

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

F.No. 18/22/2022-23/ECA.I/

Date of Order : 22.02.2023

Date of Despatch: 23.02.2023

Name of the Appellant(s):

- (i) Dr. R.B. Tiwari, Chairman, M/s Clarion Organics Ltd. (IEC No. 0394065328), Village-Dewadi, Post-Tumsar Road, Dist-Bhandara, Maharashtra-441912.
- (ii) Dr. Vipul J. Doshi, Independent Director, M/s. Clarion Organics Ltd. (IEC No. 0394065328) Village-Dewadi, Post-Tumsar Road, Dist-Bhandara, Maharashtra-441912.
- (iii) Shri Vivek Tiwari, Director, M/s Clarion Organics Ltd. (IEC No. 0394065328), Village-Dewadi, Post-Tumsar Road, Dist-Bhandara, Maharashtra-441912.
- (iv) Dr. Divya Patel, Director, M/s Clarion Organics Ltd. . (IEC No. 0394065328), Village-Dewadi, Post-Tumsar Road, Dist-Bhandara, Maharashtra-441912.

Order appealed against:

Order-in-Original No.50/24/040/00013/AM17  
dated 10.06.2022 passed by Addl. DGFT, Nagpur

Order-in-Appeal passed by:

Santosh Kumar Sarangi, DGFT

**Order-in-Appeal**

Dr. R.B. Tiwari, Chairman, Dr. Vipul J. Doshi, Independent Director, Shri Vivek Tiwari, Director & Dr. Divya Patel, Director of M/s Clarion Organics Ltd. (here-in-after referred to as the 'Directors') of the firm M/s Clarion



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Organics Ltd. having IEC No. 0394065328 (here-in-after referred to as the 'firm') filed appeals all dated 24.06.2022 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. 50/24/040/00013/AM17 dated 10.06.2022 passed by Adjudicating Authority, Nagpur imposing penalty of Rs. 2,09,32,200/- in addition to payment of customs dues on the Firm and its Proprietor/ Partners / Directors. The Adjudicating Authority also ordered that no further licence shall be issued to the Firm or any other firm in which the Proprietor/Partners/Directors for the Firm is/ are directly involved in the day to day activities of that firm as per Provisions of the Handbook read with Section 7(1) of the Act.

### **Brief Facts of the Case**

2. The firm M/s Clarion Organic Ltd. obtained Advance Authorizations No. 5010002312 dated 16.12.2016 for CIF value of Rs. 1,04,66,000/- with an obligation to export for FOB value of US\$ 7,72,084 to be completed within a period of 18 months. The Firm did not fulfill export obligation and therefore RA, Nagpur issued Demand Cum Show Cause Notice dated 24.03.2022 under Section 14 for action under Section 11(2) of Foreign Trade (Development & Regulation) Act, 1992. Additional DGFT, Nagpur (Adjudicating Authority) observed that the Firm and its Proprietor/Partners/Directors are guilty of violating the conditions of authorization and also did not reply to SCN and did not appear for personal hearing. The Adjudicating Authority passed OIO dated 10.06.2022 imposing a penalty of Rs. 2,09,32,200/- in addition to payment of customs dues on the Firm and its Proprietor/ Partners / Directors. The Adjudicating Authority also ordered that no further licence shall be issued to the Firm or any other firm in which the Proprietor/Partners/Directors for the Firm is/ are directly involved in the day to day activities of that firm as per Provisions of the Handbook read with Section 7(1) of the Act.

3. The Directors (the Appellants) filed appeals all dated 24.06.2022 against OIO dated 10.06.2022. They submitted the following:

(i) the firm imported the Raw Materials allowed under the Authorisation and used in manufacture of export product and exported for fulfilment of export obligation,

(ii) due to inadvertent oversight and human error all shipping bills for export were filed under 'Free' scheme instead of 'AA' scheme. The Firm did not



indicate authorisation number on the shipping bills. Therefore the exports made by it have not been reflected towards fulfilment of EO,

(iii) Adjudicating Authority passed OIO dated 10.06.2022 ex-party without considering the documents evidencing export placed on record and without affording an opportunity of hearing,

(iv) the firm filed an application before the PRC vide File No. HQPRCAPPLY00001056 AM23 dated 22.04.2022 with a request to consider export made vide 'Free' Shipping Bills towards fulfilment of EO or grant 12 months extension in export obligation,

