

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPARTMENT OF COMMERCE
OFFICE OF THE DIRECTOR GENERAL OF FOREIGN TRADE
Udyog Bhawan, New Delhi-110011

F. No. 18/30/2018-19/ECA-I / 298

Date of Order January, 2019

Date of Dispatch 17th January, 2019

Name of Appellant : M/s Maharashtra Steels Rolling Mills Pvt. Ltd.,
190, L.B.S. Marg, Bhandup
Mumbai-400078.

Order Appealed against : Order-in-Appeal No. 03 / 16 / 144 / 00065 / AM.15 /
14 dated 27.03.2017 passed by the Additional DGFT,
Mumbai.

Order-in-Review passed by : Shri Alok Vardhan Chaturvedi, Director General of
Foreign Trade

Order-in-Review

M/s Maharashtra Steels Rolling Mills Pvt. Ltd., Mumbai has filed Review Petition against Order-in-Appeal No. 03/16/144/00065/AM.15/14 dated 27.03.2017 passed by Additional Director General of Foreign Trade, Mumbai.

Facts of the case:

2. M/s Maharashtra Steels Rolling Mills Pvt. Ltd., Mumbai obtained an Advance Authorization No. 0310353722 dated 26.10.2005 from RA, Mumbai for import of:

- (i) Non Alloy Steel Bloom / Billets
- (ii) Rolls for Rolling Mills
- (iii) Furnace Oil
- (iv) Saw / Shear Blade

for a CIF value of Rs. 3,40,32,735/- against export of 1400 MT of Non Alloy Steel Angles for an FOB value of Rs. 3,43,76,500/- to be achieved within a period of 24 months from the date of issue of the authorization and the appellant were required to submit the prescribed document within two month from expiry of the said obligation period to the Licensing Authority towards discharge of the said obligation and redemption of LUT / BG.

2.1 The authorization was issued for import of goods without payment of applicable duties under duty exemption scheme under FT Policy 2004-09 with "Actual Users" and other terms and conditions prescribed in the prevalent policy and procedures.

2.2 The firm failed to submit the documents evidencing fulfillment of export obligation against the said authorization. Hence, a Demand Notice asking the firm to submit the prescribed documents was issued on 01.01.2008. They did not submit the required documents, therefore, Licensing Authority placed them under DEL vide order dated 20.07.2010 for refusal of issuance of further authorization / incentives.

2.3 As the firm did not respond to the refusal order also, then a Show Cause Notice dated 21.09.2010 was issued to the firm and its Directors under Section 14 of the Foreign Trade (Development and Regulation) Act, 1992, requiring them to explain as to why action under

Section 11(2) of the said Act should not be initiated against them for imposing fiscal penalty for violation of Rule 10, 13 and 14 of the Foreign Trade (Regulation) Rules, 1993 and Para 2.10 of FTP. The firm was given a personal hearing vide the said notice 19.10.2010 before the Adjudicating Authority.

2.4 In response to the Show Cause Notice, the firm vide letter dated 19.10.2010 submitted certified photocopies of Advance Authorization and statement of Imports & Exports and further stated in their letter that they had fulfilled 100% export obligation. They further requested for some more time for submission of the original documents. Accordingly, one month's time was granted to the firm for submission of original documents.

2.5 As there was no response from the firm, a notice dated 17.03.2011 was issued to them granting a personal hearing on 29.03.2011. Shri K.A. Talati, Authorized Representative appeared before the Adjudicating Authority on 29.03.2011 and stated that they have already submitted documents towards redemption; therefore, he requested to withdraw the Show Cause Notice.

2.6 Accordingly, documents submitted by the firm vide letter dated 15.03.2011 were scrutinized, however, it was observed that the firm did not submit payment realization certificate duly signed by the concerned Bank and Appendix-23 duly certified by the CA. Therefore, these deficiencies were called for by the RA vide letter dated 25.04.2011 granting another personal hearing. However, the firm neither submitted these documents nor appeared for personal hearing till 22.02.2012. Hence, the Adjudicating Authority decided the case on merit on the basis of facts and records available with RA.

2.7 The Adjudicating Authority went through the facts and records of the case and observed that in terms of Para 4.24 of the HBP, the firm was required to submit documents having fulfillment of export obligation as prescribed under Para 4.25 of the said procedure book within a period of 2 months from the date of expiry of the export obligation period but they failed to do so. However, they submitted statement of Imports and Exports, ARE-3 and Tax Invoices.

2.8 From the documents submitted by the firm, it was observed that they had supplied the goods to M/s Kalptaru Power Transmission Ltd., Gandhinagar, a 100% EOU. However, they did not submit the original payment certificate towards proof of payment realization and Appendix-23 duly certified by the CA towards showing consumption of duty free imported goods which were mandatory documents for issuance of redemption certificate under Para 4.25 of Hand Book. Therefore, export as claimed to have been fulfilled could not be taken into account towards discharge of stipulated export obligation and redemption of the authorization.

