



AFCAN IMPEX PVT. LTD.

"Recycling" - The Endless Possibility

Date: 30.04.2019

To
Chief Public Information Officer
Office of Development commissioner
KANDLA Special economic Zone
Gandhidham

श्री राजु दस |
त्ररित / RTI

APIO

मि
02/5/19



Dear Sir

SUB: Copy of Note sheet and other Documents from the file of IA section of company

SUB : APPLICATION UNDER RTI ACT 2005

With reference to the above please find application under RTI Act 2005 in respect of Details from file of AFCAN IMPEX PVT LTD in record of IA section of Office of Development commissioner, KASEZ & Office record file for same

Thanking you
For AFCAN IMPEX PVT LTD.

(Kishor Kapdi)
Authorised Signatory

- 1) RTI application
- 2) Demand Draft for Fees
- 3) Copy of Note Sheet Page No.-41

K-GROUP

1/5/19
आयुक्त निरिपक
क.वि.आ.क्षेत्र प्रशासन
गांधीधाम (कच्छ)



APIO

CIN : U51909MH2003PTC142437

REGD. OFFICE :

1002/A, Pinnacle, Corporate Road,
Prahladnagar, Ahmedabad,
Gujarat - 380015, Telefax : 079-40029991
E-mail : info@arzeerags.com

PORT ADMIN :

"Shree Awadh", Plot No. 237, Sector-1A,
Gandhidham - 370201, Gujarat.
Tel. : 02836-230002,
E-mail : info@arzeerags.com

PORT ADMIN :

"Shree Awadh", Plot No. 237, Sector-1A,
Gandhidham - 370201, Gujarat.
Tel. : 02836-230002,
E-mail : info@arzeerags.com



- 5 -

RTI Application Form
FORM 'A'
See Rule 3(1)

I. D. No.....
(For Office Use Only)

To
Chief Public Information Officer
Office of Development commissioner
KANDLA Special economic Zone
Gandhidham

1. Full Name of the Applicant : Kishor Bachuram Kapdi
(Director - AFCAN IMPEX PVT LTD)
2. Father Name/Spouse Name : **Shri Bachuram P Kapdi**
3. Permanent Address: : **Shri Awadh
Plot No. 237, Sector -1A,
Near Saheb car
Gandhidham-Kutch**
4. Correspondence Address : **Plot No. 237, Sector -1A,
Near Saheb car
Gandhidham-Kutch**
Email: info@arzeerags.com
5. Particulars of The Information Solicited : IA Section
- Subject Matter of Information : Copy of Note sheet and other
Documents from file of IA section of
company

b) The period to which information relates: **1/1/2010 to 30/04/201 9**

1. Specific Details of Information required:

1. Copy of Note sheet from 01.01.2010 to 31.12.2011
2. Copy of table form attached in file at c/p 581 (As mention in NSP-41 -copy is attached) and copy of C/P 581
3. Copies of comments submitted by Office of the development commissioner in DGFT , New Delhi against the appeal file by AFCAN IMPEX PVT LTD on 08.11.2013 before appellate committee , DOC , New Delhi

For AFCAN IMPEX PVT. LTD.


Authorised Signatory

- 3

d) Whether information is required by Post : **Need by Speed Post**
(The actual postal fees shall be Included in additional fee in providing the information)

e) In case by Post (ordinary/registered: or speed post) : **Speed Post**

6. Is this information not made available by Public authority under voluntary disclosure? : **Not Applicable**

7. Do you agree to pay the required fee? : **Yes,**

8. Have you deposited application fee? : **Please find Attached Demand Draft of fees**

(If Yes, Details of such deposit) **Pay Order of Rs. 50 bearing No. 612006 in favor of "Regional Pay Account officer payable at Gandhidham**

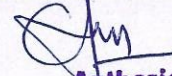
9. Whether belongs to below Poverty Line category: **Not Applicable**
(If yes, you furnished the proof of the same with Application)

Place : Gandhidham

Date: : 30 /04 /2019

Signature of Applicant

For AFCAN IMPEX PVT. LTD.



Authorised Signatory

(Kishor Kapdi)

Director- AFCAN IMPEX PVT LTD

KASEZ/IA/1916/2002-03
M/s Afcan Impex Pvt. Ltd.

Submitted please.

Development Commissioner's observations and direction on pre-page 40 may kindly be seen. As directed previous, such cases have been examined and four such cases have been found; the details of which is prepared in tabular form and is attached at c/p 581 which may kindly be seen.

Perusal of the table will transpire that in first three cases five times of the amount of (-) ve NFEE has been imposed as penalty in terms of Section 11 (2) of Foreign Trade (Development and Regulation) Act, 1992, however, in the case of SCN referred to at Sl. No. 4, penalty of Rs. 60 lakhs is imposed which is nearly equal to the amount of (-) ve NFEE of Rs. 58.32 lakhs, though an extended period to cover the said amount was given to achieve/to cover up the difference and subject to non-achievement only the amount of penalty becomes payable. As is evident from the remarks column the unit made exports of 90.56 lakhs before the due date and thus the penalty was not payable.

It is pertinent to mention that all the adjudications were made prior to the amendment in the year 2010 of FTDR Act, 1992. Section 11 (2) of FTDR Act, 1992 before and after amendment is reproduced hereunder verbatim,

Before amendment,

"(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this act or any rules or orders made there under or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more."

After amendment

"(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this act or any rules or orders made there under or the export and import policy, he shall be liable to a penalty of not less than ten thousand rupees and not more than five times the value of the goods or services or technology in respect of which any contravention is made or attempted to be made, whichever is more."

As is evident that before amendment there were only two options available i.e. not less than one thousand rupees or five time of the value which ever is more and accordingly penalties were imposed. However, after amendment the option has been given as not less than ten thousand rupees and not more than five times the value and thus a span appears to have been given to the adjudicating authority to rationalize the penalty.

The present case appears similar to the case at Sl. No. 4. NSP 35 may kindly be referred to where during the PH taken by the then DC it is recorded that the unit assured to achieve (+) ve NFEE by Oct. 2011. Attention is also drawn towards the submission made during the PH (enclosed at c/p 529-31) wherein they had undertaken that they will not demand DTA clearance till the (-) ve NFEE issue is settled or suitable time fixed by the DC. Apart from this kind attention is also drawn towards letter dated 17.02.2012 (c/p 555-56) and dated 02.03.2012 (c/p 559-561) wherein it is mentioned that in view of the discussion/PH had with the Development Commissioner they have not only covered up/achieved the deficit of 1.14 crore as per SCN dated 27.12.2010 for the previous block year (c/p 248) but have also covered up the additional negative amount of 1.94 crore incurred during the current block year. The calculation for the same has been enclosed which is duly certified by the Chartered Accountant. In view of the achievement of the (+) ve NFEE

For AFcan IMPEX PVT. LTD

Authorized Signatory





KASEZ

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Office of the Development Commissioner
Kandla Special Economic Zone
Ministry of Commerce & Industry
Gandhidham-Kutch-370 230
Phone (02836)-253300, 252475, 252273
Fax (02836) – 252250 & 252194
E-mail: admn.kasez-gj@gov.in
Website: www.kasez.gov.in

F. No.KASEZ/RTI/05/2019-20/ 2136

Dated: 20.05.2019

By Speed Post

To,

Shri Kishor Bachuram Kapdi
S/o Shri Bachuram P Kapdi,
Shri Awadh, Plot No.- 237,
Sector- IA, Near Saheb Car,
Gandhidham- Kutch

Sir,

Subject: RTI application dated 30.04.2019 - seeking information under RTI Act, 2005- m/r.

Please refer to your RTI application dated 30.04.2019, received by this office on 01.05.2019.

In this regard, as per information received from concerned branch/section, the point wise desired information are as under:-

1. The copies of Office Note sheet from 01.01.2010 to 31.12.2011 is enclosed herewith as **Annexure- 'A'** (total page- 13). (NSP. from 25.01.10 to 22.09.11)
2. The copy of table form attached in file at C/P 581 is enclosed herewith as **Annexure- 'B'** (total page- 01) and
3. The copy of letter dtd. 21.02.2014 to DoC, New Delhi forwarding therewith brief history and para-wise comments against appeal filed by M/s Afcan Impex Pvt. Ltd. on 08.11.2013 is enclosed herewith as **Annexure- 'C'** (total page- 08).

