

**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. 18/33/2018-19/ECA-I / 300

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 / 00022 / AM18 /  
0229 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. 03/16/144/00022/AM18/0229 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. 0310381782 dated 25.05.2006 from RA, Mumbai for a CIF value of Rs. 1,13,46,500/- (US\$ 255264) for import of Non Alloy Steel Blooms / Billets Chemical Composition (525 MT / 488.672 MT-Prorata entitlement), 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. 1,14,60,000/- (US\$ 259864) within a period of 24 months from the date of issue of the authorization.

2.1 The export obligation period expired on 24.05.2008.

2.2 As the firm failed to submit the documents evidencing fulfillment of export obligation against the authorization, a Demand Notice asking the firm to submit prescribed documents was issued on 21.07.2010. They were also accorded a personal hearing on 12.08.2010 vide this Demand Notice. They did not submit the required documents; therefore, the licensing authority placed them under 'Denied Entity List' vide order dated 14.09.2010 for refusal of issuance of further authorization / incentives.

2.3 As the firm did not respond to the refusal order, a Show Cause Notice dated 03.03.2011 was issued to the firm and its Directors under Section 14 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, asking 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 personal hearing vide the said Notice on 15.03.2011 before the Adjudicating Authority.

2.4 In response to the Notice, the firm vide letter dated 15.03.2011 submitted the following documents:

- (i) Advance Authorization
- (ii) ANF 4F
- (iii) Original ARE-3
- (iv) Copy of Tax Invoice
- (v) Photocopy of Payment Certificate
- (vi) Appendix-23
- (vii) No Bond Certificate.

2.5 The Adjudicating Authority examined the case based on facts and records available and observed that the firm had submitted documents. Actual EO fulfilled by the firm was 465.470 MT [Rs. 1,33,81,091/- (US\$ 303426)] against 500 MT [Rs. 1,14,60,000/- (US\$ 259864)] as per the authorization. There was a shortfall 34.53 MT. Also the import made was for Rs. 94,49,042.40/- against Rs. 1,13,46,500/- allowed as per authorization.

2.6 From the documents submitted by the firm, it was observed that they had fulfilled the exports on prorata basis in proportion to imports made through 20 invoices. However, they did not submit the original Payment Certificate in Appendix-22B duly certified by the concerned Bank. They had submitted Xerox copy of Payment Certificate for some invoices but the same could not be accepted as the same had not been counter signed by the concerned Bank. Further, the firm did not submit proof of payment realized against invoice Nos. 772, 286, 306, 269 and 290 and Appendix-23 submitted was not signed by the Chartered Accountant. Hence, the documents submitted could not be taken into accounts towards discharge of the export obligation.

2.7 Though, from the documents, it was evident that exports were made on prorata basis of imports made, however, in spite of repeated opportunities extended to them, they had failed to submit all the prescribed documents in order to get the case redeemed and closed.

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. 03/01/002/00524/AM11/112 dated 05.05.2011 imposing a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the firm and its Directors.

3. Aggrieved by the Order-in-Original No. 03/01/002/00524/AM11/112 dated 05.05.2011, 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 to 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 2350 days. The appellant in their appeal had stated that the Order-in-Original dated 05.05.2011 was received by them on 17.05.2011.

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 2350 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 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. 03/16/144/00022/AM18/0229 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. However, a Show Cause Notice dated 03.03.2011 was issued to the petitioner.

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

- (i) Bank Certificate of Payment for export fulfilled.
- (ii) Appendix-23 duly certified by the Chartered Accountant.

4.3 Without considering the documents submitted by the petitioner for redemption of the advance authorization, the Joint DGFT, Mumbai issued Order-in-Original No. 03/01/002/00524/AM11 dated 05.05.2011 directing payment of duty and interest on entire import made under the advance authorization and imposed fiscal penalty of Rs. 1,00,000/-. The Order-in-Original was issued on the following grounds:

- (i) Shortfall of Export Obligations in quantity terms to the extent of 34.53 MTs.
- (ii) Original Bank Realization Certificates in Appendix-22B duly certified by the Bank not submitted.
- (iii) Proof of payment realized against invoice Nos. 772, 286, 306, 269 and 290 not submitted.
- (iv) Appendix-23 submitted was not signed by the Chartered Accountant.

4.4 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. 03/16/144/00022/AM18/0229 dated 28.03.2018 without going into merits, on the ground that there was delay of 2350 days in filing the appeal.

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

- (i) The Appellate Authority (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.
- (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 05.05.2011 imposed penalty on the ground that 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) 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 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 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 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 the 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 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 500 MTs against the export obligation allowed for 500 MTs.
- (ii) They received Payment of BRC (Bank Realization Certificate) on 03.04.2017.
- (iii) They have submitted the original documents on 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.

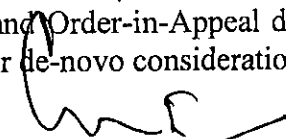
6.1 I, therefore, in exercise of powers vested in me under Section 16 of FTDR Act, 1992, as amended, pass the following order:

**Order**

**F. No. 18/33/2018-19/ECA-I** } 30


**Date of Order** January, 2019  
17-01-2019

The Review Appeal is accepted. Order-in-Original dated 05.05.2011 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**