



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,  
CUSTOM HOUSE: MUNDRA, KUTCH  
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421  
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62

A	File No.	VIII/48-16/Adj/ADC/MCH/2017-18
B	Order-in-Original No.	MCH/ADC/PSK/08/2019-20
C	Passed by	Shri Prashant Kaduskar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	25.04.2019
E	Date of Issue	26.04.2019
F	SCN NO. & Date	F. No. S/15-02/Enq.-Urea/SIIB/CHM/2018-19 dated 30.05.2018
G	Noticee / Party / Importer / Exporter	Pooja Chemicals, FF-2, Shreeji Complex, Opp. Indra Complex, Manjalpur, Vadodara, Gujarat

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-  
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील), कांडला  
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”  
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA  
Having his office at 7<sup>th</sup> Floor, Mridul Tower, Behind Times of India,  
Ashram Road, Ahmedabad-380 009.”

- उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।  
Appeal shall be filed within sixty days from the date of communication of this order.
- उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-  
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –
  - उक्त अपील की एक प्रति और  
A copy of the appeal, and
  - इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।  
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
- अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।  
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
- अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।  
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
- इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।  
An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Subject :- SCN F. No. S/15-02/Enq.-Urea/SIIB/CHM/2018-19 dated 30.05.2018 issued to Pooja Chemicals, FF-2, Shreeji Complex, Opp. Indra Complex, Manjalpur, Vadodara, Gujarat.



**BRIEF FACTS OF THE CASE:**

M/s Pooja Chemicals, FF-2, Shreeji Complex, Opp. Indra Complex, Manjalpur, Vadodara, Gujarat (herein after referred as “the importer”), having IEC No. 3411000783, engaged in import of Technical Grade Urea falling under CTH 31021000 of the first schedule to the Customs Tariff Act, 1975, on high sea purchase basis from State Trading Enterprises, viz., MMTC, during the period from April, 2012 to 27.04.2015 without having a licence for import of Urea from Director General of Foreign Trade (DGFT).

1.2 A reference F. No. DRI/DZU/JRU/19/ENQ.30/2016 dated 26.10.2017 was received from the Assistant Director, Directorate of Revenue Intelligence, Regional Unit, Jaipur, passed the inputs that some importers of urea had violated the provisions of Foreign Trade Policy in import of Technical Grade Urea during the period from April, 2012 to 27.04.2015. In terms of Notification No. 04/2015-2020 dated 28.04.2015 issued by the Ministry of Commerce & Industry, Department of Commerce, Udyog Bhawan, New Delhi, Import policy of Urea under ITC (HS) code 31021000 was amended. Import of “Urea whether or not in aqueous solution” allowed to be imported by State Trading Enterprises only prior to 28.04.2015. As per revised policy besides State Trading Enterprises, import of Industrial Urea/Technical Grade Urea shall be free subject to Actual User Condition.

1.3 Foreign Trade Policy defines State Trading Enterprises as “State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and/or import. Any goods, import or export of which is governed through exclusive or special privileges granted to State Trading Enterprises (STEs) may be imported or exported by STE(s) as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix 2J. However, it is provided that DGFT may grant an authorization to any other person to import and export any of these goods.

1.4 As per para 2.11 of Foreign Trade Policy 2009-2014, such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.

1.5 Further, the Joint Director, Directorate of Revenue Intelligence, Regional Unit, Jaipur, communicated vide letter F.No. DRI/DZU/JRU/19/ENQ.30/2016 dated 07.03.2018 that as per Foreign Trade Policy 2009-2014, there were only three State Trading Enterprises viz. STC, MMTC and Indian Potash Limited (para 2.11 of FTP); that on enquiry, the Deputy Director General of Foreign Trade, DGFT, New Delhi, vide his letter F.No. 01/89/180/102/AM-02/PC-2[A]/Part-II/800 dated 14.09.2017 informed that DGFT permitted import of Urea (46% granular) from Oman to M/s IFFCO and M/s KRIBHCO, New Delhi; that apart from the above, following parties were permitted during 2011-15 for import of urea:-