This information is being supplied under section 7 of the RTI Act, 2005. In case, the applicant is not satisfied with the information supplied, he may prefer an appeal within 30 days from the receipt of this information before the Development Commissioner, KASEZ.

Yours faithfully,

AR.
20/5

(Arun Kumar)

Deputy Commissioner of Customs/CPIO
Kandla Special Economic Zone.

Encl : As above.

by hand
Received

by
KISHOR KAPDI

20/5/2019

KANDLA SPECIAL ECONOMIC ZONE

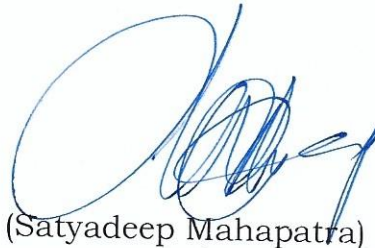
I.A-1 Section

U.O.Note

Please refer to U.O. Note F.No. KASEZ/RTI/05/2019-20/1510 dated 03.05.2019 forwarding RTI application dated 30.04.2019 received from Shri. Kishor Bachuram Kapdi, Gandhidham

The available information pertaining to this section is as under:-

1. The copies of Office Note Sheet of IA Section file in respect of M/s. Afcan Impex Pvt. Ltd., KASEZ from 01.01.2010 to 31.12.2011 are enclosed herewith. *(Note Sheet from 25-01-2014 to 22-09-2011)*
2. The copy of table form attached in file at c/p 581 is attached herewith.
3. The copy of letter dated 21.02.2014 to DoC, New Delhi forwarding therewith brief history and para-wise comments against appeal filed by M/s. Afcan Impex Pvt. Ltd. on 08.11.2013 is enclosed herewith.



(Satyadeep Mahapatra)

Joint Development Commissioner


07/05/19

F.No:-KASEZ/IA/RTI(III)/14/2017-18/ 1706

Dated :- 07.05.2019
09

To,
APIO
Kandla SEZ

Received


09/05/19

NSP-16

Submitted Please.

M/s. Afcan Impex Private Limited, KASEZ (formerly known as M/s. Arzee Rags (India) Private Limited) have submitted letter Ref.No.Nil dated 12-01-20109 under which they have requested to renew their Letter of Approval No.KASEZ/IA/1916/2003-04/1999 dated 04-06-2003 for a further period of 5 years.

As per our records the approval holder have commenced their authorized activity w.e.f. 21-03-2005 and therefore, as per Rule 19(6) of SEZ, Rules 2006 the validity of LOA will be expired on 20-03-2010.

Further, it is to report that the Board in its meeting held on 02-01-2008 (20th Meeting) for renewal of LOP for existing Old and Used Clothing Units in KASEZ and granted approval for extension of validity of LOP for a further period of five years (copy placed opposite). As the unit LOA is likely to expire on 20-03-2010 we may if approved extend the validity period of LOA for a further period of five years i.e. 20-03-2015 as per direction of the Board.

Put up for kind perusal and necessary orders please.

by
25/01/10

Appt.
(on leave)

less. please for review
JDC
as per Bot decision
d
25.1.10

Unit's letter show only three yrs. Expts. Are they maintaining the NFE?

Shukla
25/1

JDC
They will complete 7 years on 20.03.2010, therefore 5 yr. NFE can be monitored after that. However 4 yr NFE is 3.90 crm.
d
25.1.10

can we Renew LOA, if they are having negative NFE?
JDC
Shukla
25/1

Monitoring of the NFE of a unit can take place only after 5 yrs. are completed while renewal needs to be done before it completes 5 years. As per Rule 19(6) there are no preconditions attached with renewal. Secondly if a unit is -NFE even after 5 years action in FTD, it has to be taken which will be done only after monitoring of 5 year performance is over.

Therefore renewal request of the unit may be accepted please.

W
25.1.10

AC

O.K. renewal may be allowed. However monitoring will be done on completion of this bloc of 5 yrs.

AWH
27/1

~~ICC~~
IAH
29/1/10

S.No. 20.

As approved above Renewal/ Extension of Letter of Approval in favour of M/s. African Timber Int'l Ltd. (formerly known as M/s. Azee Rugs (India) Pvt. Ltd.) 198562 for further period of five years i.e. from 21-03-2010 to 20-03-2015 is proposed and status for final period and signed.

W
29/01/10

Appr.
Conclaves

~~ICC~~ W
29.1.10

Sub. Pl.

As approved and on the basis of the minutes of the 10th Approval Committee ~~meeting~~ meeting (Aug-10) held on 21/08/10, ^{draft} broad banding permission in favour of M/s. Afcan Impex Pvt. Ltd. is prepared and put up for kind perusal and approval please.

W
draft

Approved
26/02/10

~~M/s. Afcan
SDC~~

Submitted please.

(Corrs. page-230-233 may please be seen.)

Minutes of the meeting and letter dtd.21-05-2010 issued for explanation may please be seen.

Monitoring of Annual Performance Report in respect of the KASEZ units for the Financial Year 2008-09 have been considered in the Approval Committee Meeting held on 06-04-2010 and decided that issue a warning letter to the unit who have failed to achieve positive NFE in the 3rd year of the five year block and Administration has issued the same on 21-04-2010 and asked party to submit their reason for non achieving the positive NFE and also submit future plan for making NFE positive.

With reference to the above, M/s. Afcan Impex Private Limited, KASEZ vide letter Ref. No. Nil dated 30-04-2010 have submitted that at the time of change of the company's constitution there are only 5% space compared to all the other used clothing companies shed allotted additional space in the year 2008 i.e. 9200Sq.mtrs and after completion of construction work started production in Jan-2010 and they have made around Rs.3.00crores of exports. Further they have submitted that they are receiving a huge export orders now and support to achieve positive NFE.

Letter is put up for kind perusal / information and orders please.

W
14/05/10

Approved
14/5/10

For perusal
IDC 12/5

W
SDC

12/5

AT

NSP-19

Submitted please:

Attention is drawn towards Instruction No. 69 dated 04.11.2010 issued under Ministry F. No. D.6/29/2010-SEZ regarding guidelines to regulate functioning of plastics/used clothing units in the SEZs.

As directed and as approved on file no. KASEZ/IA/G-64/98/Vol.I, the units of plastics/used clothing are to be issued fresh/revised LOAs suspending their operations in the unrelated items broad-banding approvals of which have been issued to them from time to time.

Accordingly on perusal of the file of the unit the detail of the items as mentioned in the original LOA, all the related items and unrelated items has been segregated which is as under:

(A) CONTINUED - APPROVED ITEMS

LOA No. and date	Approved items of Manufacturing/Broad-banding of related items
KASEZ/IA/1916/2003-04/1999 dated 04.06.2003 as amended vide letter no. KASEZ/IA/1916/2003-04/9393 dated 04.03.2005	Manufacturing of :- shoddy synthetic yarn, shoddy woolen yarn, blankets

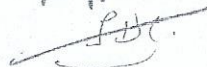
(B) Unrelated items for which approval of broad-banding suspended :

Broad-banding letter no. and date	Name of the items
KASEZ/IA/1916/2003-04/16868 dated 04.03.2010	Broad-Banding for Trading Activity of (1) PP Jumbo Bags/FIBC (2) PP/HDPE/ Woven Fabrics Laminated / Unlaminated (3) PP/HDPE Sheet (4) LLDPE/LDPE Film (5) LLDPE/LDPE Bags/Sacks (6) Garbage Bags (7) PP/HDPE Tarpaulins (8) PP/Tape with/without U.V Stabilization (9) PP Multifilament Yarn (10) PP Webbing (11) Fillers & Master batch (12) All types of Granules HDPE, LDPE, LLDPE, PP

Accordingly as per the draft of the LOA as approved in file no. KASEZ/IA/G-64/98/Vol.I the DFA of the fresh LOA is put up in the line of above.