(v) the firm is also in process of requesting customs department to permit conversion of these shipping bills from 'Free' to 'AA' Scheme,

(vi) neither in the SCN nor in the impugned order, there is any allegation against the Appellants. In the absence of mens rea, penalty could not be imposed. Penalty under the provisions of Section 11(2) of the Act has been incorrectly imposed on them,

(vii) as the penalty has already been imposed on the Firm vide the OIO, no penalty can be imposed upon them. ~~penalty cannot be imposed~~ jointly on the appellant and its Directors /Partners without specific quantification,

4. The Appellants has prayed for :

(i) allowing their appeals and OIO dated 10.06.2022 be set aside or recalled or withdrawn,

(ii) issuing clarification as to whether penalty imposed is only on the Firm and not on the Appellants and accordingly appeals filed by them may be allowed,

5. The Appellate Authority granted the personal hearing to the appellant on 16.02.2023. Shri Vivek Tiwari, Director and one of the Appellant attended the PH in person. Shri Vivek Tiwari, Director stated that the firm had completed the exports within the given time period and fulfilled its export obligation. However, due to lack of knowledge and oversight of its Customs House Agent, the Advance Authorisation numbers were not endorsed on the shipping bills. He has also stated that e-BRCs are also available indicating realization of funds against the export done by the firm. On being queried regarding additional evidence of export, Director informed that they have ARE-1 form which indicates assessable value of goods for export and are in a position to submit the same to the DGFT. He also informed that the Directors were not issued



any Show Cause Notice separately before the OIO imposing penalty on them were passed.

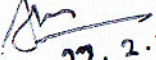
6. I have gone through the facts and records of the case carefully. The Appellant has claimed that they have fulfilled the export obligation but due to oversight and inadvertent error on their part, the Advance Authorisation numbers were not endorsed on the shipping Bills. The Appellant has claimed that they have ARE-1 form which further indicates export completion on the part of firm and can file the said ARE-1 form, as further evidence of export. The Adjudicating authority has not issued any separate SCN to the Directors nor has he specified the role and responsibility of the Directors in the contravention of the Act.

**ORDER**

F.No.18/22/2022-23/ECA.I/493

Date: 21.02.2023

The Appeals filed by the four Directors of M/s Clarion Organics Ltd. against the Order-in-Original No. 50/24/040/00013/AM17 dated 10.06.2022 is admitted. The penalty imposed against the four Directors is set aside. The Adjudicating Authority is at liberty to adjudicate the case de-novo after issuing separate SCNs to the Directors specifying their individual role and responsibility in the contravention of the Act after the firm's case is decided de-novo in terms of OIA No. 18/15,17,18&22/2022-23/ECA.I dated 21.02.2023.

  
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(Santosh Kumar Sarangi)  
Director General of Foreign Trade



Copy to:-

1.
  - (i) Dr. R.B. Tiwari, Chairman, M/s Clarion Organics Ltd., Village-Dewadi, Post-Tumsar Road, Dist-Bhandara, Maharastra-441912.
  - (ii) Dr. Vipul J. Doshi, Independent Director, M/s. Clarion Organics Ltd., Village-Dewadi, Post-Tumsar Road, Dist-Bhandara, Maharastra-441912.

- (iii) Shri Vivek Tiwari, Director, M/s Clarion Organics Ltd., Village-Dewadi, Post-Tumsar Road, Dist-Bhandara, Maharastra-441912.
- (iv) Dr. Divya Patel, Director, M/s Clarion Organics Ltd., Village-Dewadi, Post-Tumsar Road, Dist-Bhandara, Maharastra-441912.
2. M/s Clarion Organics Ltd., Village-Dewadi, Post-Tumsar Road, Dist-Bhandara, Maharastra-441912.
3. The Addl. Director General of Foreign trade, Nagpur.
4. Central Economic Intelligence Bureau, 1<sup>st</sup>, 6<sup>th</sup> & 8<sup>th</sup> Floor, 'B' Wing, Janpath bhawan, Janpath, New Delhi - 110001.
5. DGFT Website.

*Dilip Kumar*

(Dilip Kumar)

Dy. Director General of Foreign Trade

