

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

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F.No. 18/01/2019-20/ECA.I/109

Date of Order:

09 .07.2021

Date of Dispatch:

13 .07.2021

Name of the Applicant:

McNally Bharat Engineering Co.  
Ltd., 4, Mangoe Lane, 5<sup>th</sup> & 7<sup>th</sup> Floor,  
Kolkata - 700001 ( New Address:  
Ecospace Campus 2B 11F/12, New  
Town, Rajarhat North 24 Parganas,  
Kolkata - 700160)

IEC No. :

0288021479

Order reviewed against:

Order-in-Appeal No. 18/40/17-  
18/ECA/KOL/Appeal-243/932  
dated 01.03.2019 passed by  
Additional DGFT, Chennai.

Order-in-Review passed by:

Shri Amit Yadav, DGFT

Order-in-Review

McNally Bharat Engineering Co. Ltd., Kolkata (here-in-after referred to as the 'Petitioner') filed a Review Petition dated 26.03.2019 under Section 16 of the Foreign Trade (Development & Regulation) Act, 1992 as amended (here-in-after referred to as 'the Act') against Order-in-Appeal (OIA) No. 18/40/17-18/ECA/KOL/Appeal-243/932 dated 01.03.2020 passed by Additional DGFT, Kolkata upholding the Order-in-Original (O-i-O) dated 03.07.2017 passed by Joint DGFT, Kolkata imposing a penalty of Rs.5,00,000/- in addition to payment customs duty and interest thereon, on the Petitioner.

Brief Facts of the Case

2.1 The Petitioner obtained an Advance Authorization No.0210150168 dated 04.11.2010 for a CIF value of Rs.1,82,47,848.14 with an export obligation for supply of Twin Bucket Bridge type blender Reclaimer within 36 months . As per conditions of the Authorisation, the Petitioner was required to submit the prescribed





documentary evidence of having fulfilled its export obligation (EO) and to pay duties on the imported raw materials left unutilized with it.

2.2 EO Period expired on 03.11.2013. The Petitioner did not submit the prescribed documents despite several reminders and opportunities of personal hearing. A Show Cause Notice dated 21.01.2016 under Rule 7 of Foreign Trade (Regulation) Rules, 1993 and under Section 11(2) of the Act. It was also granted an opportunity of personal hearing. The Petitioner neither submitted documents nor appeared for personal hearing. As the Petitioner failed to submit complete requisite documents, an Order in Original (OIO) was passed by the Adjudicating authority on 03.07.2017 imposing a penalty of Rs.5.00 lakhs in addition to payment of customs duty and interest thereon, on the Petitioner. The IEC of the Petitioner was suspended on 19.12.2018.

2.3 The Petitioner filed an appeal on 29.01.2019 before the Appellate Authority against OIO dated 03.07.2017. The Appellate Authority dismissed the appeal as time-barred vide the OIA dated 01.03.2019.

3.1 The Petitioner has now submitted a review petition dated 26.03.2019 to the undersigned stating:

- (i) It imported only Slew bearing for a value of INR 1,05,10,192.00 (USD 234080.00) the said AA No.0210156771 dated 25.03.2011 and supplied under deemed export basis 1 Number Twin Bucket Bridge Type Blender Reclaimer valued at Rs.10,54,50,000.00 more than the stipulated EO of valued at Rs.21441587.00 and realized Amount being 10,54,50,000.00.
- (ii) It upon fulfilment of Export Obligation and for claiming TED refund submitted all statutory Export documents required to be submitted as per Para 8.2C read with Para 8.3.1(ii) of HBP under TED file No.02/40/083/00063/AM12 of the office of the Addl. DGFT, Kolkata.
- (iii) It has submitted the following required documents before the office of Addl. DGFT, Kolkata on 02<sup>nd</sup> April, 2014 towards proof of supply of 1 Number Twin Bucket Bridge Type Blender Reclaimer.

- (a) Copy of Supply Invoices
- (b) Copy of Bank Realisation Certificate (BRC)
- (c) Photocopy of Bill of Entry
- (d) Statement of Import and Export

- (iv) The Joint Director General of Foreign Trade has issued Show Cause Notice under Rule 7 dtd. 19.04.2016 of the Foreign Trade Rules 1993 why we should



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not be put under DEL list. Thereafter without giving further notices or calling for a personal hearing the adjudicating authority placed the firm under Denied Entity List on 19.12.2018.

