

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH – COURT NO.1

Customs Appeal No.537 of 2012

[Arising out of Order-in-Original No.88(SIIB)/2011/CC(I)/JNCH, dt.10.05.2012,
passed by the CC (Imports) Nhava Sheva]

M/s Bora Agri Tech,

Gat No.257/4, Jiwaji Bhuwachi Wadi,
Tal. Daund, Dist: Pune

.....Appellant

VERSUS

Commissioner of Customs (Import)

JNCH, Sheva
Tal. Uran,
Dist.: Raigad- 400 707 (Maharashtra)

.....Respondent

Appearance:

Shri V.M. Doiphode, Advocate for the Appellant

Ms. Trupti Chavan, AC (AR), Authorised Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

FINAL ORDER NO.A/88344 / 2018

Date of Hearing: 22.11.2018

Date of Decision: 22.11.2018

PER: D.M. MISRA

This is an appeal filed against OIO No. 88(SIIB)/2011/CC(I)/JNCH, dt.10.05.2012, passed by the CC (Imports) Nhava Sheva passed by CC (Imports) Sheva.

2. Briefly stated the facts of the case are that the Appellants had imported 340 MTs of White Poppy Seed from China, vide four Bills of Entry No.695719, dt. 25.09.2009 and 695702, dt.25.09.2009,

704830, dt.03.10.2009, and 712012, dt.08.10.2009, totally valued at Rs.5,04,41,414/-. Alleging that the said imports were unauthorised and contrary to the Foreign Trade Policy provisions, a Show Cause Notice was issued to the Appellant, proposing confiscation of the imported goods under Section 112(a) and penalty under Section 112(a) and Section 114AA of Customs Act, 1962. On adjudication, the learned Commissioner directed confiscation of the imported goods, (released earlier provisionally on execution of bond and bank guarantee) with an option to redeem the same on payment of fine of Rs.20.00 lakhs, and imposed penalty of Rs.5.00 lakhs under Section 112(a) and Rs.2.00 lakhs under Section 114AA of Customs Act, 1962.

3. The learned Advocate Shri V.M. Doiphode for the Appellant has submitted that the Appellants are engaged in importing White Poppy Seeds regularly from Turkey for more than a decade, complying with the conditions of EXIM Policy. For the first time, the Appellant entered into two contracts bearing No.TTHK 09027 and TTHK 09028, dt.30.06.2009 with M/s Tampico Co., Hongkong for delivery of White Poppy Seeds of Chinese origin. Contract No. TTHK 09027 was for destination at Mumbai port whereas the contract No. TTHK 09028 was having destination at Nhava Sheva port. The Appellant on 06.07.2009, filed an application for registration of Contract No. TTHK 09027 with Central Bureau Narcotics (CBN), Gwalior as required. Vide letter dt.14.07.2009, certain discrepancies were pointed out in the Appellant's application and thereafter, they filed necessary clarification and revised application along with original contract showing port of export. On 20.07.2009, the Appellant submitted

another application for registration of Contract No. TTHK 09028 destination port as Nhava Sheva. Since their applications for registration of contracts were not accepted by CBN, Gwalior, they approached Hon'ble High Court of Madhya Pradesh and the contracts were registered on 04.09.2007. Two consignments were shipped on 31.08.2009 and the remaining two were shipped on 06.09.2009. Consequently, the Appellant submitted certificates of origin on 10.09.2009 indicating the country of Origin as China. Due to delay in registration of Contract No.TTHK 09027, the shipment pertaining to the same could not be effected in terms of the condition 9 of registration, accordingly they returned the original Registration pertaining to the said contract on 11.09.2009 bearing No.216/CBN/Poppy Seeds/2009-10.

4. Alleging that the four consignments of White Poppy Seeds valued at Rs.5,04,41,414/- imported against Contract No.TTHK09027 and CBN Registration No.216/CBN/Poppy Seeds/2009-10, which was subsequently cancelled by CBN,Gwalior hence the imports against said contract were unauthorized, being imported against violation of foreign trade policy provisions. Consequently, it is proposed to confiscate the imported goods under Section 111(d) of Customs Act, 1962 and penalty proposed under Section 112(a) and 114AA of Customs Act, 1962. On adjudication, the said goods were directed to be confiscated with an option to redeem on payment of fine of Rs.20,00,000/-; penalty of Rs.5.00 lakhs imposed under 112(a) of Customs Act, 1962 and penalty of Rs.2.00 lakhs imposed on the Appellant under Section 114AA of Customs Act, 1962. Hence, the present appeal.

