Government of India (भारत सरकार)
Department of Commerce (वाणिज्य विभाग)
Directorate General of Foreign Trade (विदेश व्यापार महानिदेशालय)
Vanijya Bhawan, New Delhi-110011
वाणिज्य भवन,नई दिल्ली

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01/92/180/16/AM26/PC6/38

Date of Order: 10.08 .2026

Date of Dispatch: 10.08 .2026

Name of the Applicant:	M/s Texpoly Impex, Shed No. 177-178, Sector-I, Kandla Special Economic Zone, Gandhidham, (Kutch) 370230.
IEC No.	3716902420
Order Appealed against:	Appeal against Order-in-Original No. KASEZ/6/2024-25 dated 12.02.2025.
Order passed by:	**Shri Lav Agarwal** **Director General of Foreign Trade**

Order-in-Appeal

M/s Texpoly Impex (hereinafter "the Appellant") is a partnership firm operating as a Special Economic Zone (SEZ) unit at Shed No. 177-178, Sector-I, Kandla Special Economic Zone (KASEZ), Gandhidham, Kutch. The Appellant holds Letter of Approval (LOA) dated 28.12.2010 for undertaking authorized operations of processing of worn and used clothing, as amended/extended from time to time.

2. Vide Notification No. 101 (RE-2013)/2009-2014 dated 05.12.2013, the Central Government has authorized the Director General of Foreign Trade, aided by one Additional DGFT, to function as Appellate Authority against orders passed by the Development

Commissioner, Special Economic Zones, functioning as Adjudicating Authority. Accordingly, the present appeal is properly before this Authority

3. Brief History of the Case:

3.1 The Appellant holds Letter of Approval (LOA) dated 28.12.2010 for undertaking authorized operations of processing of worn and used clothing, as amended/extended from time to time. Condition No. (18) of the LOA, inserted vide the LoA Renewal Letter dated 12.03.2014, provides that "the unit's operations shall be restricted to the premises authorised to it and reasonably required for the quantity exported by the unit. The unit shall not be permitted to avail any additional space from the date of issue of this LoP through allotment/warehousing/any other mode." The Appellant had also executed a Bond-cum-Legal Undertaking (BCLUT) on 05.07.2021, accepted by the Development Commissioner, KASEZ vide letter dated 15.07.2021, Condition No. 1 whereof binds the Appellant to abide by all provisions of the SEZ Act, 2005 and the Rules made thereunder in respect of goods for authorized operations in the SEZ.

3.2 On 10.11.2023, the Custom House (SIIB), Kandla reported to the office of the Development Commissioner, KASEZ that a search conducted at the premises of M/s Adinath Warehousing Co. (another SEZ unit in KASEZ) under panchnama dated 30.03.2023 revealed broken bales and used clothes belonging to the Appellant lying at those premises. Statements of Shri Jitendra Jain, authorized person of M/s Adinath Warehousing Co., and Shri Rafiq Bara, partner of the Appellant, recorded that a warehousing arrangement existed between the two units under which the premises of M/s Adinath Warehousing Co. were being used for storage of broken bales and used clothes of the Appellant on account of shortage of space at the Appellant's own allotted unit.

3.2 On this basis, Show Cause Notice bearing F. No. KASEZ/IA/1601/95/69-A/Vol.I/506 dated 07.11.2023 was issued to the Appellant alleging contravention of Condition No. (18) of the LOA and Condition No. 1 of the BCLUT, and calling upon the Appellant to show cause as to why (a) the LOA should not be cancelled under Section 16 of the SEZ Act, 2005 for persistent violation, and (b) penalty should not be imposed under Rule 54(2) of the SEZ Rules, 2006 read with Sections 11 & 13 of the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter "FT(D&R) Act").

3.3 The Appellant filed a written submission dated 27.11.2023 stating, inter alia, that the space of M/s Adinath Warehousing Co. had been utilized only for temporary storage on account of an unforeseen additional flow of inputs, that no authorized operations such as sorting, segregation or grading were carried out at those premises, and that the lapse, being unintentional and involving no revenue loss, warranted a lenient view. Personal hearing, initially fixed for 28.11.2023, was adjourned at the Appellant's request and held on 04.01.2024, at which Shri Rafiq Bara, partner, appeared and reiterated the Appellant's submissions, additionally offering to formalize and submit the warehousing agreement, which was submitted on 09.01.2024.