P.  9/7/11

A. O.
(On Saw)

10.12.11


Submitted Please:-

As per the minutes of the 39th Approval Committee meeting of KASEZ held on 16.11.2010, the committee decided to issue SCN to the units who have completed 5 years and have negative NFE i.e. Afcan Impex Pvt. Ltd. (copy kept opposite)

It is noted from the APR file that party has submitted revised APR for the year 2009-10 as they have not mentioned the figure of intra zone sale (deemed export) in the APR. (APR file kept opposite)

Accordingly draft SCN is put up for approval please.

M
22/12/10.

22.12.10
[Signature]

22/12/10
Appr. (IA-1)

-51-

KASEZ/IA/1916/2002-2003

Submitted pl.

Letter ref. no. NIL dated 22.12.2010 has been received from the unit which is placed at p. no. 249 to 252 which may please be seen.

On perusal of the same it is observed that they have requested to include "Used Clothing" in their approved item of manufacturing in the LOA which is actually "Manufacturing of Shoddy Synthetic Yarn, Shoddy Woolen Yarn, Blankets". They have referred to this office letter dt. 04.03.2005 (c/p 131 flagged as "Amendment") wherein amendment/modification of condition no. (iii) of the LOA dt. 04.06.2003 has been intimated wherein they have been permitted to import second hand clothing for segregation for export and were also barred from clearing the segregated goods as it is into DTA. This amendment/permission was given subject to the condition that they will start yarn carding & spinning facility by 31.12.2005 for which they have given undertaking to the effect which is attached at c/p 130 which may also be seen.

They have further referred to this office letter dated 08.03.2005 (c/p 133 and flagged as "clarification") which is issued with reference to their letter dated 04.03.2010 (c/p 132). Vide letter dated 08.03.2010 NOC is given to the unit for clearance of mutilated rags into DTA which is a value added product on payment of applicable duty. However, it is amply clear that the condition as given in this office letter dt. 04.03.2010 still existed which requires starting of yarn carding & spinning facility by 31.12.2010.

The third letter of this office dated 11.12.2006 (c/p 149) is a one time permission given in terms of DGFT Nt. No. 56/2006 dt. 30.03.2006 and does not have any relevance to their present request.

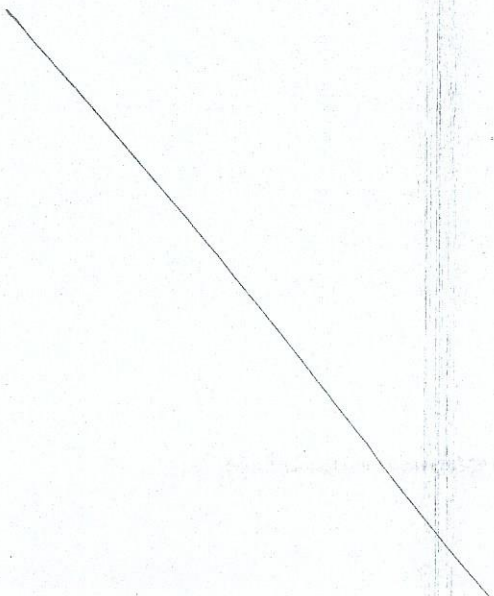
As evident from the revised LOA issued in obedience to Inst. No. 69 dt. 04.11.2010 (c/p 238) amendment letter to LOA dt. 04.03.2010 has been clearly mentioned and it is felt that the clarification/NOC as given vide letter dated 08.03.2010 still exists if the condition as given in the letter dated 04.03.2010 is fulfilled by the unit.

Accordingly, a self explanatory draft of the letter in reply is prepared in anticipation of the approval of the narrated facts above and put up for approval please.

[Handwritten signature]
29/12/10

A. O.
(on leave)

23/12/10
[Handwritten signature]



Submitted please:-

A letter dated 9.12.2009 received from M/s. Afcan Impex Pvt. Ltd., may kindly be seen.

Party has informed that resolution passed in Board of Directors Meeting that Shri Surendra Mohan Bhanot and Shri Sanjay Mohan Bhanot, Director of Afcan Impex Pvt. Ltd., are authorized signatory. Further, Mr. Sanjay Gosai, Director of Afcan Impex Pvt. Ltd, who is already having authorization for KASEZ work will remain in force alongwith new additional authorized persons. All three directors can sign all the documents with any one signature as capacity of Afcan Impex Pvt. Ltd.

As per our records S/Shri Surendra Mohan Bhanot, Sanjay Mohan Bhanot, Jagdish Kumar Banot and Ram Chandra Chakerwari are never appointed as directors of M/s. Afcan Impex Pvt. Ltd.

We may, if approved, ask the party to furnish the particulars of appointment of above directors to act as directors of the company and/or undertaking to take and pay for qualification shares in FORM 32 under Companies Act, 1956.

Accordingly draft letter is put up for approval please.

[Handwritten signature]
11/1/11

[Handwritten signature]
Appr. (IA-1)

Submitted Please:-

In view of our SCN ^{dated 27.12.10 (p. 24 etc)} issued to the party for negative NFE, party has requested to give them time of two to three weeks for giving reply.

Submitted for orders whether we may give them two to three weeks time or otherwise.

[Handwritten signature]
12/1/11

Appr. (IA-1)

Pre page Note dt. 12.1.11 may kindly be processed.

M/s AFCAH Super Pvt. Ltd has requested to give them two to three weeks time for submitting reply of SCN issued on 27.12.10 for negative HFE.

Party's letter is put up for perusal & necessary order if any please.

12/1/11

Able them to give reply by 21.1.11 & avail PH save day. J.D.E. 12.1.11

Submitted Please:-

As directed above, a draft letter to the party is put up for approval please.

12/1/11

12/1/11
Appr: (A-I)

Since adjudication has not been completed we may put up a fresh SCN under signature of A.C. & present SCN will be rescinded.

4.2.11

1AP1

Submitted for.

As directed above, it is to submit that SCNs are issued at ex-officio designated and can be adjudicated by the files in-charge on the date of adjudication and it is felt that SCN already issued need not be rescinded on this ground.

Memorandum letter dt. 31.1.11 of the unit has been received and have sought for extension of four weeks limit. Put up for perusal and necessary order.

12/1/11

OK. 7.2.11

Submitted Pt.

Attention is drawn towards that of noting on NSP-21 wherein letter dtd. 22.12.10 of the unit was put up on file accordingly a no objection letter dtd 30.12.10 (CP 266) was issued wherein it was indicated that the condition of starting yarn carding and spinning facility should be fulfilled.

In the similarly placed situation in the case of M/s Lahu International, it has been approved by D.C for verification of such facility if established in the unit. Photo copy of the NSP 23 of file no. KASEZ/TA/1922/2002-03 is placed at CP 266 may Pt. be seen.

As directed file is put up for fresh drawing if any.

MS
28/2/11

AD
28/2/11

7/1/11
1.3.11
verify.

JDC

Po

Submitted please:-

As decided in the 39th Approval Committee meeting held on 16.11.2010, SCN was issued to M/s. Afcan Impex Pvt. Ltd. on 27.12.2010 (p.248/crs.) for continuously performing negative NFE earning.

In reply to above SCN, the party vide their letter dated 06.01.2011 (p.262/crs.) has requested to grant them two-three weeks time to file the reply. This Administration vide letter dated 13.01.2011 (p.264/crs) has informed the party to file the reply of SCN by 31.01.2011 alongwith an opportunity to appear before the Jt. D.C. for P.H. on same day.

Further, party has again requested for extension of four weeks time to file the reply of SCN, vide their letter dated 31.01.2011, but till date party has neither file the reply nor appear before the Jt.D.C. for P.H.

Submitted for orders whether we may grant them one more chance to file the reply or we may presume that they have nothing to say in their defense and take ex-parte decision.

Submitted for orders please.

N. P. 07/06/11



Appr. (IA-1)

*Ask them to appear for PH
on 24-06.11 or otherwise case
will be adjudicated Ex-parte.
JDC
N
7.6.11*

NSP-26

Submitted Please: Receipts (From Page No.272-330/Crs.)