5. At the outset, the learned Advocate Shri V.M. Doiphode, assailing the impugned order, has submitted that even though the learned Commissioner in the impugned order observed that the Appellants at the given time, had valid registration in respect of both the contracts viz.TTHK 09027 and TTHK 09028 and could have used either of them for import clearance, but erred in holding that import was not under authorized contract. Also, the learned Commissioner observed that the Appellant had surrendered the Contract No.TTHK 09027 on their own accord as required under the Condition 9 of the registration of the contract, which indicated that the approach of the Appellant was bonafide. The learned Commissioner has not considered the explanation of the Appellant as to why the import documents of the four consignments mentioned Contract No.TTHK 09027 and not TTHK 09028. Explaining the reason, the learned Advocate submitted that on 15.09.2007, while submitting the B/L for the four consignments and certificate from the competent authority for two consignments which was clarified that in respect of Sr.No.1 & 2, booking reference mentioned was wrong but on the respective certificate of origin and other shipment information has been correctly mentioned. Further, the reference was given to CBN registration No.217/CBN/Poppy Seeds/2009-10 for Contract No. TTHK 09028 on 18.09.2009. They have submitted certificate from the competent authority for the remaining consignments. Further on 17.10.2009, the Applicant responding to the Department's query, submitted that the consignment was dispatched before 10.09.2009 which is the date of certificate and that the certificate number mentioned on the top of certificate and serial number mentioned at

bottom must be some internal reference number. However, Phytosanitary Certificate issued by AQSIQ as per CBN registration certificate No.217/CBN/Poppy Seeds/2009-10 and the issuing authority wrongly mentioned the packing reference number and after noticing this mistake, the certificate was sent for necessary correction, to the issuing authority, who issued new certificate, which was communicated to the Department. Further he has submitted that a certificate dt.18.11.2009 received from M/s Tampico Trading Co. Ltd, Hongkong certifying that the four consignments supplied to the Applicant were under Contract No.TTHK 09028 and they have received full payment and details were given in the said certificate. The learned Commissioner has ignored the letter dt.11.11.2010 addressed to Consulate General of India at Hongkong where under it is confirmed that based on joint undertaking received by them from Gansu Yubaoze Nongken Pooy Seeds Biological Co. Ltd, China, and M/s Tampico Trading (HK) Ltd, that they had certified the said cargo is exported by authorized exporter under Contract No.TTHK 09028 signed between Mid Company & M/s Tampico Trading Co. Ltd, Hongkong Ltd with the Appellant. Therefore, the conclusion of the learned Commissioner that the import against Contract No.TTHK 09028 is unauthorized and illegal, cannot be sustained.

6. Heard both sides and perused the records. The issue for determination is whether the import of 340 MT of White Poppy Seeds of Chinese origin for which 4 Bills of Entry filed had been filed

between 25.09.2009 to 08.10.2009 is in accordance with law or otherwise.

7. It is not in dispute that as per the import policy, import of White Poppy Seeds is under licencing control when imported from certain countries which included China during the relevant period. To import of said White Poppy Seeds, the Appellant had registered two contacts viz. TTHK 09027 and TTHK 09028, with Narcotics Commissioner, CBN, Gwalior, who is the authority to allow import of White Poppy Seeds and with the intervention of the Hon'ble High Court same were registered bearing no. No.216/CBN/Poppy Seeds/2009-10 and No.217/CBN/Poppy Seeds/2009-10 dt. 04.9.2007, respectively. Later, they have cancelled one of the Contract No.TTHK 09027 and surrendered Registration No.216/CBN/Poppy Seeds/2009-10 issued by Narcotics Commissioner, CBN, Gwalior. The claim of the Appellant is that the imports be considered as made against Contract No.TTHK 09028 with Registration No. 217/CBN/Poppy Seeds/2009-10, dt.04.09.2009. The allegation of the Department, on the other hand, is that the documents filed for import of the said White Poppy Seeds refers to Contract No.TTHK 09027 and there are certain discrepancies in the documents relating to said imports. I find that the learned Commissioner in the impugned order, has clearly recorded that the Contract No.TTHK 09027 has been surrendered/cancelled along with CBN Registration No.216/CBN/Poppy Seeds/2009-10. He has further observed the Appellant could have used either of the contracts for import of the goods of Chinese

Origin. The learned Commissioner, though had not doubted the bonafide of the Appellant, but observed that the Appellant has not been authorized to import goods against Contract No.TTHK 09028. The observation of the Commissioner is self contradictory in as much as the Appellant had also registered the contract No.TTHK 09028 vide CBN Registration No.217/CBN/ Poppy Seeds/2009-10 and the Ld. Commissioner observed the Appellant could have imported the white poppy seed under either of the contract. Also, subsequently, the Appellant had produced certificate of Chinese authorities indicating that the import was against Contract No.TTHK 09028, clarifying the mistakes in the relevant import documents. Thus, the explanation furnished by the Appellant in wrong mentioning of the reference number in the import documents had later been clarified/rectified by approaching the appropriate Chinese authorities, is acceptable being supported by letter dt.11.11.2010 issued by the Chinese authorities, a fact not controverted by the department. Therefore, the findings of the Commissioner that the imports were against cancelled Contract No.TTHK 09027 and not authorized is incorrect. On the contrary, the said contract No.TTHK 09027 was cancelled and Registration No.216/CBN/ Poppy Seeds/2009-10 has been surrendered; hence the consignments imported were against Contract No.TTHK 09028 with Registration No.217/CBN/Poppy Seeds/2009-10, which was validly obtained. Therefore, imports were authorised under Contract No.TTHK 09028 and under valid Registration No.217/CBN/Poppy Seeds/2009-10.

7. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative part of the order pronounced in open court)

(D.M. Misra)
Member (Judicial)

CBB