

**Government of India**  
**Ministry of Commerce & Industry**  
**Directorate General of Foreign Trade**  
**Udyog Bhawan, New Delhi-110011**  
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F. No. 01/92/171/44/AM-20 / PC-IV/~~77, 78, 79~~ Date of Order: 28 .01.2021  
TR No. 78 Date of Dispatch: 28.01.2021

Name of the Appellant: Flax Apparels Pvt. Ltd.,  
Shed No. 308/309, Sector-I,  
Kandla Special Economic Zone,  
Gandhidham, Kutch

IEC No.: 0896000842

Order appealed against: Order-In-Original Number KASEZ/56/2019-20  
dated 31.07.2019 passed by the Development  
Commissioner, Kandla Special Economic Zone

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

**Order-in-Appeal**

Flax Apparels Pvt. Ltd., Gandhidham, Gujarat (here-in-after referred to as 'the Appellant'), an SEZ unit, filed an appeal dated 13.09.2019 u/s 15 of the Foreign Trade (Development & Regulation) Act, 1992 (here-in-after referred to as "the Act") against Order-in-Original No. KASEZ/56/2019-20 dated 31.07.2019 passed by the Development Commissioner (here-in-after referred to as the "DC"), Kandla Special Economic Zone (KASEZ) imposing a penalty of Rs. 10,00,000/- and Rs. 2,00,000/- on the Appellant and its Director, Mr. Jagmohan Singh Kang respectively under section 11 of the Act.

2. Vide Notification No. 101 (RE-2013)/2009-2014 dated the 5<sup>th</sup> 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 the appeal is before me.



3. **Brief facts of the case:**

3.1. The Appellant was granted a Letter of Approval (LoA) No. KASEZ/IA/1627/96/1213 dated 15.05.1996, as amended from time to time and valid up to 30.11.2019, to set up a unit in KASEZ for reprocessing of used garments for export. The Appellant was authorized to import Old & Used Clothing. After segregation, according to quality, nature and use, the old and used clothing were to be exported. The Appellant was also engaged in clearing the mutilated old and used rags, not worthy of export, in the Domestic Tariff Area (DTA) on payment of Customs duty.

3.2. In terms of condition of LoA and also in terms of condition of 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 to comply with the provisions of SEZ Act, 2005 and Rules made thereunder.

3.3. On 11.08.2018, KASEZ Security personnel, during patrolling, found some suspicious activities happening near the unit of M/s Syndicate Printers, at Sector-IV, KASEZ and some unknown persons were found gathered there. On enquiry, they started running and pelting stones towards security personnel. The security personnel tried to catch them but they managed to flee away. 10 Bales of worn clothing, having a printed label of M/s Safari Fine Clothing on all of them, along with two trollies, were found lying at the site of incident. These Bales were brought to the customs check post for safe custody and later on seized.

3.4. After investigation, it appeared that these Bales were not prepared in the factory of Safari Fine Clothing Pvt. Ltd., as there was no machinery for making small bales of worn clothing in that unit. It also appeared that these Bales might be owned by the Appellant as the Appellant used to make Bales with the logo of Safari Fine Clothing and the later was also regularly making transactions of purchase/sale of un-mutilated worn clothings with the Appellant Unit.

3.5. The Appellant, vide letter dated 17.08.2018, informed that Safari Fine Clothing Pvt. Ltd. was implicating the Appellant in the theft which took place on 10.08.2018. It feigned ignorance about ownership of the Bales and stated that it's premises are well guarded by security staff and CCTV cameras. However, later on, vide letter dated 22.10.2018, the Appellant informed that during the course of calculating its stocks, 15 Bales of export material weighing 45 kg. each were found missing from it's warehouse. The

Appellant, vide letter dated 22.10.2018, submitted a copy of FIR dated 27.08.2018 lodged with Police for theft of 15 Bales of old and used clothes of each 45 kgs. each and each amounting to Rs. 2,000/-.

3.6. Subsequently, the DC gathered that the Appellant was aware of the fact of goods of restricted export quality were being secretly removed for the purpose of sale into DTA which otherwise was not permissible. A Show-cause Notice dated 29.11.2018 was issued to the Appellant, Safari Fine Clothing Pvt. Ltd. and Directors of these two units, to show cause as to why penalty should not be imposed on them under the Act.

3.7 DC, in its findings, recorded that the Noticees were well aware of the clandestine removal of the goods but they tried to hush up the matter in order to mislead the Department and also withheld the key material facts and thus they have contravened the provisions of Rules 22(2) and 75 of the SEZ Rules, 2006 and the conditions of the LoA and BLUT as per which they were under legal obligation to conduct their business as per the provisions of the SEZ Rules 2006. On the basis of the evidences available on record and the reply submitted by the Appellant, the DC, KASEZ, inter-alia, imposed penalty of Rs. 10,00,000/- on the Appellant under Section 11(2) and Rs. 2,00,000/- on Shri Jagmohan Singh Kang, Director of the Appellant under Section 11(3) of the Act.

