

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

F. No. 18/29/2022-23/ECA.I/

Date of Order : 27.09.2023

Date of Despatch: 29.09.2023

Name of the Appellant:

M/s Fabrimax Engineering Pvtl. Ltd.
Plot No. J-20, MIDC, Hingna Road,
Nagpur – 440016.

IEC No.

5010000806

Order Reviewed against:

Order-in-Original No.
50/24/040/00009/AM17 dated 21.07.2022
passed by Addl. DGFT, Nagpur.

Order-in-Review passed by:

Santosh Kumar Sarangi, DGFT

Order-in-Appeal

M/s Fabrimax Engineering Pvt. Ltd. (here-in-after referred to as 'the Appellant') having IEC No. 5010000806 filed an Appeal dated 30.08.2022 under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992, as amended (here-in-after referred to as 'the Act') against Order-in-Original No. 50/24/040/00009/AM17 dated 21.07.2022 passed by Addl. DGFT, Nagpur imposing a penalty of Rs. 4,53,93,523.00/- (equal to CIF value) plus penalty amount i.e. two times of duty saved amount in addition to duty customs saves plus interest thereon, on the appellant and its Proprietor/Partners/Directors.

Brief of the Case

2. The Appellant had obtained an Advance Authorization No. 5010002300 dated 15.09.2016 with an export obligation of Rs. 7,58,24,814.00 for a CIF value of Rs. 4,53,93,523.00 to be completed within 18 months from the date of issue of authorization. They had also obtained following 2 Advance Release Order (ARO) for its suppliers from RA, Nagpur, (i) ARO No.5044000636 dated 15.09.2016 for M/s Jindal Steel & Power Limited (JSPL) and (ii) ARO No.5044000637 dated 15.09.2016 for M/s Uttam Value Steels Limited (UVSL).



3. The export obligation period (EOP) expired on 14.03.2018. The Appellant did not submit the documents evidencing fulfillment of export obligation. A Demand cum Show Cause Notice dated 22.02.2019 was issued for action under Section 14 under Section 11(2) of FTDR Act, 1992.

4. The adjudicating authority convinced that the appellant and its Proprietor/Partners/Directors, as the case may be, are guilty of violating of conditions of the license in question thereby liable to a penalty u/s 11(2) of FTDR Act, 1992. Hence, the adjudicating authority passed an Order-in-Original No. 50/24/040/00009/AM17 dated 21.07.2022 imposing a penalty of Rs. 4,53,93,523.00/- (equal to CIF value) plus penalty amount i.e. two times of duty saved amount in addition to duty customs saves plus interest thereon, on the appellant and its Proprietor/Partners/Directors as there was the appellant has submitted export documents and found that as per Para 4.27 (a) of HBP of FTP all shipments were fixed under duty free. Those shipping bills are not considered for fulfillment of export obligation. In addition, no further benefits of FTP will be given to the appellant and its Proprietor/Partners/Directors is/are directly involved in the day to day activities of the firm.

5.1 Now, the Appellant has filed the present appeal dated 30.08.2022 on the following grounds :-

- (i) No demand is leviable in the light of non-utilization of advance authorization benefits by the appellant.
- (ii) Submission of original ARO letter issued to the supplier is not legally mandated for surrender of advance authorization.
- (iii) Affidavit by the supplier should serve as a sufficient proof for surrender of advance authorization.
- (iv) Appellant is not required to fulfill export obligation and has not violated any conditions of the authorization.

5.2 The Appellant has prayed for :-

- (i) Set aside the Order-in-Original dated 21.07.2022.
- (ii) Pass any such order or orders as may be deemed fit and proper in the facts and circumstances of the present case.



