CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87373 OF 2016

[Arising out of Order-in-Original No: Pr.CC-DS/05/2016-17 Adj(I) ACC dated 1st July 2016 passed by the Principal Commissioner of Customs (III), Air Cargo Complex (Import), Mumbai.]

Syngenta India Ltd
Amar Paradigum, S No. 110/11/3, Baner Road,
Pune – 411 045 … ***Appellant***

versus

Principal Commissioner of Customs (Import)
Mumbai Zone – III, Air Cargo Complex, Sahar,
Andheri (E), Mumbai 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 87452 OF 2016

[Arising out of Order-in-Original No: Pr.CC-DS/05/2016-17 Adj(I) ACC dated 1st July 2016 passed by the Principal Commissioner of Customs (III), Air Cargo Complex (Import), Mumbai.]

Principal Commissioner of Customs (Import)
Mumbai Zone – III, Air Cargo Complex (Import),
Sahar, Andheri (E), Mumbai 400099 … ***Appellant***

versus

Syngenta India Ltd
Amar Paradigum, S No. 110/11/3, Baner Road,
Pune – 411 045 ***…Respondent***

APPEARANCE:

Shri T Viswanathan, Advocate with Shri Akhilesh Kangsia, Advocate for assessee-appellant

Shri R K Dwivedy, Additional Commissioner (AR) for Revenue

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 87151-87152/2021

DATE OF HEARING:	10/08/2021
DATE OF DECISION:	16/11/2021

PER: C J MATHEW

The issue in this appeal of M/s Syngenta India Ltd, against order-in-original no. Pr.CC-DS/05/2016-17 Adj(I) ACC dated 1st July 2016 of Principal Commissioner of Customs (III), Air Cargo Complex (Import), Mumbai, is the correctness of adopting tariff item 1005 10 00, corresponding to 'seeds of maize (corn)' within the chapter enumerating 'cereals' in the First Schedule to Customs Tariff Act, 1975 for classification and consequent denial of benefit available in notification 21/2002-Cus dated 1st March 2002 (at serial no 8) and in notification no. 12/2012 dated 17th March 2012 (at serial no 42). Specifically, the grievance of the appellant arises from the order for recovery of differential duty of ₹ 2,83,09,537/- under section 28 of Customs Act, 1962, along with applicable interest under section 28AB of Customs Act, 1962, upon re-assessment of 26 bills of entry filed for import of the impugned goods, valued at ₹ 3,79,88,095/-, between

August 2009 and August 2013. In addition, imposition of penalty of ₹ 75,00,000/- under section 112 of Customs Act, 1962 on the finding that the imported goods are liable for confiscation under section 111(m) of Customs Act, 1962 and imposition of penalty of ₹ 25,00,000/- under section 114AA of Customs Act, 1962, is also under challenge. Revenue is in appeal against the determination by the adjudicating authority that imposition of penalty under section 112 of Customs Act, 1962 precludes recourse to penalty, arising from specific ingredients that had been held as established, under section 114A of Customs Act, 1962 on the ground that the statutory intent of primacy of section 114A of Customs Act, 1962 had been overlooked in the adjudication order.

2. In the relevant bills of entry, classification was sought under residual tariff item 1209 91 90 of the First Schedule to Customs Tariff Act, 1975 applicable to 'other vegetable seeds' within

> *'seeds, fruit and spores, of a kind used for sowing'*

corresponding to heading 1209 of the First Schedule to the Customs Tariff Act, 1975 entitling availment of concessional duty @ 5% accorded by the relevant notifications. According to the customs authorities, 'cereals' enumerated in chapter 10 of the First Schedule to the Customs Act, 1962 are specifically excluded from the coverage of heading 1209 of the First Schedule to the Customs Tariff Act, 1975 by note 3(c) of chapter 12 even if for sowing and, therefore, is appropriately classifiable against tariff item 1005 10 00 of First Schedule to Customs Tariff Act, 1975.

3. The rival submissions were elaborated at length at the hearing and, as the option of filing written submission by 10th September 2021 had not been taken recourse to by either side, we proceed to decide the issue.

