 - (iii) Their DTA unit was getting benefits such as duty drawback which were not available to their SEZ unit due to which SEZ unit had become uncompetitive.
- 3.7 DC, KASEZ observed that the Appellant had applied for renewal of their LoA after a lapse of almost 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. It has also not carried out its regular export activities since 2018 onwards. However, the Appellant has achieved positive NFE of Rs. 8.77 lakhs in block year 2015-2020 (included the extended period of three months).



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

- (i) Rejected the Application submitted by the Appellant on 19.01.2021 for renewal of LoA dated 05.01.2012 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 by them 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 22.12.2021, the Appellant has filed the present Appeal. Shri Shivam Amarnath Mishra, Consultant appeared on behalf of the Appellant in the hearing held on 16.06.2022. 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 had invested as on December, 2019, Rs. 83.11 lakhs in building, plant and machinery and all the plant and machinery was indigenously procured.
- (ii) Upon expiry of the LoA on 31.12.2019, DC granted an extension of LoA for a period of three months till 31.03.2020.
- (iii) After 31.03.2020 and till December, 2020 there was no scope for any business. The authority should have suo moto extended and renewed the LoA instead of waiting for an application for extension to be made, as in the renewal letter it was mentioned that the position will be reviewed after three months, so when the period of three months got extended due to COVID 19, it was incumbent upon the authority to have suo moto extended, or least when we made application for renewal on 19.01. 2021, the same was required to be allowed.
- (iv) Exports were affected by product of SEZ being incompetent in the international market due to fewer benefits of drawback and FTP to the SEZ unit.
- (v) DC has not appreciated the factual aspect of having achieved positive NFE.
- (vi) The sole reason before DC to reject the application as having been made beyond two months is arbitrary and needs to be quashed.

5.0 Comments on the Appeal were sent by the Specified Officer, Electronic Park SEZ, Gandhinagar vide e-mail dated 25.03.2022. It has been stated that :-

- (i) During review of LoA, it was observed by the DC that the Appellant has achieved the positive NFE of Rs. 8.77 lakhs upto November, 2019.
- (ii) Appellant stopped its commercial production activities since 2018 without contributing to any value addition in terms of investment, employment generation and exports which are the key parameters of SEZ.
- (iii) Appellant had informed the DC vide letter dated 28.11.2019 about their commitment to restart the business very soon but the same did not occur.



(iv) There is no provision in the SEZ Rules for taking suo-moto action for renewal on expiry of the LoA.

(v) Appellant was required to apply for renewal of validity of LoA before two months of its expiry as per the SEZ Rules. However, Appellant submitted application for renewal of LoA on 19.01.2021 i.e. almost after nine months of expiry of LoA without any request for condonation of delay.

6.0. I have considered the Order-in-Original dated 22.12.2021 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 31.03.2020, the application for renewal was submitted only on 19.01.2021 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.
- (iii) 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.

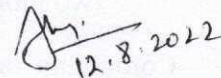
7.0. In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014 dated the 5th December 2014, I pass the following order :-

Order

F.No. 01/92/171/1 3/AM-22/PC-VI

Dated: 12 .08.2022

The Appeal is dismissed.

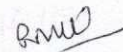

12.8.2022

(Santosh Kumar Sarangi)

Director General of Foreign Trade

Copy to:

1. Mahavir Tex Fab, Plot No. 16, GIDC Apparel Park (SEZ), Khokhara, Ahmedabad.
2. Development Commissioner, KASEZ for information and compliance.
3. Additional Secretary (SEZ Division), DoC, New Delhi for information.
4. DGFT's website.



(Randheep Thakur)

Joint Director General of Foreign Trade