

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

F.No. 01/92/171/08/AM-18 / PC-VI/141/20142 Date of Order: 08.08.2019
Date of Dispatch: 08.08.2019

Name of the Appellant: Shreeyam Power & Steel Industries Ltd.,
Tulsiani Chambers, Nariman Point,
Mumbai.

IEC No. 1199001201

Order appealed against: Order-in-Original No. 37/21/040/00012/
AM09 dated 19/20.07.2017 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 5.9.2017 under Section 15 of the Foreign Trade (Development & Regulation) Act 1992, (FTDR Act) as amended from time to time, against Order-in-Original No. 37/21/040/00012/AM09-4433 dated 19/20.07.2017 passed by the Development Commissioner, Kandla, Special Economic Zone (DC, KASEZ).

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 one Advance Authorisation (AA) No. 3710000826 dated 08.07.2008 for a CIF value of Rs. 135310548.42/- from the office of DC, KASEZ who 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, that the appellant would export 5000 MT 'Non Alloy Steel Billets' for an FOB value of Rs. 13,81,25,000 within a period of 24 months from the date of issue of the AA.

3.2 The appellant submitted some export documents on 05.07.2012 in proof of fulfilment of export obligation, it was asked to rectify the deficiencies vide letter dated 31.01.2013. Since, it did not remove the deficiencies despite letters from the DC office, a Show Cause Notice dated 25.10.2016 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 16.11.2016 before the DC, the representative of the appellant stated that it had submitted detailed written reply to the show cause notice. However, the deficiencies were not removed.

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 + interest to the Custom Authority of Rs. 135310548.42/- plus interest vide Order-in-Original dated 19/20.07.2017 issued u/s 11(2) read with section 13 of FTDR Act, 1992, as amended.

4.0 Aggrieved by the adjudication order dated 19/20.07.2017; the appellant filed the present appeal. During the personal hearing held on 31.01.2019 before me, the representative of the Appellant stated that:

- (i) The company was a recognized status holder under the category of 'Export House' vide status certificate no. 014484 dated 16.07.2007. It actually imported item at Sr. No. 04 for a quantity of 4854.04 MT for which proportionate export to be made was 4045.00 MT for USD 32,49,995/-. It has made exports of 3008.620 MT worth USD 18,31,259/- within the validity period and 1095.940 MT after expiry of 24 months but within 36 months. Hence it has already completed 100% export obligation quantity and value wise.
- (ii) It filed the necessary documents with the RA for redemption of the said AA. However, the RA raised certain deficiencies and did not consider the exports made after expiry of the AA period.
- (iii) It intimated the DC that it has approached the PRC for granting relaxation in terms of para 2.58 of FTP, however, the DC did not take note of the same and decided the matter.

5.0 A report was sought from DC, KASEZ on the claims made by the appellant. DC vide letter dated 14.2.2019 informed that although the appellant has made 100% quantity wise exports on the basis of proportionate imports effected by it, however, due to deficiencies in the documents, a quantity of 2429.22 MT cannot be counted towards fulfillment of export obligation. There is a quantity wise as well as value wise shortfall unless it is regularized by the appropriate authority.

6.0 In the meantime, the appellant approached the Policy Relaxation Committee (PRC) and obtained extension of EO period from 24 months to 36 months and acceptance of copy of certain shipping bills towards fulfillment of export obligation. The appellant stated that it has submitted that requisite documents for closure of the said AA with the DC office, alongwith EFT challan No. 0002594787 dated 17.07.2019 for Rs. 4,14,220/- towards composition fee for EO extension from 24 months to 36 months and EFT challan no.

0002594876 dated 17.07.2019 for Rs. 3,26,290/- towards composition for regularization of shortfall in value addition.

7..0 I have gone through the facts of the case; oral & written submission made by the appellant and all other aspects relevant to the case. It is observed that the PRC, in its meeting held on 25.06.2019 has allowed EO extension for a period from 24 months to 36 months and allowed acceptance of certain shipping bills towards fulfillment of EO in respect of the subject AA subject to certain conditions. With such extension, the exports made by it beyond the initial export obligation period would be counted towards discharge of its obligation. In view of the decision taken by the PRC, it would be appropriate to take a relook at the whole matter.

8.0 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. 01/92/171/08/AM-18/ PC-VI

Dated: 08.08.2019

- (i) The Order-in-Original dated 19/20.09.2017 is set aside.
- (ii) The case is remanded to DC for De-Novo consideration.

CVI

(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

Copy To:

- ✓(1) Shreeyam Power and Steel Industries Ltd., 621, Tulsiani Chambers, Nariman Point, Mumbai.
- ✓(2) Shreeyam Power and Steel Industries Ltd., Plot no. 332, New GIDC Industrial Estate, Phase II, Village Mithirohar, Gandhidham, Kutch, Gujarat - 370201
- ✓(3) Development Commissioner, SEZ, Kandla.
- ✓(4) DGFT Website.

SGM 8/8/19
(Shobhit Gupta)

Dy. Director General of Foreign Trade

o/c

*Issued
8/8/19*