4. Learned Counsel for the appellant submits that the imported goods are ‘sweet corn’ intended for sowing and that the description of ‘maize (corn)’ proposed by the customs authorities is not the most appropriate. It was further pointed out that even if exclusionary references indicating chapter numbers are to be taken as rules of classification, the specific coverage of note 3(a) discards includability among ‘cereals’ as proposed by the customs authorities. It was also argued that the very same Explanatory Notes to the Harmonised System of Nomenclature (HSN), of which subheading note

> *‘For the purposes of subheading 1005.10, the term “seed” covers only maize (corn) regarded by the competent national authorities as being only for sowing.’*

has been relied upon by the adjudicating authority to include the impugned goods within the description corresponding to tariff item 1005 10 00 of First Schedule to Customs Tariff Act, 1975, is equally specific that

> *'This Chapter covers cereal grains only…..Fresh cereal (**other than** sweet corn of Chapter 7), whether or not suitable for use as vegetables, remain classified in this Chapter.'*

It is the contention of the Learned Counsel that in subsequent imports, the same product (against bill of entry no. 9996419/07.06.2017) has been classified under tariff item 0710 40 00 and that 'sweet corn' is the description of the goods in the mandatory permission issued by the Regional Plant Quarantine Station.

5. According to Learned Authorized Representative, the finding by the adjudicating authority that

> *'14.4 Note 3 to Chapter 12 of first Schedule to the Customs Tariff Act, 1975 reads as under:*
>
> *"For the purpose of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds vetches (other than those of the species viciafaba) or of lupines are to be regarded as ' seeds of kind used for sowing"*
>
> *Heading 1209 does not, however, apply to the following even if for sowing:*
>
> *(a) Leguminous vegetables or sweet corn (Chapter 7);*
> *(b) Spices or other products of Chapter 9;*
> *(c) Cereals (Chapter 10); or*
> *(d) Products of headings 1201 to 1207 or 1211.*
>
> *Therefore, I find that as per Note 3 to Chapter 12 read with Rule 3 (a) of the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975, Cereals which are classifiable*

> *under Chapter 10, will be excluded from the purview of Chapter 12 even if they are used for sowing purpose. It is an established fact that 'maize corn' is 'cereal' and maize corn seeds, even if they are used for sowing, will be classified in CTH 10 & not under CTH 1209.'*

is a clear and unambiguous exposition of the notes to the chapter and is in accord with the General Rules for the Interpretation of the Harmonized System.

6. It would appear that the general coverage of 'seeds for sowing' corresponding to heading 1209 of the First Schedule of Customs Tariff Act, 1975 is not absolute and certain exceptions have been carved out by notes to chapter 12 indicating not only interchangeable description within the tariff but also the deviation from rule 3(c) of the General Rules for the Interpretation of the Harmonized System. It is clear from

> *'1…… for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes …'*

in the said Rules that, except when obviously intended to identify classification, the notes are to be adjuncts to the headings. Parenthetical emphasis are not classification in themselves but are, at best, guidance points. To zero in on a specific description corresponding to numerical notation at the eight, or even six digit, level because of such parenthetical guidance as sufficient compliance of rule 3(a) of the said Rules is to breach the foundation of classification that commences at the heading level before proceeding to the description corresponding to the tariff item.

7. There has been no controverting of the claim of the importer that the impugned goods are ‘sweet corn’ which is, essentially, a vegetable but, owing to design of nature for propagation of the species through seed, finding fitment elsewhere too in the tariff. As use is not the criteria for classification, save where explicitly intended, the tariff accords recognition of these as ‘cereals’ to enable national policy to be determined accordingly and within the enumerations under the relevant subheading. Nonetheless, ‘sweet corn’, though a fresh cereal thereby, is further excepted from such coverage by the general notes pertaining to chapter 10 in the Explanatory Notes to the Harmonized System of Nomenclature (HSN). Consequently, ‘sweet corn’ is not ‘cereal’ for the purposes of exclusion from chapter 12 of the First Schedule to Customs Tariff Act, 1975.

8. The permission envisaged under the Policy on Seed Development, 1988, requiring appropriate clearance by the competent authority empowered by the Plant Quarantine (Regulation of Imports into India) Order, 2003, has also made it abundantly clear that the seeds are intended for sowing. While not sufficing for classification, it does establish the description of the goods impugned in this

proceeding. The parenthetical guidance points are not arbiters of classification and may be seen as cross-referencing for comprehension of the scheme of the tariff enumeration. With the exclusion of 'sweet corn' from 'cereal' which is one of the exclusions from 'seeds…. for use as sowing', even such guidance point fails to justify placement in chapter 10 of the First Schedule to Customs Tariff Act, 1975.

9. The adjudicating authority has not undertaken classification of the impugned goods in accordance with the General Rules for the Interpretation of the Harmonized System but set out to deny the effective rate of duty available to specific enumerations. The classification claimed by the importer in the bill of entry, even if substitutable by a more apt tariff item, cannot be discarded owing to absence of such proposal in the show cause notice.

10. Accordingly, the appeal of M/s Syngenta India Ltd is allowed and the appeal of Revenue is dismissed.

(Order pronounced in the open court on 16/11/2021)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*