

**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. 18/32/2018-19/ECA-I | 296

Date of Order January, 2019

Date of Dispatch 17<sup>th</sup> 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 / 00023 / AM18 /  
0230 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. 03/16/144/00023/AM18/0230 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. 0310403668 dated 11.10.2006 from RA, Mumbai for a CIF value of Rs. 1,23,75,200/- (US\$ 271982.4) for import of Non Alloy Steel Billets (525 MT), Rolls for Rolling Mills (885 KG), Furnace Oil for Fired Reheating Furnace in Rolling Mills (25000 KG), Saw / Shear Blade (5 KG) subject to condition that they would export 500 MT of Non Alloy Steel Bars & Rods for an FOB value of Rs. 1,25,00,000/- (US\$ 274725) within a period of 24 months from the date of issue of the authorization.

2.1 The export obligation period expired on 10.10.2008.

2.2 Since no documents towards discharge of export obligation had been submitted even after the expiry of the export obligation period, a Demand Notice dated 10.12.2008 was issued to the firm. When no reply was received to the Demand Notice, Refusal Order dated 14.09.2010 was issued and name of the firm was put under 'Denied Entity List'.

2.3 A Show Cause Notice dated 08.03.2011 under Section 14 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, was issued to the firm requiring them to show cause within 15 days from the date 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 the advance authorization without discharging export obligation imposed in the said authorization in contravention of the conditions of the 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 contesting the allegation leveled against them in the Show Cause Notice, the firm was advised to appear for personal hearing on 22.03.2011. There was no response from the firm.

2.5 The company had submitted an incomplete set of documents for redemption on 15.03.2011. The deficiencies were communicated vide Deficiency Letter dated 28.04.2011. They were also asked to appear for personal hearing before Joint DGFT on 10.05.2011. When no one turned up for the personal hearing and no reply was received to the Deficiency Letter dated 28.04.2011, a notice under Section 14 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, was issued on 11.10.2006.

2.6 The representative of the firm attended personal hearing and vide letter dated 22.12.2011 they committed to submit the payment certificates within 45 days. Even after expiry of 45 days time, the original Bank Realization Certificates (BRCs) were not submitted.

2.7 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 utilized for import of Non Alloy Steel Billets. They had not submitted any of the original Bank Realization Certificates required for redemption of the case. Only 16 ARE-3s out of 17 indicated in the export statement had been submitted. ARE-3 No. 9 or its corresponding Invoice No. 248 had not been submitted. It implied that though partial 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. They had been given sufficient opportunities 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.

2.8 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. 03/01/002/00540/AM11 dated 30.05.2016 holding the firm guilty of contravening the provisions of Section 11(2) imposing a penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) on the firm and its Directors on account of non fulfillment of export obligation. The firm was also directed to pay duty and interest on 524.561 Kg of import of Non-alloy steel billets.

3. Aggrieved by the Order-in-Original No. 03/01/002/00540/AM11 dated 30.05.2016, 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 Mumbai (Appellate Authority).

3.1 The appellant had preferred the appeal after a delay of 460 days. The appellant in their appeal had stated that the Order-in-Original dated 30.05.2016 was received by them on 08.06.2016.

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 460 days in filing the appeal. There was no cogent reason for 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. 03/16/144/00023/AM18/0230 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 15.03.2011. Since all original Bank Realization Certificates were not submitted, a Deficiency Letter dated 28.04.2011 was received. A Show Cause Notice dated 08.03.2011 was also issued to the petitioner.

4.2 The petitioner vide letter dated 04.10.2017 submitted the following additional documents for redemption of the advance authorization:

- (i) Bank Certificate of Payment in original from Bank of India for exports made.
- (ii) 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. 03/01/002/00540/AM11 dated 30.05.2016 directing payment of duty and interest on the 524.561 Kgs of import of Non Alloy Billets made under the advance authorization and imposing fiscal penalty of Rs. 10,00,000/- on account of non fulfillment of export obligation on duty free imports made and for failure of submission of all relevant export documents. The Order-in-Original was issued on the following grounds:

- (i) Original Bank Realization Certificate not submitted.
- (ii) Only 16 ARE-3s out of 17 indicated in the export statement submitted.
- (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. 03/16/144/00023/AM18/0230 dated 28.03.2018 without going into merits, on the ground that there was delay of 460 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 30.05.2016 imposed penalty on the ground that original BRCs and one ARE-3 and corresponding Invoice were

not submitted, whereas the original BRCs were submitted by the petitioner vide letter dated 04.10.2017. The ARE-3 No. 9 and Invoice No. 248 were submitted on 08.06.2008.

- (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 initiating necessary action for filing the appeal. 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 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 by deciding their case on merits. Therefore, the impugned Appellate order needs to be quashed and set aside.
- (iv) Since the export obligation was completed in respect of the advance authorization and all the required documents were submitted for redemption of the same, even if there was 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.

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 submitted a letter dated 19.09.2018 stating that:

- (i) They completed the export obligation of 525 MTs against the export obligation allowed for 500 MTs.
- (ii) They received Payment of BRC (Bank Realization Certificate) on 07.06.2007, 09.01.2009, 28.09.2007, 15.10.2007 and 26.12.2008.
- (iii) They submitted the original documents on 21.03.2011 and 06.10.2017 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**

F. No. 18/32/2018-19/ECA-I / 297

Date of Order January, 2019

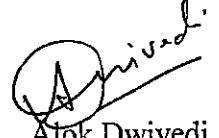
17.01.2019

The Review Appeal is accepted. Order-in-Original dated 30.05.2016 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