

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. 18/31/2018-19/ECA-I/304

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 / 00028 / AM18 /
0231 dated 28.03.2018 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. 03/16/144/00028/AM18/0231 dated 28.03.2018 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. 0310460790 dated 13.02.2008 from RA, Mumbai for a CIF value of Rs. 2,87,12,871/- (US\$ 699460) for import of Non Alloy Steel Billets (1050 MT), Rolls for Rolling Mills (1770 KG), Furnace Oil for Fired Reheating Furnace in Rolling Mills (50000 KG), Saw / Shear Blade (10 KG) subject to condition that they would export 1000 MT of Non Alloy Steel Bars & Rods for an FOB value of Rs. 2,90,00,000/- (US\$ 715166) within a period of 24 months from the date of issue of the authorization.

2.1 The export obligation period expired on 12.02.2010.

2.2 The firm requested for redemption and submitted related documents on 22.03.2011. But the firm did not submit the original Bank Realization Certificates and also Appendix-23. The deficiencies were communicated to the firm vide Deficiency Letter dated 05.05.2011.

2.3 Since no response to the Deficiency Letter dated 05.05.2011 was received, a Demand Notice was issued. When no reply was received to the Demand Notice, Refusal Order dated 21.11.2011 was issued and name of the firm was put under 'Denied Entity List'.

2.4 The representative of the firm attended personal hearing on 08.12.2011 and committed to submit the original BRCs within 45 days. Even after the expiry of 45 days time, the original BRCs were not submitted. Personal hearing was granted on 14.06.2012 and then again on 01.08.2012. As requested by the firm a final personal hearing was granted on 27.09.2012. No one attended the personal hearing. Personal hearing was again granted on 08.08.2014. But, no reply was received.

2.5 The Adjudicating Authority examined the case based on information available on record. It was observed that the firm had failed to furnish Bank Realization Certificates to the licensing authority in spite of several reminders to them. It was also observed that the authorization had

been fully utilized for import purpose. They had not submitted any of the original Bank Realization Certificates required for redemption of the case. Only ARE-3s had been submitted. It implied that though exports had been made but the export proceeds were not realized. In the absence of original BRCs, the ARE-3s could not be accepted towards discharge of export obligation of this authorization and export obligation remained unfulfilled. Sufficient opportunities were given to them to submit complete documents but they failed to do so. It was clear that they had violated the policy and procedure and conditions with which the authorization had been issued.

2.6 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, the Adjudicating Authority passed Order-in-Original No. 03/01/002/00212/AM12 dated 25.05.2016 holding the firm guilty of contravening the provisions of Section 11(2) and imposed a penalty of Rs. 28,70,000/- (Rupees Twenty Eight Lakh Seventy Thousand only) on the firm and its Directors on account of non fulfillment of export obligation.

3. Aggrieved by the Order-in-Original No. 03/01/002/00212/AM12 dated 25.05.2016, 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 The appellant had preferred the appeal after a delay of 532 days. The appellant in their appeal had stated that the Order-in-Original dated 25.05.2016 was not traceable at their end; therefore, they collected the copy of order on 02.11.2017 from the RA. However, they had not submitted any documentary evidence of collecting the order from the RA on 02.11.2017. Further, in their appeal, they had also stated that they were required to file the appeal till 09.07.2016. They had requested to condone the delay of 532 days in filing the appeal.

3.2 The appellant had stated that due to unavoidable circumstances in the company, they were in a deep financial crisis. A senior manager of the department left the organization with incomplete work done.

3.3 There was an inordinate delay of approximately 532 days in filing the appeal. There was no cogent reason for the delay. The appellant had failed to submit the appeal within the period prescribed under the Foreign Trade (Development and Regulation) Act, 1992, as amended. Therefore, their request for condonation of delay in submitting the appeal could not be considered.

3.4 In view of the above, 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, rejected the appeal as time barred vide Order-in-Appeal No. 03/16/144/00028/AM18/0231 dated 28.03.2018.