2.9 In view of the above, in exercise of powers conferred upon him under Section 13 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, Adjudicating Authority passed Order-in-Original No. 03/01/002/00387/AM11/ECA-I/853 dated 27.02.2012 imposing a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on the firm and its Directors. They were collectively and severally made responsible to deposit the same. The Appellant was also directed to submit payment realization certificate against all the invoices within a month's time. In case of failure, the export obligation would be treated null & void and the Appellant would be liable to pay customs duty to customs Authority against full imports made under license.

3. Aggrieved by the Order-in-Original No. 03/01/002/00387/AM11/ECA-I dated 27.02.2012, the appellant filed appeal under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, before the Additional Director General of Foreign Trade (Appellate Authority), Mumbai.

3.1 An opportunity of Personal Hearing was granted on 21.09.2016 by the Appellate Authority. Nobody turned up for personal hearing. Second opportunity of personal hearing was given on 19.10.2016. Nobody turned up for personal hearing. A fresh third personal hearing was granted on 09.11.2016. Nobody turned up.

3.2 After going through the adjudication order as well as the documents available on record, the Appellate Authority found that the appellant had failed and neglected to submit original payment certificate towards proof of payment realization and Appendix-23 duly certified by the Chartered-Accountant. They also failed to appear for personal hearing granted to them thrice to defend their case. The Appellate Authority had no option left but to proceed further in the matter on the basis of details / documents available on record.

3.3 In view of the above findings, the Appellate Authority, in exercise of the powers vested in her under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, dismissed the appeal vide Order-in-Appeal No. 03/16/144/00065/AM.15/14 dated 27.03.2017.

4. Aggrieved by the decision of Appellate Authority, the petitioner has filed the present Review Petition dated 19.07.2018 under Section 16 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, stating that:

- (i) The Appellate Authority grossly erred in rejecting the appeal of the petitioner filed against the Order-in-Original. The impugned order can not be sustained under law and even on facts and hence needs to be quashed and set aside forthwith.
- (ii) The Appellate Authority ought to have considered that the petitioner had completed the export obligation within the validity period of the advance authorization by exporting the goods to EOU and had submitted the necessary documents for redemption of the advance authorization. The Appellate Authority also failed to consider that the Order-in-Original dated 27.02.2012 imposed penalty on the ground the original BRCs and Appendix-23 duly signed by the Chartered Accountant were not submitted, whereas both these documents were submitted by the petitioner vide letter dated 13.04.2017.
- (iii) Since the export obligation was completed in respect of the advance authorization and all the required documents submitted for redemption of the same, the Appellate Authority ought to have set aside Order-in-Original imposing penalty on the ground that the petitioner have failed to discharge the export obligation. Hence, the impugned order rejecting the appeal of the petitioner needs to be quashed and set aside.

5. The petitioner was granted Personal Hearing on 12.09.2018 at 4.00 PM to be heard by the Reviewing Authority. Shri Prasanna S. Namboodiri, Advocate appeared before the undersigned on the given date on behalf of the applicant. They have submitted a letter dated 19.09.2018 stating that:

- (i) They have completed the export obligation of 1470 MTs against the export obligation allowed for 1400 MTs.
- (ii) They received the BRC (Bank Realization Certificate) on 27.06.2011.
- (iii) They have submitted the original documents on 21.03.2011 and 03.05.2017 for redemption of the authorization.

6. I have gone through the facts and records of the case carefully. Considering the fact that the petitioner has fulfilled 100% export obligation, his procedural lapse of not submitting the export documents in time is condoned.

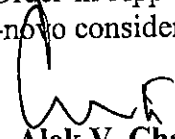
6.1 I, therefore, in exercise of powers vested in me under Section 16 of the FTDR Act, 1992, as amended, pass the following order:

Order

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17-01-2019

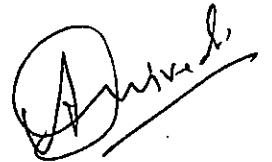
The Review Appeal is accepted. Order-in-Original dated 27.02.2012 and Order-in-Appeal dated 27.03.2017 are set aside. The case is remanded back to RA, Mumbai for de-novo consideration.



Alok V. Chaturvedi
Director General of Foreign Trade

To

1. M/s Maharashtra Steels Rolling Mills Pvt. Ltd.,
190, L.B.S. Marg, Bhandup (W),
Mumbai-400078.
2. The Addl. Director General of Foreign Trade,
CGO Complex, Nishtha Bhawan,
New Marine Lines, Churchgate,
Mumbai-400020.



Alok Dwivedi
Deputy Director General of Foreign Trade