

**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. 18/34/2018-19/ECA-I / 302

Date of Order January, 2019

Date of Dispatch 7th 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 / 00021 / AM18 /
0228 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. 03/16/144/00021/AM18/0228 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. 0310430304 dated 23.05.2007 from RA, Mumbai for a CIF value of Rs. 2,77,09,029/- (US\$ 623374) for import of Non Alloy Steel Billets (1050 MT), Rolls for Rolling Mills (1770 KG), Furnace Oil for Fired Reheating Furnace in Rolling Mill (50,000 KG), Saw / Shear Blade (10 KG) subject to condition that they would export 1000 MT of Non Alloy Steel Bars & Rods Angles, Shapes, Sectars and Rails for an FOB value of Rs. 2,79,88,919/- (US\$ 635390) within a period of 24 months from the date of issue of the authorization.

2.1 The export obligation period expired on 22.05.2009. The firm made request for redemption of the authorization and submitted related documents on 24.11.2009. But, the complete set of documents was not submitted. The deficiencies were communicated vide Deficiency Letter dated 21.12.2009.

2.2 Since no response to the Deficiency Letter dated 21.12.2009 was received from the firm, a Demand Notice dated 03.09.2010 was issued to them. When no reply was received to the Demand Notice, Refusal Order dated 03.03.2011 was issued and name of the firm put under 'Denied Entity List'.

2.3 A Show Cause Notice dated 03.03.2011 under Rule 13(2), 14(1) and 14(2) of the Foreign Trade (Regulation) Rules, 1993 and under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992, as amended, was issued to the firm asking to show cause within 15 days from the date of receipt of the said Notice as to why action should not be taken against them to impose fiscal penalty on the allegation that they had mis-utilized the goods imported against advance authorization.

2.4 In accordance with the principle of natural justice and in order to enable the firm to place evidence, if any, on record and for contesting the allegations leveled against them in the Show Cause Notice, the firm was advised to appear for personal hearing on 15.03.2011.

2.5 Reply to the Deficiency Letter dated 21.12.2009 was received on 17.03.2011. The evidences of export and realization were submitted. But, one ARE-3 in original was still not submitted. The deficiencies were communicated vide Deficiency Letter dated 24.05.2011. There was again no reply received against the Deficiency Letter dated 24.05.2011. A summon dated 01.12.2011 was issued.

2.6 The firm attended personal hearing and informed vide letter dated 22.12.2011 to submit pending documents and close the case. But the pending documents were not submitted.

2.7 The firm failed to furnish all the documents to the licensing authority in spite of several reminders to them.

2.8 Hence, the Adjudicating Authority examined the case based on facts and records available and observed that export obligation had been fulfilled but they had not submitted original ARE-3 for Invoice No. 79. Although, vide letter dated 22.12.11, the firm had accepted that some of BRCs were missing and committed to submit the missing BRCs within 45 days, it had been found that a combined proof of realization for all the invoices in Appendix-22B was available in file. The only missing document was the original ARE-3 for invoice No. 79. The firm had been given sufficient opportunity 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.

2.9 Therefore, 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. 03/01/002/00528/AM11 dated 20.06.2016 holding the firm guilty of contravening the provisions of Section 11(2) of the FTDR Act, 1992, as amended read with Rule 13 and 14(1) & (2) of the Foreign Trade (Regulation) Rules, 1993 and imposed a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on the firm and its Directors on account of non submission of the original export document in spite of repeated reminders.

3. Aggrieved by the Order-in-Original No. 03/01/002/00528/AM11 dated 20.06.2016, 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 with a request to condone the delay and admit the appeal and decide the same on merits of the case.

3.1 The appellant had preferred the appeal after a delay of almost 465 days.

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 465 days in filing the appeal. The appellant had failed to submit the appeal within the period prescribed under the Foreign Trade (Development and Regulation) Act, 1992, as amended. The reason given by the appellant for condonation of delay had no merit. Therefore, their request for condonation of delay in submitting the appeal could not be acceded to.

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. 03/16/144/00021/AM18/0228 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 24.11.2009. Since complete set of documents were not submitted, a Deficiency Letter dated 21.12.2009 was received. A Show Cause Notice dated 03.03.2011 was also issued to the petitioner. The petitioner submitted letter along with all documents on 17.03.2011.

4.2 Another Deficiency Letter dated 24.05.2011 was received informing the petitioner that original ARE-3 for Invoice No. 79 dated 31.03.2007 was not submitted. The letter also stated that on backside of the Custom Purpose copy value of import availed was not indicated. The said letter also requested for copy of Bill of Entry for the import made and informed that Appendix-23 was not correctly submitted with signature of Chartered Accountant.

4.3 The petitioner vide letter dated 05.10.2017 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 with details of import on the backside.
- (ii) Copy of ARE-3 for Invoice No. 79 dated 31.03.2017. It was informed that the original copy of ARE-3 was submitted in the documents given for redemption.
- (iii) Original statement having details of Bill of Entry for the import duty certified by the Chartered Accountant

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. 03/01/002/00528/AM11 dated 20.06.2016 directing payment of composition fees as per Para 4.30A of HBP Vol.-1 for not submitting original ARE-3 for Invoice No. 79 imposing fiscal penalty of Rs. 50,000/- on account of non submission of original export document.

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. 03/16/144/00021/AM18/0228 dated 28.03.2018 without going into merits, on the ground that there was delay of 465 days in filing the appeal.

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

- (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.
- (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 20.06.2016 imposed penalty on the ground that original ARE-3 for Invoice No. 79 dated 31.03.2007 was not submitted whereas this document in original was submitted along with letter dated 24.11.2009.
- (iii) They had contended before the Appellate Authority that due to severe financial crisis in the company, a Senior Manager of the company who was entrusted with handling of matters of DGFT left the company without taking cognizance of the

Order-in-Original and without initiating necessary action for filing the appeal thereto. On appointing new officials after a lapse of more than a year, the unattended Order-in-Original came to notice of the management. Thereupon, immediate action to prepare the appeal and to file it without any further delay was taken. The Appellate Authority failed to consider that in view of the aforesaid unavoidable circumstances, there was delay in filing appeal and hence the delay ought to have been condoned and their case should have been decided on merits. Therefore, the impugned order 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 Prasannan S. Namboodiri, Advocate appeared before the undersigned on the given date on behalf of the applicant. The Appellant 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 Payment of BRC (Bank Realization Certificate) on 08.08.2007, 17.08.2007, 08.12.2007 and 27.06.2011.
- (iii) They have submitted the original documents on 24.11.2009 (vide letter dated 21.10.2009) 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.

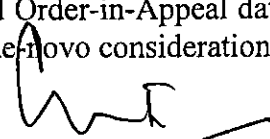
6.1 I, therefore, in exercise of powers vested in me under Section 16 of the FTDR Act, 1992, as amended, pass the following order:

Order

F. No. 18/34/2018-19/ECA-I/303

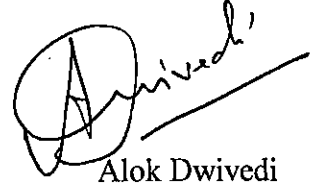
Date of Order January, 2019
17-01-2019

The Review Appeal is accepted. Order-in-Original dated 20.06.2016 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
Mumbai-400078.
2. The Addl. Director General of Foreign Trade,
CGO Complex, Nishtha Bhawan,
New Marine Lines, Churchgate,
Mumbai-400020.

A handwritten signature in black ink, appearing to read 'Alok Dwivedi', with a long horizontal stroke extending to the right.

Alok Dwivedi
Deputy Director General of Foreign Trade