Receipt-1:(Page No.272-284/Crs)

In view of our letter dated 11.01.2011(Page No.260 Crs.)Party has submitted Form No.32 of appointment of directors in the company, viz Mr. Sanjay Mohan Bhanot, Mr. Surendra Mohan Bhanot and Cessation of Mrs. Chetna Sanjay Gosai.

Receipt-2:(Page No.285/Crs)

One of the directors of the Company Mr.Sanjay J.Gosai vide their letter dated 23.02.2011 informed that Mr. S.M.Bhanot has done false signature of his wife Mrs. Chetna S.Gosai and transferred 50% share in his name. He has informed that he is taking this matter in legal court and requested not to entertain this matter of additional directors.

Receipt-3:(Page No.286-293,294/Crs)

In view of our letter dated 08.06.2011(Page no.271/Crs) Party has informed that due to lack of proper space lot of their material about 60-70 containers got damaged in the rainy season, and they have paid huge demurrage hence they suffered financial losses. Party has again requested to give them 6 to 9 months time to achieve positive NFE and also requested to provide them one more opportunity of PH as their director is out of India.

Receipt-4:(Page No.295-315/Crs)

Vide letter dated 20.07.2011 one of their director Mr. S.M.Bhanot has informed that Mr.Sanjay Gosai and Mr.Rajesh Chandnani has submitted forged documents for change of directors. He has also filed a complain with Police Station, Gandhidham and requested not to act on these documents as the same are not valid.

Receipt-5:(Page No.316-328/Crs)

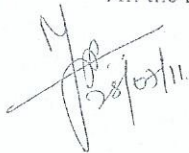
Party vide their letter dated 20.07.2011, has again submitted Form 32 filed with Ministry of Corporate Affairs/ROC regarding Cessation of 7 directors and also submitted list of the present authorized signatories of the company. Party has informed that henceforth all the transactions will be conducted by Mr.Sanjay J. Gosai & Mr.Rajesh P. Chandnani and requested to make the changes in our record.

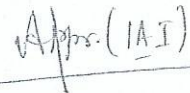
Receipt-6:(Page No.329-330/Crs)

Party vide letter dated 20.07.2011 has submitted notarized affidavit undertaking to freeze online ID and Digital Signature and stop all transaction on account of Mr. Sanjay Gosai and Mr.Rajesh P. Chandnani.

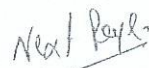
It seems there are dispute between the directors of the Company. At the portal of Ministry of Corporate Affairs at present only two directors are in the list of signatories.

All the receipts are put ~~up~~ for perusal and further order please.


28/03/11


A/ps. (IAI)


28/3/11


Next Page

KASEZ/IA/1916/2002-03

Notes on pre-page may please be seen:

As is evident that there are two aspects of the case:

- (1) Dispute among the Directors of the company,
- (2) SCN dated 27.12.2010 for negative NFE as per minutes of 39th UAC meeting.

With reference to (1) following is brought to the notice:

- (a) Application 10.02.2003 (c/p 44) for LOA as a proprietary co.
- (b) LOA dated 04.06.2003 (c/p 73) issued accordingly,
- (c) Converted into co. limited by shares and registered with ROC as per certificate of incorporation dated 13.09.2003 (c/p 88) with six directors (corresponding page is flagged). Name of the co. changed to Argee Rags (India) Pvt. Ltd.
- (d) Vide letter dated 27.07.2007 (c/p 166) it had been informed that Sri Kuldipsingh Grewal and Sri Sanjay J. Gosai are appointed as Authorised Representative of the co. with Sri Sanjay J. Gosai appointed also as Chairman - cum Managing Director.
- (e) Vide letter dated 31.07.2007 intimation was given with respect to appointment of new Director Mrs. Chetna Sanjay Gosai and was taken on record by this office vide letter dated 07.08.2007 (c/p 171) which also is for the names mentioned at (d) above.
- (f) Vide letter dated 29.08.2007 (c/p 29.08.2007) again appointment of a new Director Mr. Rajesh Prabhulal Chandnani is given which taken on record vide letter dated 14.09.2007.
- (g) Change of name of the company from Argee Rags (I) Pvt. Ltd. to Afcan Impex Pvt. Ltd. taken on record vide letter dated 17.09.2009.
- (h) Vide letter received in this office on 10.12.2010 (c/p 258 & put up at NSP 22) it has been informed duly enclosing the copy of board resolution that Sri Sanjay Mohan Bhanot and Sri Surendra Bhanot both Directors are also the authorized persons in addition to Sri Sanjay Gosai. In reply they were asked to submit Form 32 as per Companies Act, 1956.
- (i) In response vide letter dated 22.02.2011 (c/p 284) Form 32 (generated online) is submitted w.r.t. Sri Sanjay Mohan Bhanot and Sri Inderjeet Singh Chopra. Rest of the correspondences are as received and put up at NSP - 26 as receipt 1, 2, 4, 5 and 6 which may kindly be referred to.

With reference to (2) following is brought to the notice:

- (I) SCN dated 27.12.2010 issued to the unit for negative NFE on completion of five years as per the minutes of 39th UAC meeting.
- (II) Vide letter dated 06.01.2011 three weeks time has been sought for reply of the SCN. PH on 31.01.2011 was informed vide letter dated 13.01.2011.
- (III) Extension for another four weeks sought vide letter dated 31.01.2011 (c/p 265). PH on 22.06.2011 was informed vide letter dated 08.06.2011 (c/ 271)
- (IV) Vide letter dated 22.06.2011 which is signed by some Sri Bhanot, reply of the SCN appears to have been submitted wherein while explaining their position they have sought PH date in first week of July. Vide another letter of the same date which signed by Sri Rajesh P Chandanani extension of date of PH is sought.

As will be evident that a dispute among the Directors is going on with Sri Sanjay J Gosai and Sri Rajesh P Chandanani on one side and Sri Sanjay Bhanot, Surendra Mohan Bhanot and others on the another side. It appears that none of them are interested in the SCN for negative NFE issued to them.

It is felt in this regard that a communication may be sent to individual Directors of the Company asking them to resolve the issue under intimation to this office within a week. A fresh date of PH for the SCN may be given after lapse of one week and the same may be adjudicated by enforcing the proposals contained in the SCN.

Put up for perusal and further necessary direction is solicited.

A.O. (A.I.)

JBC

1.8.11

Yes - write to each Director

45

Submitted Please:-

As directed on pre-page, a draft letter to all the directors of M/s. Afcam Impor Pvt Ltd, is put up for approval please.

[Signature]
01/08/11

[Signature]
Appr. (A-1)

[Signature]
I.D.C.

Submitted for

As approved on the no. KASZ/IA/Wom-used Clothing/06-07. a new condition is to be put in the LOA of the unit. The approval of the Development Commissioner at NTA-16 of the said file and the approval draft of addendum is placed opposite which may be seen.

As per approved draft P/O is put up for sign.

[Signature]
31/07/11
A2

"3.8"
[Signature]

Submitted Please:-

Note at page 27/N may kindly be seen. As directed letter was issued to all the directors of the company (By name) vide our letter dated 02/08/11 (P.335/08) but no reply has been received from any of the directors, as we ^{we} ^{are} given them a weeks time. Submitted for further orders please.

[Signature]
09/08/11

[Signature]
Appr. (A-2)
Next pag.

Submitted please:

Notes on NSP-27 may kindly be seen. As directed letters to individual Directors of the company had been sent vide this office letter dated 02.08.2011 (c/p 335) giving them a weeks time.

After lapse of one week no response has been received from any of the Directors so far. As dispute among the Directors is still unresolved, guideline for further course of action is solicited.

It is to bring to the notice that the SCN dated 27.12.2010 has already been issued to the unit for negative NFE on completion of five year block as per the minutes of 39th UAC. The SCN is pending adjudication for want of proper representation from the unit.

Put up for necessary direction please.