3.4 Thereafter, Order-in-Original No. KASEZ/6/2024-25 dated 12.02.2025 (hereinafter "the impugned OIO") was passed by the Development Commissioner, KASEZ, upholding the averments in the SCN and imposing a penalty of Rs. 18,60,000/- (Rupees Eighteen Lakhs Sixty Thousand only) on the Appellant under Section 11(2) of the FT(D&R) Act, 1992 read with Rule 54(2) of the SEZ Rules, 2006. The proceedings for cancellation of the LOA under Section 16 of the SEZ Act, 2005 were dropped, with a warning that any repetition would attract cancellation proceedings.

3.5 Aggrieved by the impugned OIO, the Appellant preferred the present appeal dated 26.03.2025 before this Authority.

4. In the appeal, the Appellant states that:

4.1 The impugned order has travelled beyond the scope of the Show Cause Notice inasmuch as Section 11(2) of the FT(D&R) Act, 1992 provides for penalty only on a person who makes, abets or attempts to make any export or import in contravention of any provision of the Act, rules, orders or the foreign trade policy. Since there is no allegation that the Appellant made, abetted or attempted any export or import in contravention of any provision, imposition of penalty under Section 11(2) is not tenable in law.

4.2 There is no dispute that the Appellant or the employees of M/s Adinath Warehousing Co. did not carry out any authorized operations permitted under the LoA on the goods temporarily stored at the latter's premises. The storage was purely accidental, necessitated by an unforeseen additional flow of inputs, and not undertaken under any long-term or permanent arrangement. The Development Commissioner ought to have taken a lenient view and refrained from imposing penalty.

4.3 The penalty imposed is harsh and incommensurate with the lapse, if any, and there is a catena of decisions of the Hon'ble Supreme Court holding that penalty should not be imposed, even where the statute provides for it, for technical and venial breaches.

4.4 The Appellant craves leave to add, amend, alter, rescind or modify any of the foregoing grounds if deemed necessary in the interest of justice, and further prays that owing to financial hardship, the requirement of pre-deposit of penalty be waived.

5. In reply to the appeal, the Development Commissioner, KASEZ, furnished para-wise comments and stated that:

5.1 The SCN was issued for violation of the SEZ Act/Rules and the conditions of the LOA and BCLUT, and not merely for contravention relating to export or import. Condition No. (18) of the LOA expressly restricts the Appellant's operations to the premises authorised to it and bars availing of any additional space through allotment, warehousing or any other mode. Rule 54(2) of the SEZ Rules, 2006 read with Sections 11 & 13 of the FT(D&R) Act, 1992 independently empowers the Adjudicating Authority to penalize violation of LOA/BCLUT conditions, and the Appellant's narrow reading of Section 11(2) is misconceived.

5.2 The Appellant has itself admitted, both in its written submission and at the personal hearing, that goods belonging to it were found stored at the premises of M/s Adinath Warehousing Co., which by itself establishes that the Appellant was functioning outside the premises authorised under its LOA, in contravention of Condition No. (18) of the LOA and Condition No. 1 of the BCLUT.

5.3 The catena of Supreme Court decisions relied upon by the Appellant turns on the existence of a bona fide belief. In the present case, the Appellant was well aware of the conditions of its LOA, as amended from time to time, and had also signed the BCLUT undertaking to comply with the SEZ Act/Rules; despite this, it functioned from unauthorized premises. The Respondent has already taken a lenient view by not cancelling the LOA under Section 16 of the SEZ Act, 2005, and the penalty imposed is appropriate and ought to be upheld in its entirety.

6. Personal hearing on the matter was granted to the parties. Shri Vikas Mehta was present from the side of the party and Shri Darshan Gattani was present from the side of the DC, KASEZ. In the personal hearing, the Appellant and the Respondent reiterated the positions taken in their respective submissions. In addition to the submissions made in the appeal the appellant

also pointed to Section 11(4) FT (D&R) Act, 1992 which talks about settlement in case of admission of the violation.