- (i) M/s Coromandel International, Secunderabad;
- (ii) M/s Zuari Agro Chemicals Ltd., Gurgaon;
- (iii) M/s Blusky Automotive Pvt. Ltd., Mumbai; and

1.6 Ministry of Chemicals and fertilizers had invited tender for handling and distribution of Urea. Some third parties other than State Trading Enterprises filed Bills of Entry and imported Urea, which they had purchased on High Sea Sale basis. In fact, State Trading Enterprises purchased Urea from outside India and instead of directly importing into India they had sold Urea to third parties who had been awarded orders by Ministry of Chemical and Fertilizers for handling and distribution of Urea on High Sea Sale basis. In the process, ownership of Urea had been transferred and such third parties filed the Bills of Entry.

1.7 The importer had filed various Bills of Entry at Mundra port during the period from April, 2012 to 27.04.2015, for clearance of 'Technical Grade Urea' purchased on High Sea Sales basis from MMTC Limited (original importer). The following Bills of Entry had been filed by the importer at Mundra port and the Out-of Charge had been granted by the proper officer after payment of appropriate Customs duties by the importer.

**TABLE-A**

Sr. No.	Bill of Entry Number & date	Quantity (in MTs)	Assessable Value (Rs.)	Total Customs duties paid (Rs.)	Date of OOC of B/E
1	2701406 / 15.07.2013	200	4813458	1244398	15.07.2013
2	3402101 / 28.09.2013	505.942	10641257	2751029	01.10.2013
3	3503654 / 10.10.2013	500	10149144	2623806	14.10.2013
4	3629333 / 24.10.2013	500	10141827	2621914	26.10.2013
5	3849952 / 19.11.2013	500	10338761	2672826	22.11.2013
	TOTAL	2205.942	46084447	11913973	

1.8 Statement of **Shri Jinkal Gandhi**, Purchase Manager cum Authorized person of M/s Pooja Chemicals, FF-2, Shreeji Complex, Opp. Indra Complex, Manjalpur, Vadodara, Gujarat, was recorded on **20.04.2018**, wherein he, *inter alia* stated that Shri Ketan Vinodchandra Ramani was the proprietor of M/s Pooja Chemicals, engaged in trading activity of various types of chemicals including 'Technical grade urea'; that he was working as Purchase Manager in M/s Pooja Chemicals since 2011 and looked after the works relating to import and purchase of trading goods; that on being specifically asked regarding the import license of Technical grade Urea, imported during the period prior to 27.04.2015, he stated that his company have a valid permission for import of Technical grade urea for industrial use issued by the Jt. Director, Department of Fertilizer, Ministry of Chemicals & Fertilizers vide No. 6-4/2013-FM (Vol-II) dated 15.05.2013 and submitted copy of permission/license No. 6-4/2013-FM (Vol-II) dated 15.05.2013 along with copies of Bill of entry, High sea sale agreement with M/s MMTC and other import documents.

1.9 On being asked, he stated that his company had entered into agreement of High Sea Purchase of Technical Grade Urea with M/s MMTC, a state trading Enterprise, from time to time and had filed Bill of Entry and cleared the same on payment of appropriate Customs duties; that they have imported and cleared the Technical Grade Urea at Mundra port under the cover of 5 Bills of Entry during the period 2013-2014; that they have complied the conditions imposed under No. 6-4/2013-FM (Vol-II) dated 15.05.2013 at the material time.

1.10 The Joint Director, Department of Fertilizer, Ministry of Chemicals & Fertilizers vide permission No. 6-4/2013-FM (Vol-II) dated 15.05.2013 extended the permission to import balance 11000MTs of Technical Grade Urea for Industrial Use through any State Trading Enterprises (i.e., MMTC, IPL, STC) during the year 2013-14 on fulfilment of certain conditions by the importer. As per condition No. (xiv) of the permission No. 6-4/2013-FM (Vol-II) dated 15.05.2013, which is reproduced below:

*"TG urea user shall inform this department through STEs/ any other company under license from DGFT, from whom he/ she is buying TG urea."*

It implies that the permission was granted to the importer for domestic purchase of Technical Grade Urea from STEs/ any other company under licence from DGFT but in the instant case the importer has purchased the Technical Grade Urea on high sea sales basis from M/s. MMTC Ltd., a State Trading Enterprise which is to be considered as "Import" of goods which is

contrary to the conditions of the permission granted by Ministry of Fertilizers. Therefore, it clearly indicates that the importer had violated the permission No. 6-4/2013-FM (Vol-II) dated 15.05.2013.

