

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. 18/35/2018-19/ECA-I / 306

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 / 00020 / AM18 /
0227 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. 03/16/144/00020/AM18/0227 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. 0310474980 dated 17.06.2008 from RA, Mumbai for a CIF value of Rs. 3,17,23,267/- (US\$ 756216) for import of Non Alloy Steel Billets (823.2 MT), Rolls for Rolling Mills (1387.68 KG), Furnace Oil for Fired Reheating Furnace in Rolling Mill (39200 KG), Saw / Shear Blade (7.84 KG) subject to condition that they would export 784 MT of Non Alloy Steel Bars & Rods for an FOB value of Rs. 3,20,40,500/- (US\$ 763778) within a period of 24 months from the date of issue of the authorization.

2.1 The export obligation period expired on 30.06.2010. Even after expiry of export obligation period, no documents towards discharge of export obligation were submitted by the firm. Therefore, a Demand Notice dated 24.07.2012 was issued.

2.2 When no reply was received to the Demand Notice, Refusal Order dated 12.11.2012 was issued and name of the firm put under 'Denied Entity List'.

2.3 A Show Cause Notice dated 27.12.2012 was issued to the firm asking them to show cause within 15 days from the date of receipt of the said Notice as to why action should not be taken against the firm and its Directors / Partners / Proprietors as per provisions of Rule 14(1) and 14(2) of the Foreign Trade (Regulation) Rules, 1993, for not submitting the documents towards discharge of export obligation ever after a Demand Notice was issued.

2.4 But no documents towards discharge of export obligation had been submitted by the firm. Hence, the Adjudicating Authority, in exercise of powers conferred upon him under Section 13 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, passed Order-in-Original No. 03/02/002/00228/AM13 dated 11.01.2015 imposing a penalty of Rs. 31,72,000/-

(Rupees Thirty One Lakh Seventy Two Thousand only) for not fulfilling the export obligation and fraudulently claiming discharge of export obligation by submitting SBs / AREs not pertaining to the authorization.

3. Aggrieved by the Order-in-Original No. 03/02/002/00228/AM13 dated 11.01.2015, 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 840 days. The appellant in their appeal had stated that the Order-in-Original dated 11.01.2015 was received by them on 27.01.2016. In support of their contention, they had submitted photocopy of envelope addressed to them showing handwritten date 27.01.2016. There was no stamp or attestation of postal authorities. Therefore, the same could not be accepted as a documentary evidence of receiving the Order-in-Original dated 11.01.2015 on 27.01.2016.

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 840 days in filing the appeal. Even the appellant's contention was accepted that they had received the order on 27.01.2016; there was delay of 585 days in filing this 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. 03/16/144/00020/AM18/0227 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 SEZ units and EOU in June, 2008. They had supplied goods to SEZ units and EOU for total quantity of 784.16 MTs of value of Rs. 3,22,65,201/-. As such they completed the export obligation against the said authorization both in quantity terms as well as in value terms within the validity period of 24 months.

4.2 The petitioner vide their letter dated 08.04.2011 had submitted the following documents in the office Joint DGFT, Mumbai for redemption of the advance authorization:

- (i) Application in ANF 4F
 - (ii) Original Advance Authorization (both copies) along with condition sheet.
 - (iii) Bank Certificate of Exports and Realization in Appendix-22B.
 - (iv) Bill of Exports containing details of exports to SEZ and EOU.
 - (v) Certified copies of ARE-1 duly certified by the Authorized Officer of SEZ.
 - (vi) Certified copies of ARE-3 duly certified by EOU Central Excise Authority.
 - (vii) Statement of Imports.
 - (viii) Statement of Exports.
 - (ix) Form H along with Certificate of Utilization of Import Materials.
 - (x) No Bond Certificate.
- 

4.3 In spite of submission of the above mentioned documents to DGFT, Mumbai, the petitioner were served with a copy of Demand Notice dated 24.07.2012.

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. 03/02/002/00228/AM13 dated 11.01.2015. In the Order-in-Original, the petitioner were directed to pay duty and interest on the entire amount of import made under the advance authorization and even a penalty of Rs. 31,72,000/- was imposed on the ground that no documents towards discharge of export obligation were submitted by the petitioner.

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. 03/16/144/00020/AM18/0227 dated 28.03.2018 without going into merits, on the ground that there was delay of 840 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 SEZ units and EOU and had submitted the necessary documents for redemption of the advance authorization. The Appellate Authority also failed to consider that as per Para 4.1.3.4 of FTP, exports to SEZ and supplies made to EOU under advance authorization are to be counted towards discharge of export obligation.

(iii) They had contended before the Appellate Authority that the Order-in-Original dated 11.01.2015 was received by them on 27.01.2016 and in support of this contention, submitted photocopy of envelope addressed to them showing handwritten date of 27.01.2016. However, on the ground that there was no stamp or attestation of postal authorities, this evidence of receipt of Order-in-Original dated 11.01.2015 on 27.01.2016 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 about the date of serving of the Order-in-Original on the petitioner, from the records maintained in DGFT, Mumbai. Therefore, the impugned Appellate order needs to be quashed and set aside.

(iv) The Appellate Authority further observed in the impugned order that even if it considered that the Order-in-Original was received by the petitioner on 27.01.2016, there is a delay of 585 days in filing the appeal.

(v) The petitioner 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 by deciding their case on merits.

- (vi) Since the export obligation was completed in respect of the advance authorization, even if there is delay in filing the 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 have submitted a letter dated 19.09.2018 stating that:

- (i) They have completed the export obligation of 784.16 MTs against the export obligation allowed for 784 MTs.
- (ii) They received Payment of BRC (Bank Realization Certificate) on 05.05.2008, 13.05.2008 and 22.05.2008.
- (iii) They have submitted the original documents on 09.10.2017 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. 18/35/2018-19/ECA-I / 307

Date of Order January, 2019
17-01-2019

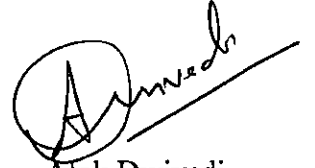
The Review Appeal is accepted. The Order-in-Original dated 11.01.2015 and Order-in-Appeal dated 28.03.2018 are set aside. The case is remanded back to RA, Mumbai for de-novo consideration.



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, consisting of a stylized 'A' followed by 'lok Dwivedi', enclosed in a circle with a horizontal line extending to the right.

Alok Dwivedi
Deputy Director General of Foreign Trade