7. Observations and Findings

7.1 On merits, it is not in dispute indeed it stands admitted by the Appellant in its written submission dated 27.11.2023 and reiterated at the personal hearing that broken bales and used clothing belonging to the Appellant were found stored at the premises of M/s Adinath Warehousing Co., a separate SEZ unit, and that this storage was necessitated by shortage of space at the Appellant's own allotted unit. Condition No. (18) of the Appellant's LOA, and Condition No. 1 of the BCLUT executed by the Appellant, in unambiguous terms restrict the Appellant's operations to the premises authorised to it and expressly bar it from availing any additional space through allotment, warehousing or any other mode. The Appellant's admitted conduct is squarely in violation of these conditions, and this Authority finds no infirmity in the finding of contravention recorded in the impugned OIO.

7.2 However, on the question of quantum of penalty, this Authority does not find merit in the Appellant's alternative plea that the penalty of Rs. 18,60,000/- is disproportionate to the gravity of the violation established on record. First, the violation was a deliberate and sustained one, involving the storage of goods at an unauthorized SEZ unit in the teeth of an express contractual and regulatory bar, and not a mere technical or inadvertent lapse. Second, that the Appellant shifted the stock back to its own premises only upon being pointed out by the authorities does not mitigate the violation; compliance secured through detection, rather than voluntary disclosure, does not evidence the kind of bona fide conduct that would warrant leniency in quantum. Third, the Adjudicating Authority declined to invoke Section 16 of the SEZ Act, 2005 for cancellation of the LOA on that basis, the decision to proceed only by way of penalty, rather than the more drastic remedy of cancellation, has already been factored into the Adjudicating Authority's exercise of discretion; it is not, in addition, a ground for diluting the penalty itself.

7.3 The Appellant was demonstrably aware of Condition No. (18) of its LOA, had executed the BCLUT binding itself to comply with the SEZ Act/Rules, and its own letter dated 24.05.2021 intimating the office of availing warehousing space from M/s Adinath Warehousing Co. subsequently withdrawn by letter dated 01.06.2021 shows that the Appellant was conscious that such an arrangement required intimation to, and sanction of, the Development Commissioner. Having withdrawn that intimation, the Appellant nonetheless proceeded to function from the very same premises without any fresh intimation or approval. This conduct does not establish the kind of bona fide belief contemplated in the decisions of the Hon'ble Supreme Court cited by the Appellant, and the plea for complete waiver of penalty as well as the alternative plea for reduction of penalty, is accordingly rejected.

7.4 Balancing the admitted contravention of the LOA and BCLUT conditions, the deliberate nature of the violation, and the absence of any bona fide belief on the part of the Appellant, against the fact that the Respondent itself declined to cancel the LOA and proceeded only by way of penalty, this Authority is of the view that the penalty of Rs. 18,60,000/- (Rupees Eighteen Lakhs Sixty Thousand only) imposed under Section 11(2) of the FT(D&R) Act, 1992 read with Rule 54(2) of the SEZ Rules, 2006 is fair, proportionate, and calls for no interference. The penalty as imposed by the Adjudicating Authority is accordingly upheld and affirmed in its entirety.

8. In view of the above, this Authority finds as follows:

8.1 The Appellant's storage of goods at the premises of M/s Adinath Warehousing Co. is in violation of Condition No. (18) of the Letter of Approval dated 28.12.2010 and Condition No. 1 of the Bond-cum-Legal Undertaking dated 05.07.2021, and the finding of contravention recorded in Order-in-Original No. KASEZ/6/2024-25 dated 12.02.2025 is upheld.

Order

01/92/180/16/AM26/PC6/38 **Dated:** 10. 8. **—2026**

The appeal filed by M/s Texpoly Impex is dismissed. The finding of contravention of Condition No. (18) of the Letter of Approval and Condition No. 1 of the Bond-cum-Legal Undertaking, as recorded in Order-in-Original No. KASEZ/6/2024-25 dated 12.02.2025 passed by the Development Commissioner, Kandla Special Economic Zone, is upheld. The penalty of Rs.

18,60,000/- (Rupees Eighteen Lakhs Sixty Thousand only) imposed thereunder is upheld and affirmed in its entirety..

(Lav Agarwal)
Director-General of Foreign Trade

<u>Copy To:</u>

1) M/s Texpoly Impex, Shed No. 177-178, Sector-I, Kandla Special Economic Zone (KASEZ), Gandhidham – 370 230, Kutch, Gujarat
2) Development Commissioner, Kandla SEZ for taking necessary action.
3) DGFT's website.

(Sumit Verma)
Deputy Director General of Foreign Trade