1.11 As per Para 2.11 of General Provisions regarding Import and Export under Foreign Trade Policy 2009-2014:

*2.11 Any goods, import or export of which is governed through exclusive or special privileges granted to STE(s), may be imported or exported by STE(s) as per conditions specified in ITC (HS). DGFT may, however, grant an Authorisation to any other person to import or export any of these goods. Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.*

1.12 The Customs Act, 1962 defines the meaning of Import, Importer, & India which is as under:

Section 2(23) -“Import” with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

Section 2(26) -“*Importer*’ in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer;’

Section 2(27) -“India” includes the territorial waters of India;

1.13 As per the Foreign Trade (Development and Regulation) Act, 1992, definition of “Import” is “in relation to goods bringing into India any goods by land, Sea or Air”. The definition of “Importer” as per Foreign Trade (Regulation) Rules, 1993 “means a person who import goods and holds a valid IEC No.”. As per Foreign Trade Policy importer means ‘person who imports or intends to import and holds and IEC No., unless otherwise specifically exempted”.

1.14 It appeared that no other importer, other than STEs and importers mentioned at para 3 above was permitted to import Urea during the material period. Thus, importer had imported total 2205.942 MT of Technical grade Urea having assessable value of Rs.4,60,84,447/-, in violation of provisions of Foreign Trade Policy enforced at the material time. The importer had paid total Customs duties of Rs.1,19,13,973/- against the import and clearance of

2205.942 MTs of Urea. The importer was fully aware about the fact that the goods in question was a canalised item and he had suppressed the facts by producing the licence No. 6-4/2013-FM (Vol-II) dated 15.05.2013 issued by the Jt. Director, Department of Fertilizer, Ministry of Chemicals & Fertilizers in guise of licence issued by the DGFT. Thus, the act on the part importer for wilful mis-statement and the suppression of facts at the material time draw the attention that the goods were improperly imported into India and liable for confiscation under Section 111 of Customs Act, 1962.

1.15 It therefore appeared that the importer had imported 'Technical Grade Urea' without having a valid licence issued from Director General of Foreign Trade which regulate the Exim Policy. Since, the import of 'Technical Grade Urea' is a canalised item and permitted to import by State Trading Enterprises or by the import licence holder issued by DGFT. Thus, it appears that the goods imported by the importer during the period from April, 2012 to 27.04.2015, details as per table-A above, liable for confiscation under the provisions of Section 111 (d) of Customs Act, 1962.

1.16 It also appeared that the importer was fully aware about the provisions of restriction imposed on the import of "Technical Grade Urea" and allowed to import through STEs and a valid licence holder persons. The importer was having a culpable mind of state and that the act of omission and commission made on his part that the act of import of goods were liable for confiscation and thus they have rendered themselves liable for penalty under Section 112 of the Customs Act, 1962.

1.17 In view of the above, **M/s Pooja Chemicals, FF-2, Shreeji Complex, Opp. Indra Complex, Manjalpur, Vadodara, Gujarat**, were called upon to show cause to the Additional Commissioner of Customs, Mundra, vide Show cause Notice No. S/15-02/Enq-UREA/SIIB/CHM/18-19 dated 30.05.2018 asking them as to why:

- (i) The Technical Grade Urea of 2205.942 MT valued to Rs.4,60,84,447/- imported by the importer in contravention of provisions of Foreign Trade Policy enforced at the material time should not be held liable for confiscation under Section 111 (d) of the Customs Act, 1962;
- (ii) Penalty should not be imposed on them under Section 112(a)(i) of the Customs Act, 1962 for the acts and omission on their parts.