A.O. (IA-1)

~~JDC~~

This is a worn clothing unit. It is under adjudication for ~~negative~~ in a block of 5 years. There is ownership dispute in directors & two groups have made conflicting claims. Nobody appeared in Pt for SCN, which date was given twice.

In these circumstances it is felt that we may suspend their operations till they settle dispute of ownership & come to us. Otherwise in case of any unlawful clearance ~~detacts~~; it will be difficult to catch the responsible persons.

Secondly, since no person appeared for Pt, ~~we~~ may ~~decide~~ decide on adjudication also.

Put up for order please

2.8.11

'X' - I agree. 'Y' - He speak.

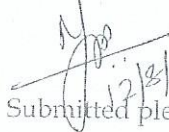
~~JDC (G)~~

IA-1
Give out a letter regarding their ops, parti, etc part but direct in & put up a draft 0-1-0 also

11.8.11

Submitted Please:-

As directed on fore page, a draft letter to all the directors of the company and draft O-I-O. is put up for approval please.


Submitted please:

Appr. (IA-I)

Four new receipts as under:

Two DEFA are dated for approval.

1. Letter dated 07.08.2011 received from Sri Surendra M. Bhanot (c/p 345 -349) giving general power of attorney to Sri Kishor Kapdi.
2. Letter dated 20.07.2011 received as inward no. 7329 dated 17.08.2011 (c/p 349 - 379) signed by Sri Surendra M. Bhanot and
3. Letter dated 12.07.2011 received as submission before Development Commissioner during meeting by Sri Kishor Kapdi.

In both the letters at sl. No. 2 and 3 the contents are similar which are (1) Registered FIR with police having FIR No. 167/2011 under IPC 465, 468, 471 and 114 for creating forged document and misrepresenting them. (2) filing of case before Company Law Board seeking relief to declared the cessation of 7 directors as invalid and thereby relief from dilution of shareholding. The CLB vide its order dated 11.08.2011 passed interim order directing both the parties to maintain status quo in respect of Board of Directors.

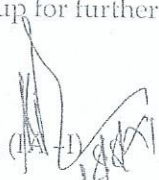
4. Letter dated 17.08.2011 submitted by Sri Rajesh P. Chandnani intimating the change in the BOD of the company and shareholding pattern which as per search report of a Registered Company Secretary, copy of which has been enclosed duly notarized. As per the search report the shareholding pattern is as under:

Sri Rajesh P. Chandnani - 95%
Sri Sanjay J. Gosai - 1%
Sri Surendra M. Bhanot - 4%

Reference is also made to the case filed before by the opponent party by the petitioner named Sri Kishor Kapdi before Company Law Board and to the interim order of CLB directing to maintain status quo.

As directed a chronological status report in the issue is prepared and is attached at c/p 446 - 447 which may kindly be seen.

Put up for further necessary directions please.

A.O. (IA-I) 

JDC

Submitted in continuation of above pl.

A fresh receipt through mail dt. 23.8.2011 is placed at C/P 451 which may kindly be seen.

On perusal it appears to be in response to this office letter dt. 12.8.2011 (C/P 349) suspending their activities except exp. Contd. P.31.

Contd. P.31.

Submitted in continuation of above please.

A fresh receipt through mail dated 23.8.2011 is placed at C/P 451 which may kindly be seen.

On perusal it appears to be in response to this office letter dated 12.8.2011 (P-344) suspending their activities except exports. It is observed that they have request to allow imports of the consignments which have been arrived and are under demurrage. They have further stated that their DTA may be kept suspended. As per the discussion had it is to further brought to the notice that the authorised representative of the company which has been taken on record are Shri Kuldip Greeval and Shri Sanjay J. Gosai only.

As already mentioned at para 1 of pre-page notings dated 18.8.2011 as also at Para 5 of status report (C/P 449) a fresh power of attorney issued in the name of Shri Kishore Kapdi has been submitted vide their letter dated 7.8.2011 which has not been taken on record because of the ongoing dispute. However, the signature of Shri Kapdi duly attested is not found on the body of the said notorised Power of Attorney.

Put up for perusal and necessary directives solicited.

AO(IA-I)

To sum up.

1. We have 2 authorised signatories as per our records,
 - a) Kuldip Grewal
 - b) Sanjay Gosai
2. A letter was received by us on 7.8.11, making authorised signatory - Mr. Kihore Kapdi. This incidentally did not have signatures of Mr. Kishore. This authorisation was signed by Mr. Surendra Bhatot & S. Bhatot.

On 11.8.2011, CLB has given status of the petition filed by Mr. S. Bhatot, it seems relief is granted to Mr. Bhatot.

A brief of case is from P-445 to P-450. Since there is a dispute over control of Board or company, that has to be decided by CLB. Now CLB has given status quo, therefore, it is felt that we may permit import and export to the unit as requested subject to a Bank Guarantee of Rs.10 crores as an SCN against the unit is pending (for negative NFE of 1.14 crores) and an undertaking that they will abide by Order-in-Original passed by the DC. Since unit has itself said that DTA sale can be stopped, therefore we may suspend DTA sales by the unit till resolution of dispute.

Put up for kind approval please.

23.8.11 JMC/lc

HC

KASEZ/IA/1916/2002-03
AFCAN IMPEX PVT. LTD.

Submitted pl.

A fresh submission dated 30.08.2011 along with enclosures (c/p 452 to 483) has been received which is in response to this office letter dated 12.08.2011 through which the activities of the unit except exports had been suspended in the light of on going dispute in the BOD of the unit. This is in continuation of their mail dated 23.08.2011 already put up on pre-page 31 wherein request had been made allowing import consignments also along with exports.

The present letter has been perused and it has been observed that:

1. They have sought for relief and asked for allowing import consignments also as without import, export will not be possible for them. They have also stated that nearly 20 containers have already been offloaded at Kandla/Mundra Port and they are incurring demurrages for not taking release. They have also enclosed copies of bills of lading in evidence of the same. They have further stated that they are ready for DTA restrictions till settlement of dispute.
2. As regards the negative NFE for 1.14 crore for which SCN has already been contemplated it has been stated that that they will be able to neutralize negative NFE in next few weeks. They also proposed to provide any personal or bank guarantee for appropriate amount as may be decided.
- 3. An undertaking duly notarized (attached at c/p 452-464 and 484-491) of 5 Directors out of the functioning 9 has also been submitted wherein one Sri Kishore Kapdi has been nominated as a authorized representative. It has also been undertaken by them that no DTA clearances will be made till clearance of the dispute at appropriate level.

On the basis of the forgoing submissions they have requested for allowing import also along with exports. Put up perusal and necessary directions please.

[Handwritten signature]
A.P.

*Pl. re confirm that all is signed by 5 or 3 directors only
3 directors' sign. M
5.9.11
OK, all 5 Directors' A.P. A new*

*Further to above points, it is recommended to permit - Mr. Kapadi (who has G.P.A. for 5 Directors out of 9 Directors on company board on date of stay order of CLB) Export & Import - subject to submission of Bank Guarantee to cover a multiple of Rs. 1.14 crore for which SCN was issued. If approved CL may also give PH to Mr. Kapadi to proceed in the process of adjudication of SCN.
Put up please. 5.9.11*

11/13.09.11

[Handwritten initials]

KASEZ/IA/1916/2002-03
AFCAN IMPEX PVT. LTD.

Submitted pl.

Notes on pre page 32 and discussion had in the presence of Sri Kishore Kapdi and in continuation of the discussion and direction a submission dated 07.09.2011 from the unit has been received which is placed at c/p 493 - 519 which may kindly be seen. In this regard mail received from Sri Kapdi, text of which is attached at c/p 492 may also be seen.

As it was informed by Sri Kapdi in his mail as also vide his letter dated 07.09.2011 that giving bank guarantee by the unit as on date is a difficult task for him as the bank accounts of the unit has already been blocked and they are running short of fund due to ongoing dispute and any guarantee in the form of cash deposit is difficult for them. However, it has been informed by Sri Kapdi that on behalf of the unit with reference to the amount of negative NFE of Rs. 1.14 crore, that he as an authorized representative for five Directors out of nine on board will submit a pledge for Rs. 2.28 on the basis of his immovable property and to undertake that Sri Kapdi on behalf of the unit will pay on demand by the Development Commissioner Rs. 2.28 crores within two working days.

