

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

F.No. 18/35/2019-20/ECA.I/

Date of Order : 18 .11.2021

Date of Dispatch: 22.11.2021

Name of the Applicant:

McNally Bharat Engineering Company Limited,  
Ecosope Campus 2B, 11F/12, New Town  
Rajarhat North, 24 Parganas, Kolkata-600 160.

IEC No.

0288021479

Order reviewed against:

Order-in-Appeal No. 18/69/17-18/ECA/KOL/  
Appeal-210/139 dated 13.06.2019 passed by  
Additional DGFT, Kolkata

Order-in-Review passed by:

Shri Amit Yadav, DGFT

**Order-in-Review**

McNally Bharat Engineering Company Limited, Kolkata (here-in-after referred to as 'the Petitioner') filed a Review Petition dated 14.11.2019 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. 18/69/17-18/ECA/KOL/Appeal-210/139 dated 13.06.2019 passed by Additional DGFT, Kolkata upholding the Order-in-Original (OIO) No. 02/24/040/00194/AM'10/ECA-05/17-18 dated 22.05.2017 passed by Joint DGFT, Kolkata imposing a penalty of Rs. 25,00,000/- in addition to payment of customs duty and applicable interest, on the Petitioner.

**Brief of the case**

2.1 The Petitioner obtained an Advance Authorization No. 0210136596 dated 18.01.2010 for a CIF value of Rs. 4,30,00,000/- (US\$ 9,19,786.00) with an obligation to export for an FOB value of Rs. 17,56,46,142.00 to be completed within 36 months from the date of issue of the said authorization. As per the condition of the Authorization, the Petitioner was required to submit the prescribed documentary evidence of having fulfilled its export obligation (EO) within two months after the expiry of export obligation period.



2.2 Export Obligation Period expired in January, 2013. The Petitioner neither submitted complete documents for redemption of export obligation nor paid the required customs duty + interest towards regularization of the case. A notice dated 06.01.2014 was issued to the Petitioner under Rule 7 of Foreign Trade (Regulation) Rules, 1993, calling upon the Petitioner to show cause as to why it should not be put under DEL and why fiscal penalty should not be imposed on it. It was also granted an opportunity of personal hearing (PH). The Petitioner did not respond and was therefore placed under DEL on 11.04.2014. A show cause notice dated 17.06.2015 for action under section 11(2) of the Act was issued. The Petitioner was also granted an opportunity of PH but the Petitioner neither appeared in the PH nor submitted the complete documents evidencing fulfillment of EO and therefore an OIO dated 22.05.2017 was passed by the Adjudicating Authority imposing a penalty of Rs.25,00,000/- in additions to payment of custom duty plus applicable interest.

2.3 The Petitioner filed an appeal before the Appellate Authority on 11.09.2017. A PH was granted on 17.11.2017 by the Appellate Authority which was attended by the representatives of the Petitioner. They informed that they have fulfilled the EO and original export documents have already been submitted in TED file bearing No. 02/40/083/00018/AM12 of RA, Kolkata. The Petitioner was requested to submit (i) Statement of supplies showing quantity of supply, date of such supply and its value duly certified by the receiving unit and their jurisdictional Central Excise Authority (ii) Statement showing correlation between the commercial invoices and Tax invoices-cum-challans duly certified by any competent authority. The Petitioner vide letter dated 20.03.2019 stated they had fulfilled E.O. and submitted all the required documents, but the Petitioner failed to remove the deficiencies and the Appellate Authority passed an order dated 13.06.2019 upholding the order of the Adjudicating Authority.

3.1 The Petitioner has now submitted a Review Petition dated 14.11.2019 to the undersigned. The Petitioner has submitted the following:-

- (i) it has been under tremendous financial hardship since last couple of years and has been incurring huge amount of losses for the past few years.
- (ii) it had imported various items for a value of Rs.1,32,60,547/- against the Advance Authorisation No. 0210136596 dated 18.01.2010 and supplied under deemed export basis Slewable Book Stacker and Bucket Wheel Reclaimer valued at Rs.15,59,34,117/- which is more than the stipulated Export Obligation.
- (iii) it had submitted the remaining required documents as per the deficiency memo before the office of Addl. DGFT, Kolkata on 21<sup>st</sup> May, 2019 towards proof of supply of 1 Twin Bucket Bridge type Blender Reclaimer,



(iv) inspite of submitting all the documents on 21<sup>st</sup> May, 2019 before the Appellate Authority, the OIO was upheld without taking cognizance of the documents submitted on 21<sup>st</sup> May, 2019.

3.2 The Petitioner has prayed that :

- (i) Order-In-Appeal No 18/69/17-18/ECA/KOL/Appeal-210/131 dated 13.06.2019 by the Addl. DGFT, Kolkata be set aside,
- (ii) Fiscal Penalty of Rs.25,00,000/- be waived off on the grounds that past two years the company is under going financial hardship and incurred huge losses,
- (iii) Payment of Customs Duty and Interest be waived off as the documentary evidences towards fulfillment of EO has been submitted.

4 The Petitioner was granted personal hearing on 02.09.2021 which was attended by Shri Utpal Kumar Saha, DGN, Indirect Taxation of the Petitioner. He informed that all documents were submitted before RA, Kolkata. RA, Kolkata acknowledged that the documents were filed by the Petitioner before the passing of the order by the Appellate Authority but could not be examined while passing the OIA dated 13.06.2019.

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

**ORDER**

F.No.18/35/2019-20/ECA.I/ 332

Date: 22.11.2021

The Review Petition dated 14.11.2019 is admitted. Order-in-Appeal No. 18/69/17-18/ECA/KOL/Appeal-210/139 dated 13.06.2019 is set aside and the case is remanded back to RA, Kolkata for de-novo consideration of the case.



*(Signature)*

(Amit Yadav)

Director General of Foreign Trade

Copy to:-

1. McNally Bharat Engineering Company Limited, Ecosope Campus 2 B, 11F/12, New Town Rajarhat North, 24 Parganas, Kolkata-600 160.
2. The Addl. Director General of Foreign Trade, 4, Esplanade East, Kolkata-700 069.
3. CEIB, 8<sup>th</sup> Floor, 'B' Wing, Janpath Bhawan, Janpath, New Delhi – 110001.
- ✓ 4. DGFT Website.

*(Signature)*

(Dilip Kumar)

Dy. Director General of Foreign Trade