- (v) It had requested the office of the Addl. DGFT, Kolkata to provide the copy of the Order-in-Original as the concerned person was sick for quite long period of time due to renal cancer and also we could not locate the copy of Order-in-Original.
- (vi) It had furnished an appeal on 29<sup>th</sup> January, 2019 u/s 15 of FTDR (1992) before the Addl. DGFT, Kolkata enclosing the required documents towards fulfilment of export obligation.
- (vii) The Appellate Authority has passed the Order against the appeal filed without giving any opportunity of personal hearing to it. The sole reason is that it has failed to submit the appeal within the statutory period.

3.2 The Petitioner has prayed for the following:-

- (i) Order-in-Appeal No. 18/40/17-18/ECA/KOL/Appeal-243/932 dated 04.03.2019 passed by the Addl. DGFT, Kolkata be set aside.
- (ii) Waiver of fiscal penalty of Rs.5,00,000/-. On the ground that past two years the company is undergoing financial hardship and incurred huge losses. Audited Financial Statement is enclosed.
- (iii) Waiver from payment of Customs Duty and Interest as the documentary evidence towards fulfilment of EO has been submitted.
- (iv) Condonation of delay in filing appeal u/s 15 as sole concerned person of Export and Import division of our organization Mr. Debasish Mukhopadhyay was remained indisposed due to his Renal Cancer.
- (v) Revocation of IEC suspension order No. 18/40/FA/2017-17/ECA/CAL/714 dated 19.12.2018/
- (vi) Allowing the review petition and delay submission of appeal petition in the statutory time period on Humanitarian grounds as the sole authorized signatory of the Export -Import department had remained indisposed due to his renal cancer treatment for which all medical papers are being submitted with this appeal petition for your merciful consideration of our humble truthful submissions.

4.1 The Petitioner was granted personal hearing on 16.01.2020 which was attended by Shri Utpal Kumar Saha, AGM of the Petitioner. He informed that the





Petitioner submitted all required documents and case be redeemed and export obligation be discharged. The Petitioner was directed to submit all required documents if not submitted earlier. A report was also called from RA, Kolkata vide letter dated 27.01.2020 a copy of which was also endorsed to the petitioner. Subsequent reminders were also issued on 12<sup>th</sup> March, 21<sup>st</sup> April and 10<sup>th</sup> September, 2020 with copies endorsed to the petitioner.

4.2 RA, Kolkata vide their letters dated 24.09.2020 and 18.11.2020 have informed that the Petitioner has not submitted the complete export documents and there are deficiencies in the export documents that have been submitted. RA, Kolkata has identified the following deficiencies:

- a) Firm had applied for advance authorisation against invalidation letter intending for deemed export. Authorisation was issued under physical export notification but the firm had done deemed export.
- b) The copies of the invoices provided are not duly signed by the jurisdictional Central Excise Authority certifying details of supply, quantity, values and data supply.
- c) The export documents don't have any signature/seal in any Government authority (excise or custom)
- d) The firm has not provided the original BRC.

RA, Kolkata has also indicated that the firm has not provided any further documents for processing the case.

4.3 I have gone through the facts and records carefully and observed that the Petitioner has not submitted the complete prescribed export documents even after seven years of expiry of export obligation period. The Petitioner has violated the provisions of conditions of Advance Authorization and provisions of Foreign Trade Policy and its Procedures

5. I, therefore, in exercise of powers vested in me under Section 16 of the Act pass the following order:

Order

F.No. 18/01/2019-20/ECA.I/110

Dated: 13 .07.2021

The Review Petition dated 26.03.2019 is dismissed and Order-in-Appeal No. 18/40/17-18/ECA/KOL/ Appeal-243/932 dated 01.03.2020 is upheld.



(Amit Yadav)

Director General of Foreign Trade



**Copy To:**

- (1) McNally Bharat Engineering Co. Ltd., 4, Mangoe Lane, 5<sup>th</sup> & 7<sup>th</sup> Floor, Kolkata - 700001 ( New Address: Ecospace Campus 2B 11F/12, New Town, Rajarhat North 24 Parganas, Kolkata - 700160)
- (2) Addl. DGFT, 4, Esplanade East, Kolkata - 700069
- (3) DGFT website

*Dilip Kumar*

(Dilip Kumar)

Dy. Director General of Foreign Trade



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