In the above response following documents have been submitted as attachments to his letter dated 07.09.2011 (c/p 519)

1. c/p 518 - Pledge dated 07.09.2011 bearing no. 1614/2011 before First Class Magistrate Gandhidham undertaking about his worth with reference to Plot No. 237 Sector 1A having market value as on date to be 12,89,88,000/- as on date and that it is free form all encumbrances.
2. Net worth certificate issued by Axis Bank Gandhidham branch certifying the same to be Rs. 11,49,76,000/- c/p 517.
3. Return of Net Wealth in form BA submitted under Rule 3(1)(B) of Wealth Tax Rules, 1957 - c/p 513-16
4. Undertaking of accepting of pledge in favour of Development Commissioner KASEZ, duly notarized - 510-512
5. Details of immovable property duly certified by the Govt. Approved valuer attached at c/p 493-509.

All the above submissions have been made in continuation of his request which have been made seeking permission to allow import consignments which has been suspended vide this office letter dated 12.08.2011 (c/p 349) and NSP 27-28.

Put up for perusal and further necessary direction in this regard.

A.O. (IN) 8/9/11

Next logs pl
 IDE
 8.9.11

F.NO.KASEZ/IA/1916/2002-03
M/S. AFCAN IMPEX PVT.LTD.

Submitted.

Further to the above points it is pertinent to note that the SEZ Rules do not call for submission of Bank Guarantee of any sort from an SEZ unit, however, in the present case, since there was a dispute in ownership and Mr. Kapdi, himself had offered to give Bank Guarantee, it was recommended to take a BG. Now Mr. Kapdi has requested that it is difficult for him to arrange BG and instead of BG he has given a pledge in favour of Development Commissioner, KASEZ which is duly notarised that in the event of demand, he will give Rs.2.28 crores as and when demanded. This amount is twice the amount of negative NFE for which a SCN is under adjudication. He has also enclosed networth certificate and solvency certificate sworn before Executive Magistrate Gandhidham which shows his networth 12.89 crores.

In view of the request of the unit, it is recommended to permit the unit to carry out activities of import and export. Since the unit itself said that it does not want to do DTA transaction, we may not permit DTA transactions.

Put up for orders please.

Wish
8.9.11
V. K. K.

OC

KASEZ/IA/1916/2002-03
AFCAN IMPEX PVT. LTD.

Submitted pl.

Notes on pre page 32 and discussion had in the presence of Sri Kishore Kapdi and in continuation of the discussion and direction a submission dated 07.09.2011 from the unit has been received which is placed at c/p 493 - 519 which may kindly be seen. In this regard mail received from Sri Kapdi, text of which is attached at c/p 492 may also be seen.

As it was informed by Sri Kapdi in his mail as also vide his letter dated 07.09.2011 that giving bank guarantee by the unit as on date is a difficult task for him as the bank accounts of the unit has already been blocked and they are running short of fund due to ongoing dispute and any guarantee in the form of cash deposit is difficult for them. However, it has been informed by Sri Kapdi that on behalf of the unit with reference to the amount of negative NFE of Rs. 1.14 crore, that he as an authorized representative for five Directors out of nine on board will submit a pledge for Rs. 2.28 on the basis of his immovable property and to undertake that Sri Kapdi on behalf of the unit will pay on demand by the Development Commissioner Rs. 2.28 crores within two working days.

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All the above submissions have been made in continuation of his request which have been made seeking permission to allow import consignments which has been suspended vide this office letter dated 12.08.2011 (c/p 349) and NSP 27-28.

Put up for perusal and further necessary direction in this regard.

A.O. (M) 8/9/11

Next page pl
 DE
 8.9.11

Submitted.

Further to the above points it is pertinent to note that the SEZ Rules do not call for submission of Bank Guarantee of any sort from an SEZ unit, however, in the present case, since there was a dispute in ownership and Mr. Kapdi, himself had offered to give Bank Guarantee, it was recommended to take a BG. Now Mr. Kapdi has requested that it is difficult for him to arrange BG and instead of BG he has given a pledge in favour of Development Commissioner, KASEZ which is duly notarised that in the event of demand, he will give Rs.2.28 crores as and when demanded. This amount is twice the amount of negative NFE for which a SCN is under adjudication. He has also enclosed networth certificate and solvency certificate sworn before Executive Magistrate Gandhidham which shows his networth 12.89 crores.

X [In view of the request of the unit, it is recommended to permit the unit to carry out activities of import and export. Since the unit itself said that it does not want to do DTA transaction, we may not permit DTA transactions.

Put up for orders please.

which
8.9.11
JDC

In view of the authorisation given by 5 out of 9 directors of the Company, as per status recognised by the Honble Court and further taking in record the notarised pledge by Mr Kapdi, both imports and exports by the Unit may be permitted, as recommended at 'X' above.

These orders will be subject to final decision in the matter of SCN issued.

JDC (K)

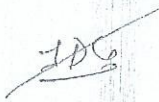
 8/9/11

Submitted for.

The approval as given by the D.C. as NISP-34 has been communicated to the unit vide letter dt 8.9.2011 (CP 520) as directed PH for SCAT fixed for 13.9.2011 at 10.30 hrs (NISP-32) is also communicated to the unit vide letter dt 8.9.2011 (CP 521). Both the o/c of the letter may be perused after issue.



AD



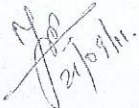
Personal Hearing done today. Mr. Kishore Kappadi appeared on behalf of applicants and made oral as well as written submissions and informed that negative NFR was primarily on account of damaged/unpacked stock due to rains. He also assured that they would achieve positive NFR by October 2011 end.



13/9/2011

11.15 am.

File read today for Appr. (IA-I) on 21.09.2011.

 21/9/11.

Submitted Please:-

DC's note on pre-page may kindly
be seen.

A draft O-I-O is put up for
approval please.

M. Joshi
22/09/11.

22/09/11
W. Joshi (A-I)

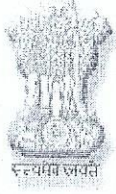
Make correction &
forward to me by mail.

W. Joshi DC

Next Page

Sr. No	Name of the Unit	Amount of (-) NFE	Block Year	O-I-O No. & Date	Amount of penalty	Payment Particular	Whether Appeal	Appellate Order	Remarks
1	M/s. Harish Processors Pvt.Ltd.	6.34 Lacs	01.11.2000 to 31.03.2006	03/2008-09 dt.02.06.2008	Rs.30,00,000/-	Nil	Yes	F.No.12013/17/20 08-ADJ/AC dt.04.12.2009	It has been contended by the appellant that in terms of Public Notice No.70 (RE-01) / 1997-2002 dt.08.02.2002 it has been decided to treat 2001-02 is blank year for the purpose of monitoring, which has not been done at the time of monitoring. In the parawise comments on the appeal filed by the unit and sent to the Appellate committee it has been stated that the claim of the benefit by the unit of the blank year i.e. 2001-02 is totally wrong because the blank year of monitoring of NFE of the SEZ units is applicable to those units whose fifth year is completing in the year 2001-02. The case is remanded back to calculate NFE based on circulars and Instruction regarding how to treat blank year.
2	M/s. Polyree Processors Pvt. Ltd	64.53 Lacs	01.11.2000 to 31.03.2006	04/2008-09 dt.24.07.2008	Rs.322.65 Lacs	Nil	Yes	F.No.12013/22/20 08-ADJ/AC dt.28.07.2011	It has been noted by Appellate Committee in its decision that the Quantum of Penalty Imposed is harsh and now since the firm is drawn to improve of its performance hence the penalty amount may be reduced from 3.22 Crore to 64.53 Lacs this should act as that deterrent to the firm not to fail in obligation in future.
3	M/s. Imperial Overseas Pvt.Ltd	173.364 Lacs	01.11.2000 to 31.03.2006	05/2008-09 dt.17.06.2008	Rs.866.82 Lacs	Nil	Yes	F.No.12013/21/20 08-ADJ/AC dt.04.12.2009	It has been contended by the appellant that in terms of public notice No.70(RE-01) / 1997-2002 dt.08.02.2002 it has been decided to treat 2001-02 is blank year for the purpose of monitoring, which has not been done at the time of monitoring. In the parawise comments on the appeal filed by the unit and sent to the Appellate committee it has been stated that the claim of the benefit by the unit of the blank year i.e. 2001-02 is totally wrong because the blank year of monitoring of NFE of the SEZ units is applicable to those units whose fifth year is completing in the year 2001-02. The case is remanded back to calculate NFE based on circulars and Instruction regarding how to treat blank year.
4	M/s. Shivam Scrap Recycling Pvt.Ltd.	58.32 Lacs	01.11.2000 to 31.03.2006	02/2007-08 dt.19.04.2007	Rs.60,00,000/- Subject to achieving of (+)ive NFE by the extended period up to 15.07.2007 to cover up the shortfall of 58.32 Lacs.	Nil	NA	NA	During PH it was contended by the unit that they were not able to achieve (+)NFE as their unit was closed for more than two years due to notice issued by GPCB. Adjudication Authority taking a lenient view granted time up to 15.07.2007 to cover up the shortfall of 58.32 Lacs and in case of failure a penalty of amount Rs.60 Lacs becomes payable. The unit vide their letter dated 26.07.2007 informed about the achieving of the obligation as conveyed by the O-I-O. They have informed that they have made export to the tune of 90.56 Lacs and they have achieved +NFE of 32.24 Lacs before the due date 15.07.2007 as per O-I-O.