4.0. Aggrieved by the Order-in-Original dated 31.07.2019; the Appellant and its Director filed the present Appeal stating that: -

- i. For a person to be penalized under section 11(2) of Act, such person has to be covered under the scope of “makes or abets or attempts to make any export or import in contravention of any provision of this Act”. The provisions of section 11(2) have neither been alleged in the SCN nor proved in the Order-in-Original.
- ii. It became a victim of an incident of “theft” despite the Appellant having taken adequate precautions by installing CCTV Cameras and by keeping the warehouse locked when it was not in use.
- iii. There is no material/evidence on record to suggest that the goods were removed by the Appellant clandestinely. It is a case of theft and a detailed FIR was lodged, although with a little delay.
- iv. That the Appellant was directed to appear for a Personal Hearing on 7-12-2018 and 25.04.2019 before the Development Commissioner, KASEZ. However, it informed the Adjudicating Authority that it would not be able to



appear due to some personal difficulty and requested for a later date. However, a chance of Personal Hearing was not given to the Appellant.

- v. There are no personal allegations against the Director and Rule 54 of SEZ Rules, 2006 has to be read with Section 11 of the Act. The appellant also quoted some judgments.

5.0 Comments on the appeal were obtained from the DC. The DC, vide letter F. No. KASEZ/IA/SF/33/2018-19/8647 dated 04.11.2019, inter-alia, stated that:

- (a) Rule 54 of the SEZ Rules 2006 specifically provides that if a unit has not achieved positive NFE or stipulated value addition as specified in Rule 53 or failed to abide by any of the terms and conditions of the LoA or BLUT, the unit shall be liable for penalty under provisions of the Act.
- (b) 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 or clandestine removal of goods needs to be dealt strictly with penal action.
- (c) The Appellant is engaged in the business of reprocessing of used & 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.
- (d) The submissions of the Appellant that despite having sufficient security personnel and CCTV cameras to guard their premises, the goods were being removed from its premises without its knowledge/awareness, are self-contradictory.
- (e) The Director of the Appellant admitted that the goods seized were owned by the Appellant and any removal of goods from premises of the Appellant without following due procedure of law is illegal. Accordingly, the Appellant, being an SEZ unit, is expected to ensure that goods are removed from their premises only in terms of provisions of the SEZ Act 2005 and SEZ Rules 2006.



(f) Section 25 of the SEZ Act 2005 provides for imposition of penalty on all the persons in case it is proved that the offence has been committed by the company with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, etc. of the company, such director, manager, etc. shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(g) The Appellant was granted Personal Hearings on 07.12.2018 and 25.04.2019. However, the Appellant failed to submit any written reply or appear before the Adjudicating Authority. Therefore, the Adjudicating Authority did not go against the principles of natural justice.

6.0. The Appellant was granted opportunities of Personal Hearing on 22.10.2020 and on 05.11.2020 which were attended by the representatives of the Appellant. I have considered the Adjudication Order dated 31.07.2019 passed by DC, KASEZ, oral/written submissions made by the Appellant, comments received from DC, KASEZ and all other aspects relevant to the case. I find that:

- i. The bales which were intercepted and seized were having mark of Safari which is also used by the Appellant. The Appellant first tried to mislead by feigning ignorance about the ownership of the seized bales. It stated that its premises are well secured as it has security guards and also CCTV cameras. It also tried to put blame on Safari International. However, later-on, it admitted that 15 Bales are missing from its unit due to theft. It also filed an FIR with the Police but in the said FIR, the date of incident of theft was mentioned much later than the date on which 10 Bales were intercepted and seized.
- ii. The Appellant admittedly had regular business dealings with Safari International and used to put safari brand name as marking on its goods.
- iii. The seized bales admittedly belonged to the Appellant.
- iv. The chain of events shows that the Appellant was trying to take the Bales out of its unit. It would have been successful had the security guards not noticed it. It tried to mislead the authorities first by denying any involvement and then later on by filing a Police complaint. Despite CCTVs and security guards, the Appellant took a long time in coming forward to admit shortage of Bales from its stock.
- v. Mr. Jagmohan Singh Kang, Director cannot escape the responsibility as he was in control of operations of the Appellant and hence is also liable for action under the SEZ Act 2005 and FTDR Act 1992.

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



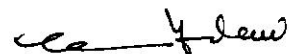
Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, I pass the following order:

**Order**

F. No. 01/92/171/44/AM-20/PC-VI

Dated: 28 .01.2021

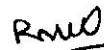
The Appeal is dismissed.



(Amit Yadav)  
Director General of Foreign Trade

Copy to:

- ✓ (1) Flax Apparels Private Limited., Shed No. 308/309, Sector-I, Kandla Special Economic Zone, Gandhidham, Gujarat – 370230.
- ✓ (2) Mr. Jagmohan Singh Kang, Director, Flax Apparels Pvt. Ltd. KASEZ.
- ✓ (3) Development Commissioner, Kandla SEZ with an advice to make recoveries.
- ✓ (4) Addl. Secy, (SEZ Division), DoC, Udyog Bhavan, New Delhi for information.
- ✓ (5) DGFT's web site.



(Randheep Thakur)  
Jt. Director General Foreign Trade