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:

4.1 The petitioner completed the export obligation by supplying goods to EOU and submitted application for redemption on 22.03.2011. The original Bank Realization Certificates were not submitted and Appendix-23 was also missing. A Deficiency Letter dated 05.05.2011 was received. A Show Cause Notice dated 22.11.2011 was also issued to the petitioner. Another Deficiency Letter dated 21.04.2017 was also received informing the petitioner to attend personal hearing on any working day along with Original BRCs issued by Kotak Mahindra Bank. It was also requested to the petitioner to remove the deficiency within a period 30 days from the date of issue of the Deficiency Letter.

4.2 The petitioner vide letter dated 13.04.2017 submitted the following additional documents for redemption of the advance authorization:

- (i) Original Advance Authorization (Customs and Exchange Control Copies) along with list and condition sheet.
- (ii) Bank Certificates in Appendix-22B issued by Kotak Mahindra Bank Ltd. and Bank of India.
- (iii) Appendix-23 duly certified by the Chartered Accountant.

4.3 The petitioner vide their letter dated 28.06.2017 submitted following additional documents for redemption of the advance authorization:

- (i) Original Advance Authorization (Customs and Exchange Control Copies) along with list and condition sheet.
- (ii) Bank Certificates in Appendix-22B issued by Kotak Mahindra Bank Ltd.

4.4 Without considering the documents submitted by the petitioner for redemption of the advance authorization, the Assistant DGFT, Mumbai issued Order-in-Original No. 03/01/002/00212/AM12 dated 25.05.2016 directing payment of duty and interest on the entire import made under the advance authorization and imposed fiscal penalty of Rs. 28,70,000/-. The Order-in-Original was issued on the following grounds:

- (i) Original Bank Realization Certificates and Appendix-23 were not submitted.
- (ii) Only ARE-3s were submitted, which implies that exports have been made but export proceeds were not realized.
- (iii) In the absence of original BRCs, the ARE-3s can not be accepted towards discharge of export obligation.

4.5 Aggrieved by the above Order-in-Original, the petitioner filed appeal before the Additional DGFT, Mumbai. However, the said appeal was dismissed by the Appellate Authority vide Order-in-Appeal No. 03/16/144/00028/AM18/0231 dated 28.03.2018 without going into merits, on the ground that there was delay of 532 days in filing the appeal.

4.6 The petitioner has filed the present Review Petition on the following grounds:

- (i) The Appellate Authority and Addl. DGFT, Mumbai 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 EOÜ and had submitted the necessary documents for redemption of the advance authorization. The Adjudicating Authority imposed penalty on the ground that original BRCs and appendix 23 were not submitted. The Appellate Authority also failed to consider that the Order-in-Original dated 25.05.2016 was not traceable at their end, hence a copy thereof was collected from DGFT office on 02.11.2017. However, on the ground that there was no evidence of collecting the order from DGFT office on 02.11.2017, the appeal was rejected by the Appellate Authority. If the contention of the petitioner on this count was not believed, the Appellate Authority could have ascertained and

satisfied herself from the records maintained in DGFT, Mumbai as to whether copy of the order was collected on 02.11.2017. Therefore, the impugned Appellate Order needs to be quashed and set aside.

- (iii) Since the export obligation was completed in respect of the advance authorization and all the required documents submitted for redemption of the same, even if there is delay in filing appeal, the Appellate Authority ought to have condoned the delay and set aside Order-in-Original. Hence, the impugned Appellate Order rejecting the appeal of the petitioner needs to be quashed and set aside.

4.7 In view of the above, the petitioner has requested for setting aside the Order-in-Original dated 25.05.2016 and Order-in-Appeal dated 28.03.2018.

5. The petitioner was granted Personal Hearing on 12.09.2018 at 4.00 PM to be heard by the Reviewing Authority. Shri Prasannan 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 1050 MTs against the export obligation allowed for 1000 MTs.
- (ii) They received the BRC (Bank Realization Certificate) on 03.04.2017.
- (iii) They have submitted the original documents on 22.03.2011, 21.04.2017 and 28.06.2017 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.

Order

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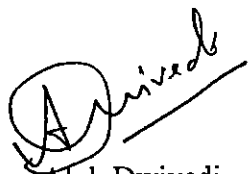
Date of Order January, 2019
17.01.2019

The Review Appeal is accepted. Order-in-Original dated 25.05.2016 and Order-in-Appeal dated 28.03.2018 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