581
-31



KASEZ

स.प.

No. KASEZ/IA/1916/2002-03/Vol.I/11828

Dated: 06.02.2014

To
Secretary to the Govt. of India,
Department of Commerce,
Ministry of Commerce & Industries,
Udyog Bhavan, New Delhi.

(Kind Attention: Shri O P Joshi, Section Officer)

Subject: Appeal filed by M/s. Afcan Impex Pvt. Ltd. KASEZ against
Order-in-Original No. 01/2013-14 dated 23.09.2013 of DC,
KASEZ. - reg.

Sir,

Kindly refer to DOC Letter No. 12013/21/2013/ADJ/AC dated 02.12.2013 on
the above subject.

In this regard, as directed brief history of the case in chronological order and
para-wise comments are as under:

Brief history of the case in chronological order is as under:-

01. M/s. Afcan Impex Pvt. Ltd., Plot No.241-243,251-B, Sector-IV, Kandla SEZ
were issued a Letter of Approval No. KASEZ/IA/1916/2003-04/1999 dated
04.06.2003, as amended from time to time, to set up a SEZ unit for the manufacture &
export of all types of Shoddy Synthetic Yarn, Shoddy Woolen Yarn, Blankets and
processing of used clothing.

1279

21

विकास आयुक्त कार्यालय

Office of the Development Commissioner

कांडला विशेष आर्थिक क्षेत्र

Kandla Special Economic Zone

वाणिज्य तथा उद्योग मंत्रालय

Ministry of Commerce & Industry

गांधीधाम - कच्छ

Gandhidham-Kutch-370 230

Phone (02836)-253300, 252475, 252273

Fax (02836) - 252250 & 252194

E-mail kasez@kasez.com

Website: www.kasez.com

02. The unit had commenced commercial production under SEZ scheme w.e.f. 20.03.2005, and while monitoring their export performance for a period from 01-04-2005 to 31-03-2010 taking the cumulative figures of five years, it was found that they had made exports to the extent of Rs.6.2635 crore (both physical + deemed exports) as against a total import of raw materials worth Rs.7.4133 crores, leading to negative Net Foreign Exchange Earning (NFE) of Rs.1.1498 crores. As they had failed to fulfil the stipulated NFEE, they had contravened the condition No. 2(ii) of the original LOA, condition No.1 of the Legal Undertaking executed by them with Development Commissioner, provisions of Rule 53 of the SEZ Rules, 2006, provision of the erstwhile Foreign Trade Policy relating to SEZ and also the relevant provision in the Handbook of Procedure on Foreign Trade Policy in force.

Therefore, on the recommendations of the Approval Committee, the unit was issued a Show Cause Notice bearing No. KASEZ/IA/1916/2002-03 dated 27.12.2010 as to why action should not be taken against them for imposition of penalty under Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 read with Section-20(2) of the Foreign Trade (Development & Regulation) Act, 1992.

03. The SCN was handed over to the unit by hand delivery on 29.12.2010. Shri Kishor B. Kapdi Authorized Representative of the unit appeared on 13.09.2011 before the then Development Commissioner on behalf of the unit and made submissions both oral and written and informed that the negative NFE was primarily on account of damage of imported stock due to rains. It was also assured that they would achieve positive NFE by the end of December 2011. He also submitted an undertaking on non-judicial stamp paper that (a) they will export their goods worth of value to neutralize the negative NFE before 31st December, 2011, (b) they will not demand DTA clearances till the negative NFE issue is resolved and (c) they will accept whatever restrictions or financial penalty if any imposed by the adjudication process. As the adjudication order could not be passed by the then Development Commissioner, fresh PH was given to the unit on 12.06.2012. Sri Kishor Kapdi, Authorized Representative of the unit appeared for personal hearing

and reiterated his earlier submissions, however, also referred to his submission made vide letter dated 04.06.2012.

04. Apart from the foregoing allegations as made in the SCN dated 27.12.2010 it had also come to the notice that there was a dispute going on among the partners about the shareholding of the company and the matter was referred to the Company Law Board, Mumbai Bench by the petitioners Shri Kishor B. Kapdi & Others against the respondents M/s Afcan Impex Pvt. Ltd. & Others vide petition no. 62/397-397/CLB/MB/2011. The said Hon'ble Board vide its order dated 11.08.2011 directed respondents to maintain status-quo and to file counter within six weeks. The Board vide final order dated 09.11.2011 accepted the out of Court settlement among the shareholders. Since dispute among the shareholders was sub-judice and the petitioner Shri Kishor B. Kapdi who was having authorization of five out of nine Directors and his status was also recognized by the Company Law Board the said unit was granted permission for operation limited to export and import and this was subject to the final decision in the matter of SCN dated 27.12.2010 issued for not achieving positive NFE vide this office letter dated 08.09.2011. After receipt of the final order of the Company Law Board settlement of the dispute between the shareholders, the adjudication process of the SCN dated 27.12.2010 was started.

05. The adjudicating authority vide Order-in-Original No. 001/2012-13 dated 02.07.2012 imposed a penalty of Rs.1,14,98,000/- (Rupees One crore fourteen lakhs and ninety eight thousands only) which is the amount of shortfall in achieving the NFE, on the unit in terms of Section 13, read with Section 11 and Section-20(2) of the Foreign Trade (Development & Regulation) Act, 1992 in respect of SCN No. KASEZ/IA/1916/2002-03 dated 27.12.2010.

06. The unit appealed against the above said OIO before the Hon'ble Chairman, Appellate Committee along with stay petition.

07. The Appellate Committee vide its order dated 12.03.2013 in the matter, remanded the case back to the DC, KASEZ for reconsidering the same on the following issues:

- (i) Why an extension of three months was given to achieve positive NFE (Net Foreign Exchange)?
- (ii) If time was extended and the unit had achieved the shortfall then why penalty was imposed?
- (iii) Whether there is case for imposition of penalty. If yes then quantum may be decided.

