

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

F.No. 18/13/2019-20/ECA.I/130

Date of Order: 26 .07.2021

Date of Dispatch: 26 .07.2021

Name of the Applicant:

Chandra Metal Limited, Shed 1 &2, MNNIT
Industrial Estate, Tellarganj, Allahabad -
211004

IEC No. :

0693003341

Order reviewed against:

Order-in-Appeal No. 03/ 16/144/ 00015
/AM.19/2031 dated 06.05.2019 passed
by Addl. DGFT, Mumbai

Order-in-Review passed by:

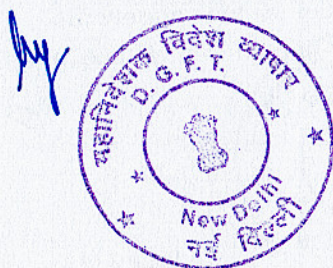
Shri Amit Yadav, DGFT

Order-in-Review

M/s Chandra Metal Limited, Allahabad (here-in-after referred to as 'the Petitioner') filed a Review Petition dated 01.07.2019 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.03/16/144/00015/AM.19/2031 dated 06.05.2019 passed by the Appellate Authority, Mumbai upholding the Order-in-Original (OIO) dated 12.02.2018 passed by the Adjudicating Authority i.e. Dy. DGFT, Mumbai, imposing a penalty of Rs. 40.00 lakhs in addition to payment of customs duty + interest on the Petitioner and its Directors.

Brief Facts of the Case

2.1 The Petitioner obtained an Advance Authorization No.0310332914 dated 03.06.2005 for a CIF value of Rs. 2,81,10,872/- (US\$ 6,42,534.22) with an obligation for an FOB value of Rs. 3,25,89,286/- (US \$ 7,44,898) within a period of 24 months from the date of issue of said Authorization. As per conditions of the Authorisation, the petitioner was required to submit the prescribed documentary evidence of having fulfilled its export obligation (EO). However, the Petitioner failed to submit the prescribed documents.



2.2 A demand notice dated 05.09.2007 was issued directing the Petitioner to submit the prescribed documents. A Show Cause Notice dated 11.10.2017 was issued to the Petitioner under Section 14 for action under Section 11(2) of the Act to pay customs duty + interest or produce the documents showing the fulfilment of EO. The Petitioner was granted Personal Hearing (PH) on 14.12.2017 and again on 23.1.2018 but the Petitioner did not attend any of the hearings. It was also granted an opportunity to avail the benefit under Public Notice No.34/2015-2020. As the Petitioner failed to submit the requisite documents and also did not attend the personal hearings, an OIO No.03/24/040/00183/AM.06 dated 12.02.2018 was passed by Dy. DGFT, Mumbai imposing a penalty of Rs.40.00 lakhs in addition to payment of customs duty + interest on the Petitioner and its Directors.

2.3 The petitioner filed an Appeal on 05.04.2018 before the Additional DGFT, Mumbai against the above O-I-O under Section 15 of the Act. The Appellate Authority granted PHs to the Petitioner on 13.11.2018 and 27.03.2019. The Petitioner submitted some documents including Amendment No.1 to Project Authority Certificate dated 25.02.2005 indicating the name of the Petitioner as one of the sub-contractors. The Appellate Authority observed (i) the Petitioner did not submit Central Excise attested invoices & payment certificate; and (ii) it was not clear from Bank Certificate for Payment for domestic supplies that payments had been made by the project authority M/s ABB Ltd. The Appellate Authority, vide the Order-in-Appeal dated 06.05.2019 dismissed the appeal.

3. The Petitioner submitted a Review Petition dated 01.07.2019 to the undersigned. The Petitioner has submitted the following:

- (i) Delhi Metro Rail Corporation (DMRC) awarded a contract to ABB Limited, New Delhi for supply, installation and commissioning of traction electrification, power supply, power distribution and ACADA system under the procedure of International Competitive Bidding. ABB Limited placed purchase order dated 11.02.2005 with it. On receipt of purchase order it obtained Advance Authorization dated 03.06.2005 from RA, Mumbai.
- (ii) It imported 228.63 MT of import items against the authorized quantity of 193.255 MT. It fulfilled the export obligation, but failed to inform RA, Mumbai and to redeem the Authorization.
- (iii) Supply of goods to project financed by Department of Economic Affairs under International Competitive Bidding comes under the definitions of deemed export in terms of Para 8.1 of Chapter -8 of Foreign Trade Policy. It supplied the export item to ABB Limited under deemed export as defined in Chapter 8 of Foreign Trade Policy. It received full consideration from ABB Limited for the supplies made.
- (iv) It submitted invoices issued by ABB Limited to it for supply of goods and certificate issued by bank showing receipt of payment in respect of goods supplies by the Petitioner to M/s ABB Limited. It could not get the invoices attested by the jurisdictional Central Excise officers.



(v) It submitted a certificate issued by bank showing receipt of payment against each sale invoice at the time of Appeal and claimed that the nexus between the invoices and payments received in its bank account is therefore established.

(vi) It requested to set aside O-I-O dated 12.02.2018 and O-I-A dated 06.05.2019.

4. The Petitioner was granted an opportunity of Personal Hearing on 16.10.2020. Shri Prasanjit Pathak and Shri Mukteshwar Nath Dubey, Advocates appeared through Video conferencing (VC). Counsel of the Petitioner informed that the Bill of Entry and other records are very old and they can not get them certified. However, the petitioner has fulfilled the export obligation and therefore, no penalty should be imposed. The Petitioner sought time to submit the Project Authority Certificate and other relevant documents. The Petitioner vide its letter dated 24.12.2020 informed that it was a sub-contractor to the Main contractor M/s ABB Ltd and the payments were made by the Project Authority directly to M/s ABB Ltd. However, the Petitioner is unable to submit details of payment certificate on account of the project from M/s ABB Ltd., In lieu of the same, the petitioner has submitted a chart along with Bank statement showing receipts of payment from M/s ABB Ltd.

5. I have gone through the records and facts carefully. The Petitioner has not submitted Project Authority Certificate (PAC) in the prescribed proforma from the Main contractor nor submitted the mandatory Central Excise attested invoices. It submitted bank certificate of payment for domestic supply from which, it cannot be ascertained that payment has been made by the Main contractor to the Petitioner for the project.

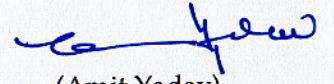
6. I, therefore, in exercise of powers vested in me under Section 16 of the Act pass the following order:

Order

F.No. 18/13/2019-20/ECA.I

Dated: .07.2021

The Review Petition dated 01.07.2019 is dismissed. The Order-in-Appeal No. 03/16/144/00015/AM.19/2031 dated 06.05.2019 and the Order-in-Original No. 03/24/040/00183/AM.06 dated 12.02.2018 are upheld.

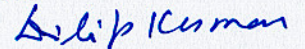


(Amit Yadav)

Director General of Foreign Trade

Copy To:

- (1) Chandra Metal Limited, Shed 1 &2, MNNIT Industrial Estate, Tellarganj, Allahabad - 211004
- (2) The Addl. Director General of Foreign Trade, Nishtha Bhawan, New C.G.O. Complex, 48, Vithaldass Thackersey Marg, New Marine Lines, Churchgate, Mumbai-400 020.
- (3) CEIB, 6th Floor 'B' Wing, Janpath Bhawan, Janpath, New Delhi -110006
- (4) DGFT Website



(Dilip Kumar)

Dy. Director General of Foreign Trade

