

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

F.No. 18/02/2019-20/ECA.I/

Date of Order: 03.06.2022

Date of Dispatch: 06.06.2022

Name of the Applicant:

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

IEC No. :

0209013494

Order reviewed against:

Order-in-Original No. 18/36/FA/ CRAD/
17-18/EA/CAL ALS-A/02/21/40/151/
AM11 dated 19.05.2017 passed by Joint
DGFT, Kolkata.

Order-in-Review passed by:

Shri Santosh Kumar Sarangi, 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-Original No. 18/36/FA/CRAD/17-18/EA/CAL ALS-A/02/21/40/151/AM11 (OIO) dated 19.05.2017 passed by Joint DGFT, Kolkata imposing a penalty of Rs.50,000/- in addition to payment customs duty and applicable interest thereon, on the Petitioner.

Brief Facts of the Case

2.1 The Petitioner obtained an Advance Authorization No.0210146721 dated 19.08.2010 for a CIF value of Rs.5,38,957/- with an obligation to export for an FOB value of EURO 3961165.05 (Rs.24,48,00,000/-) within a period of 36 months from the date of issue of the authorization. As per conditions of the Authorisation, the Petitioner was required to submit the prescribed documentary evidence of having fulfilled its export obligation (EO) within two months of expiry of EO period.

2.2 EO Period expired on 18.08.2013. The Petitioner neither submitted the prescribed documents nor regularized the case by paying customs duty plus applicable interest. A

3.6.



Show Cause Notice dated 21.01.2016 under Rule 7 of Foreign Trade (Regulation) Rules, 1993 was issued for placing the Petitioner's IEC under DEL and imposition of fiscal penalty. It was also granted an opportunity of Personal Hearing (PH). The Petitioner did not respond. The Adjudicating Authority observed that the Petitioner imported goods in violation of provisions of the export-import policy and diverted duty free imported goods for purpose other than exports and passed OIO dated 19.05.2017 imposing a penalty of Rs.50,000/- in addition to payment of customs duty and applicable interest under Sections 13 & 11 of the Act. The IEC of the Petitioner was placed under DEL on 09.05.2017.

2.3 The Petitioner did not file an appeal before the Appellate Authority against OIO dated 19.05.2017.

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

(i) it made import for CIF value of Rs.4,64,095.62 and carried out deemed export of Rs. 16,02,91,449.46,

(ii) the sole concerned person Mr. Debasish Mukhopadhyay of the export and import division of its organization remained indisposed due to his renal cancer which was the sole reason for non compliance of statutory submission of all documents towards EO fulfilment,

(iii) it was under tremendous financial hardship since last two years and has been incurring huge amount of losses for the past few years,

(iv) the Adjudicating Authority passed OIO dated 19.05.2017 and suspended its IEC on 09.01.2018 without giving an opportunity of personal hearing.

(v) it has not acted dishonestly or contumaciously or with the deliberate and distinct object of breaching the law which would invite deterrent punishment by way of penalty.

3.2 The Petitioner has prayed that:

(i) OIO dated 19.05.2017 be set aside,

(ii) fiscal penalty of Rs. 50,000/- be waived off,

(iii) payment of customs duty and interest thereon be waived off,

(iv) IEC suspension order dated 09.01.2018 be revoked.

4.1 The Petitioner was granted personal hearing to the Petitioner on 16.01.2020 which was attended by Shri Utpal Kumar Saha, AGM and Shri Hemant Basu, Consultant of the Petitioner. They informed that the Petitioner submitted all required documents and case be redeemed and Export Obligation Discharged Certificate (EODC) issued. A report was called from RA, Kolkata and the Petitioner was also requested to submit all requisite documents if



not submitted earlier vide the letter dated 27.01.2020. RA, Kolkata also furnished a factual report.

4.2 The Petitioner was again granted personal hearings on 18.04.2022 which was attended by Shri Utpal Kumar Saha, AGM of the Petitioner and Shri Arjun Upadhyay, DDG from RA, Kolkata. RA, Kolkata informed that the Petitioner had not submitted all the documents. However, the Petitioner claimed that it had submitted all documents to RA, Kolkata. Reviewing Authority directed RA, Kolkata to recheck the records and posted the matter for hearing on 25.04.2022. In the PH held on 25.04.2022 RA, Kolkata was represented by Ms Dona Ghosh, Jt. DGFT, Shri Anand Mohan Mishra, DDG and Shri Arjun Upadhyay, DDG. RA, Kolkata informed that the import items indicated in Advance Authorization and Bill of Entry do not match the invoice and the Petitioner did not fulfil accountability clause. Further, the Petitioner submitted same documents in stages. Initially, these did not have mention or authorization number and signature of project authority. RA, Kolkata also informed that certificate from Central Excise Authority regarding supply of items was unavailable. The representative of the Petitioner informed that as per ANF-4F which the firm had submitted it is stated that in case of supply of items which are non excisable or supply of excisable items to a unit producing non excisable product(s), a project authority certificate (PAC) certifying quantity, value and date of supply would be acceptable in lieu of excise certification.

5.1 Clarifications on three issues were sought from the Petitioner. The Petitioner submitted its reply vide letter dated 11.05.2022. The Petitioner was requested to clarify as to whether its manufacturing unit in which the export item 'ASH HANDLING SYSTEM Containing all import items are net to net basis' has been manufactured, is registered under Central Excise, and if so, whether the export item is exempt from payment of excise duty. The Petitioner clarified that it had already mentioned its Factory Address and its Excise Registration No. as AABCM9443R1XM010. The export items called Ash Handling Systems is being assembled and erected at the premises of the customer and the imported items are used in assembling and manufacturing of the Ash Handling Systems and supplied to customer under deemed export as per Foreign Trade Policy.

5.2 The Petitioner was requested to indicate the list of imported items and how they were utilized as part of export/deemed export. The Petitioner indicated the three import items which were assembled and used for manufacturing of new product 'Ash handling System' and duly delivered to the customer at project site. The said items are an integral part of the 'Ash Handling System'.

5.3 On the third issue regarding mismatch of export items of 'Ash Handling System' which are on net to net basis the Petitioner clarified that in all invoices, the detailed project name as 'Ash Handling System' is clearly mentioned.



6 I have gone through the records and facts. The case needs to be re-examined in the light of fresh submissions by the Petitioner.

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

Order

F. No. 18/02/2019-20/ECA.I/103

Dated: 03.06.2022

This case is remanded to RA, Kolkata for de novo consideration with the directions to take the fresh documents submitted by the Petitioner into account.



Santosh Kumar Sarangi
3.6.2022

(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy To:

- (1) McNally Bharat Engineering Co. Ltd., 4, Mangoe Lane, 5th & 7th 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) CEIB, 8th Floor, 'B' Wing, Janpath Bhawan, New Delhi - 110001
- ✓ (4) DGFT website

Dilip Kumar

(Dilip Kumar)

Dy. Director General of Foreign Trade