As directed by the Appellate Committee, the case was again taken up for adjudication and after considering the issues raised above the Order-in-Original No. 01/2013-14 dated 23.09.2013 was passed by the adjudicating authority i.e. Development Commissioner, KASEZ. While adjudicating the case, the Adjudicating Authority considered the submission of the Unit that their imported goods were damaged due to heavy rain and due to that they were in heavy loss during 2008-09. Further, the penalty imposed earlier was equivalent to the shortfall in NFEE. In the remanded matter, penalty was levied keeping in mind the comments made by the Appellate Committee & also the percentage of shortfall in NFE etc. In a quasi-judicial matter of this nature, it is not possible to quantify the extent of penalty and give reasons for imposition or change in the penalty in a remanded matter. Various factors such as extent of shortfall, percentage of shortfall, reasons for shortfall, performance of the unit otherwise etc are considered while imposing penalty. After considering the issues raised by the Appellate Authority, the Order-in-Original No. 01/2013-14 dated 23.09.2013 has been passed by the adjudicating authority i.e. Development Commissioner, KASEZ reducing the penalty to Rs. 17.10 Lakhs. While fixing the penalty, the Adjudicating Authority has clearly mentioned that he is imposing the penalty taking a lenient view and has observed that shortfall in achievement of NFE was 15% of CIF value of total import goods and it is seen that penalty imposed comes to 15% of NFE shortfall.

08. Being aggrieved by the Order-in-Original No. 01/2013-14 dated 23.09.2013, the unit has again preferred appeal before the Hon'ble Chairman of Appellate Committee, Department of Commerce, New Delhi.

Para-wise comments:

09. Para-wise comments on the appeal filed by M/s. Afcan Impex, KASEZ are submitted as under:-

Para 2.1- The allegation of the appellant is denied. The SCN was issued to the appellant for not achieving positive NFE during the block period 2005-2010. The appellant has tried to mingle two different issues i.e. reply of SCN and permission for DTA clearance. The appellant all the time requested for permission for DTA clearance and for that permission they had submitted undertaking and also imposed condition upon themselves that they would not demand any DTA clearance till the negative NFE issue resolve or suitable time fixed by the DC, KASEZ. They could not submit any plausible explanation for non-achieving positive NFE during the block period 2005-2010. Further, it is admitted fact that the SCN was not issued against the appellant for negative NFE for two block periods. This office never asked the appellant to achieve NFE for two periods for disposal of the SCN. Hence the issue raised by the noticee has no relevance.

Vide letter dated 08.09.2011, the Development Commissioner, KASEZ had considered the request of the appellant in view of the authorization given to Shri Kishor B Kapdi by five out of nine Directors as per the status recognized by the Hon'ble Company Law Board and had allowed the activity of export and import. However, the permission was granted subject to the final decision in the matter of negative NFE. On the issue of DTA transaction, the letter dated 08.09.2011 quoted by the applicant clearly mention that DTA transaction was not allowed as per undertaking of the applicant. Further, nowhere DC has mentioned that if the unit achieve positive NFE within certain period, no penalty shall be imposed.

Para 2.2: The allegation of the appellant is denied. There is nothing on the record of this office which state that three months extension to the appellant had been granted. The appellant himself claimed in his appeal that the said instructions were given by the Development Commissioner orally during personal hearing in the matter on

13.09.2011. Further, as per the records available with this office the Development Commissioner had not mentioned any things towards the extension of three months while attending the personal hearing in the matter. Actually Rule 53 of the SEZ Rules, 2006 prescribes for achievement of NFE in a particular block period of five years and does not mention about extended period.

Para 2.3 : The allegation of the appellant is denied. The decision made in the case of M/s Shivam Scrap Recycling Pvt. Ltd. , KASEZ referred by the appellant has no bearing in this case. The circumstances of the instant case are entirely different from the case referred by the appellant. In that case, brief facts of the case are as under:

"SCN was issued to M/s. Shivam Scrap Recycling Pvt. Ltd. for negative NFE of Rs. 58.32 Lakhs for the block period 01.11.2006 to 31.03.2006. During the PH, it was contented by the unit that they were not able to achieve positive NFE as their unit was closed for more than two years due to notice issued by GPCB. Adjudicating authority passed the OIO no. 02/2007-08 dated 19.04.2007 and taking a lenient view granted time up to 15.07.2007 to cover up the shortfall of 58.32 Lakhs and in case of failure, a penalty of amount Rs. 60 Lakhs becomes payable. The unit vide their letter dated 26.07.2007 informed that they have made export to the tune of 90.56 Lakhs and they have achieved position NFE of 32.24 Lakhs before the due date i.e., 15.07.2007 as per OIO."

It is also to add here that decision taken in a case cannot be quoted as a rule.

Para 2.4: The allegation of the appellant is denied. As directed by the Appellate Committee, the case has been re-adjudicated upon considering the facts and submission made by the appellant. It is a fit case for imposition of penalty as the appellant had failed to fulfil the stipulated NFEE, they had contravened the condition No. 2(ii) of the original LOA, condition No.1 of the Legal Undertaking executed by them with Development Commissioner, provisions of Rule 53 of the SEZ Rules, 2006.

Condition no. 2(ii) of Original LOA read as under:

"The unit would be required to achieve positive Net Foreign Exchange (NFE) as prescribed in the SEZ scheme for a period of five years from the commencement of production, failing which it would be liable for penal action."

Condition no. 1 of Bond cum LUT is as under:

"The unit shall achieve positive NFE cumulatively over a period of 5 years as provided in the SEZ Scheme."

Para 2.5: The allegation of the appellant is denied. As stated at Para 2.2 above, the block period of five year ending in 2010 had not been extended by this office. At Note sheet page 38 of the file, it was submitted that the claim of the appellant of achieving NFE positive was re-examined and was observed that calculation of NFE submitted by the appellant vide their letter dated 24.01.2012 was only for the period April 2011 to 24 Jan 2012 and it was claimed to have achieved 1.66 crore of positive NFE. Whereas the fact remains that SCN dated 27.12.2010 was issued for the negative NFE of Rs. 1.14 crore during their first five year activity ending on 31.03.2010.

During the year 2010-11 as per their APR submitted for the said year, another Rs. 1.96 crores have been added making the total negative NFE to the tune of Rs. 3.10 crores negative against which they have achieved Rs. 1.66 crores only leaving the vast gap of Rs. 1.34 crores. Though this has no relevance with the monitoring process, it is with respect to their commitment and undertaking to neutralize the negative NFE.

Para 2.6: The allegation of the appellant is denied as both the Orders-in-Originals dated 02.07.2012 and 23.09.2013 are passed on the same Show Cause Notice dated 27.12.2010. The appellant has repeated points made in previous paras in different manner. Reply as given in previous paras refer.

Para 2.7: The allegation of the appellant is denied. The note sheet page 35 referred by the appellant where the Development Commissioner noted during the personal hearing on 13.09.2011 that the appellant assured that they would achieve positive NFE by October, 2011 end was also perused by the appellant. As already mentioned that NFE is to be calculated in a Block of five years. Further, results of APR of 2010-11 as quoted against para 2.5 are now available.

Para 2.8: The allegation of the appellant is denied as the issue raised by the appellant was out of the purview of the SCN dated 27.12.2010. The issue of similar case has already been clarified in reply to para 2.3 of the appeal.

Para 2.7(as mentioned in appeal again): The allegation of the appellant is denied. The Hon'ble Gujarat High Court in order dated 28.02.2013 in SCA 15599 of 2012 allowed the unit to clear 50% of the goods (in value) to DTA subject to fulfilment of terms and conditions of the presently prevailing policy of the Govt. Accordingly, the unit was allowed to clear their consignments vide this office letter of even no. dated 08.03.2013 & 20.03.2013. Relevant portion of the said judgement is reproduced below:

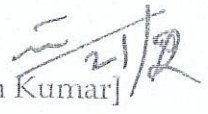
"By way of interim relief respondent (Development Commissioner, KASEZ) is directed to permit the petitioner (1.Afcan Impex Pvt. Ltd., KASEZ ; 2.Kishorkumar B Kapdi, M.D., Afcan Impex P Ltd.) to clear 50% of the goods (in value) not permitted by the respondent to be cleared for DTA sale, of course, subject to fulfilment of terms and conditions of the presently prevailing policy of the Government."

Para 2.9: As mentioned above, the DTA clearance upto 50% of the goods (in value) was allowed.

Para 2.10: The allegation of the appellant is denied as the DTA clearance upto 50% of the goods (in value) was allowed as ordered by the Hon'ble High Court of Gujarat.

Yours faithfully,




[Krishan Kumar]

Jt. Development Commissioner
Kandla Special Economic Zone