

Government of India
Ministry of Commerce & Industry
Directorate General of Foreign Trade
Udyog Bhawan, New Delhi -110011

F.No. 01/92/171/07/AM 18 / PC-VI/31,32

Date of Order: 13.05.2019
Date of Dispatch: 13.05.2019

Name of the Appellant:

Shreeyam Power & Steel Industries Ltd.,
Tulsiani Chambers, Nariman Point, Mumbai

IEC Number

1199001201

Order appealed against:

Order-in-Original No. 37/21/040/00015/
AM09 dated 17/19.07.2017 passed by the
Development Commissioner, Kandla,
Special Economic Zone.

Order-in-Appeal passed by:

Shri Alok Vardhan Chaturvedi, DGFT

Order-in-Appeal

Shreeyam Power and Steel Industries Limited (formerly known as Mid India Power and Steel Ltd.) hereinafter referred to as 'the appellant', a DTA unit, has filed an appeal on 05.09.2017 under Section 15 of the Foreign Trade (Development & Regulation) Act 1992, as amended from time to time, against Order-in-Original No. 37/21/040/00015/AM09 dated 17/19.07.2017 passed by the Development Commissioner, Kandla, Special Economic Zone.

2. Vide Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, the Central Government has authorized the Director General of Foreign Trade aided by one Addl. DGFT in the Directorate General of Foreign Trade to function as Appellate Authority against the orders passed by the Development Commissioner, Special Economic Zones as Adjudicating Authorities. Hence, the present the appeal is before me.

3.0 Brief facts of the case:

3.1 The appellant obtained an Advance Authorisation (AA) No. 3710000830 dated 10.07.2008 for a CIF value of Rs. 165595939.03/- from the office of DC, KASEZ who also acts as RA of DGFT for Kutch area, for import of duty free material as mentioned in the said AA with the condition, inter-alia, to export 'Alloy Steel Billets' worth Rs. 17 Crore within a period of 24 months from the date of issue of the AA. On request of the appellant, the export obligation period was further extended for another 12 months in terms of PC No. 80 dated 13.04.2009. Hence, the Export Obligation period expired on 09.07. 2011.



3.2 As the appellant did not submit export documents showing fulfilment of the export obligation despite letters from the DC office, a Show Cause Notice dated 20.06.2016 under section 14 of FTDR Act, 1992 was issued as to why action should not be taken against it under section- 11(2) and (7) of the FTDR Act, 1992, as amended and under Rule- 7.1 (k) of the Foreign Trade (Regulation) Rules 1993.

3.3 During the personal hearing on 09.08.2016 before the DC, the representative of the appellant stated that the appellant had filed papers for financial reconstruction to BIFR. However, no such documents in regard to approval of BFIR were produced so as to allow extension of EO period, if any required, in terms of Para 4.1.9A of the FTP 2009-14.

3.3 Hence, the DC proceeded to adjudicate the matter and imposed a penalty of Rs. 1 crore with the direction to the appellant to pay the custom duty exemption enjoyed by them along with applicable interest vide Order-in-Original dated 17/19.07.2017 issued u/s 11(2) read with section 13 of FTDR Act, 1992, as amended.

4.0 Aggrieved by the adjudication order dated 17/19.07.2017; the appellant has filed the present appeal.

4.1 During the personal hearing held on 31.01.2019 before me, the representative of the Appellant stated that:

- (i) The company was a recognized 'Export House' vides status certification no. 014487 dated 16.07.2007. It actually imported item at Sr. No. 01 for a quantity of 4723 MT worth CIF value of Rs. 12,25,26,624 for which proportionate value of export to be made was 3935.83.00 MT. It has already completed the export obligation to the extent of 82% for Qty. 3232.380 MT for a value of Rs. 13,99,12,066.
- (ii) However, due to the economic slowdown during 2008 onwards, the company became sick and filed a reference u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 on 17.09.2012 to BIFR. The company was declared sick by BIFR. IDBI Capital Market Services Ltd. (ICMS) was appointed as Operating Agency to prepare the draft Rehabilitation Scheme (DRS). After discussions with all the consortium Bankers and stakeholders, the Operating Agency submitted the DRS to the BIFR. The DRS recommended to extend the EO period under Advance Licenses without payment of composition fees. It also recommended exempting the company from any penal action and levy of penalty, penal interest, simple/compound interest, damages (if any) for non-fulfillment of obligation. However, the BIFR was dissolved on 01.12.2016 by the Government but the Consortium Bankers supported it as per the DRS and the Company is now in a position to manufacture the finished goods in quantity and on regular basis for exports.
- (iii) It has filed a request vide letter dated 14.11.2018 with the PRC to grant extension in the Export Obligation period for 2 years.

4.2 The appellant vide letters dated 19.03.2019 and 02.04.2019 and during personal hearing held on 04.04.2019 further informed that the PRC in its meeting No. 31/AM19 held on 19.02.2019 has granted the Export Obligation Period extension for a period of 18 months from the date of endorsement in respect of the subject AA. Hence, the O-i-O dated 17/19.7.2017 may be set aside to enable it to take the endorsement of the EOP extension on the AA.

5.0 I have gone through the facts of the case; oral & written submissions made by the appellant and all other aspects relevant to the case. It is observed that the PRC, in its meeting No. 31/AM19 held on 19.02.2019, has allowed EOP extension for a period of 18 months from the date of endorsement in respect of the subject AA. In view of the decision taken by the PRC, it would be justifiable to grant an opportunity to the appellant to fulfil export obligation within the time period granted by the PRC.

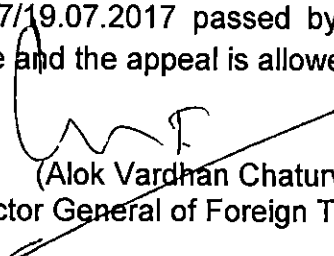
6.0 In view of the above, in exercise of the powers vested in me under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 (as amended in 2010) read with Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, I pass the following order:

Order

F.No. 01/92/171/07/AM 18/ PC-VI

Dated: 13⁰⁵.04.2019

Order-in-Original No. 37/21/040/00015/AM09 dated 17/19.07.2017 passed by the Development Commissioner, KASEZ, Gandhidham is set aside and the appeal is allowed.


(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

Copy To:

- (1) Shreeyam Power and Steel Industries Ltd., 621, Tulsiani Chambers, Nariman Point, Mumbai.
- (2) Development Commissioner, SEZ, Kandla.
- (3) DGFT Website.


(Shobhit Gupta)

Dy. Director General of Foreign Trade