6. The Appellate Authority granted the personal hearing to the Appellant on 12.09.2023, wherein, Shri Varun Vijaywargi, Authorised Representative attended the Personal Hearing. It is submitted that they have not availed any benefit against the subject license. In fact they have applied for surrender of license, within one year after obtaining the license. So as no benefit was availed by them, question of fulfillment of obligation does not arise. Two Advance Release Orders (AROs) are obtained (i) ARO No.5044000637 dated 15.09.2016 in the name of M/s Uttam Value Steel Ltd. and (ii) ARO No.5044000636 dated 15.09.2016 in the name of M/s Jindal Steel & Power Ltd. But out of these, one original ARO was not received by M/s Jindal Steel & Power Ltd. So they have applied to RA, Nagpur for issuance of duplicate ARO. In this regard affidavit was also submitted intimating that they have never received the copy of ARO. In fact FIR copy was also submitted to RA, Nagpur in reply to a deficiency letter issued by RA, Nagpur. Regarding non-utilization certificate, they along with M/s Uttam Value Steel Ltd and M/s Jindal Steel Power Ltd approached the concerned authority (Excise) to issue the same but authority concerned is reluctant to issue such certificate. They further, stated that the declaration was already submitted on stamp paper. However, in case, if required, non-utilization certificate from M/s Uttam Value Steel Ltd and M/s Jindal Steel Power Ltd., can be submitted.

6.1 Shri V. Sraman, Addl. DGFT, RA, Nagpur had attended the meeting. It was intimated that they have asked the firm for original of both the copies of ARO, but as per file record both the AROs are not available in the file also. Regarding non-utilization certificate, party can obtain non-utilization certificate from ARO holders i.e. (i) M/s Uttam Value Steel Ltd and (ii) M/s Jindal Steel Power Ltd and submit the same and that should be sufficient.

7. I have gone through the facts and records of the case carefully. The Petitioner had obtained an Advance Authorization No. 5010002300 dated 15.09.2016 with an export obligation of Rs. 7,58,24,814.00 for a CIF value of Rs. 4,53,93,523.00 to be completed within 18 months from the date of issue of authorization. The Petitioner had also obtained 2 Advance Release Order (ARO) for its suppliers from RA, Nagpur, (i) ARO No.5044000636 dated 15.09.2016 in the name of M/s Jindal Steel & Power Limited (JSPL) and (ii) ARO No.5044000637 dated 15.09.2016 in the name of M/s Uttam Value Steels Limited (UVSL). RA, Nagpur have asked the Petitioner to submit original copies of both the AROs, but the firm did not submit the same. The export obligation period (EOP) had expired on 14.03.2018. The Petitioner did not submit the documents evidencing fulfillment of export obligation and stated that since they had not utilized the license therefore they should not be penalised. The adjudicating authority had passed an Order-in-Original No.50/24/040/00009/AM17 dated 21.07.2022 imposing a penalty of Rs. 4,53,93,523.00/- (equal to CIF value) plus penalty amount i.e. two times of duty saved amount in addition to duty customs saves plus interest thereon.

27.9.



8. I therefore, in exercise of powers vested in me under Section 15 of the Act pass the following order:-

ORDER

F.No. 18/29/2022-23/ECA.I/155

Dated : 27.09.2023

The Appeal dated 30.08.2022 is admitted. The Order-in-Original No.50/24/040/00009/AM17 dated 21.07.2022 passed by Addl. DGFT, Nagpur is set aside. The case is remanded back to RA, Nagpur for de-novo consideration and to examine the non-utilization certificate furnished by the ARO holders and take a decision expeditiously.



[Signature]
(Santosh Kumar Sarangi)
Director General of Foreign Trade

Copy to:-

1. M/s Fabrimax Engineering Pvtl. Ltd., Plot No. J-20, MIDC, Hingna Road, Nagpur – 440016.
2. The Addl. Director General of Foreign Trade, Nagpur.
3. Central Economic Intelligence Bureau, 1st, 6th& 8th Floor, 'B' Wing, JanpathBhawan, Janpath, New Delhi – 110001.
- ✓ 4. DGFT Website.

[Signature]
(A.S. Lungreishang)
Dy. Director General of Foreign Trade