2.0 The importer vide letter dated 14.07.2018 submitted a detailed reply to the show cause notice. It has been argued that show cause notice totally misread and misconstrued.

**WRITTEN SUBMISSION:**

2.1 M/s. Pooja Chemicals, vide letter dated 14.07.2018, submitted a detailed reply to the show cause notice. It has been argued that show cause notice totally misread and misconstrued the said letter dated 15.05.2013, issued by the Ministry of Chemicals & Fertilizers. It has been stated that from the subject matter of permission letter dated 15.05.2013 as well as from wordings employed in the opening paragraph of the said letter that noticee M/s. Pooja Chemicals was specifically granted permission to import 11000 MTs of Technical Grade Urea for industrial use through any of the STEs during 2013-14 subject to certain conditions and one such condition at (xiv) warranted necessary information to be supplied to the Ministry through the STE from whom the Urea Technical Grade was imported by the noticee. At no stage, this condition could be read to mean that the said permission was granted to importer for domestic purchase of Urea as contended in the show cause notice.

2.2 The noticee has argued that the contention raised in the show cause notice thoroughly misconceived and the result of distorted reading of the provisions of the ITC (HS) Policy as well as Letter of Permission to import granted by the Ministry of Fertilizers & Chemicals and incomplete disregard of regular and accepted practise followed by Customs for several decades. .

2.3 The importer has further stated that the contention raised in the show cause notice that prior to 28.04.2015, "Urea whether or not in aqueous solution" was allowed to be imported only by State Trading Enterprises under Heading No.3102 1000 of the ITC (HS) Policy 2009-2015 is ex-facie incorrect. A bare reading of the said Heading No.3102 1000 of the said ITC HS) Policy as it stood before 28.04.2015 would show that as per the Policy conditions then applicable, import of Urea was allowed through STC, MMTC and Indian Potash Ltd. The word used in the said Heading 3102 1000 is "through" and not "by" STC, MMTC and Indian Potash. Thus, the contention raised in the notice is based on a total mis-reading of the words of the said Heading No.3102 1000 of the ITC (HS) Policy. When the import is allowed "through" STC, MMTC and Indian Potash, it means that any person may import "through" STC, MMTC and Indian Potash. All that it means is that the purchase order of the foreign buyer has to be placed by STEs, viz., STC, MMTC, and Indian Potash. There is no restriction anywhere in the policy which prohibits a person in India from

effecting such purchase from STC, MMTC and Indian Potash on High Sea Sale basis and filing of bill of entry. So long as the purchase of the Urea from foreign supplier is effected by STEs, viz., STC, MMTC or Indian Potash, who in turn sell the same to a party in India whether on High Sea or otherwise, the import is clearly through STC, MMTC or Indian Potash. It is further stated that with this understanding of the matter that the proper officer of Customs, Custom House, Mundra had correctly allowed the import and clearance of the said goods on high sea sale basis without any demur..

2.4 It has argued that para 2.11 of the policy provides that STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales. This clearly shows that the purchase for the import has to be done by the STEs. So long as the purchase of the Urea from the foreign supplier is effected by STEs, the import is through STEs and this is sufficient compliance with the OTC HS Policy which requires import through STEs and there is no restriction of prohibition that the Indian buyer from STEs cannot purchase the Urea from STEs on High Seas.

2.5 It has been argued that the inference drawn in the show cause notice that the STEs can only import the said goods and file the Bill of Entry and STEs cannot sell the Urea on High Seas to the Indian buyer is baseless. There can be no rational or logic in suggesting that under the Import Policy although the STEs who have purchased the Urea from the foreign buyer can sell the same to the Indian buyer after clearance from customs, such sale cannot be permitted on High Seas before clearance of the Urea from customs.

2.6 The noticee has proffered that the contention raised in the show cause notice apart being the result of a total mis-reading of the ITC (HS) Policy is totally contrary to and in complete disregard of the regular and accepted practice followed by customs for over several decades. It is a regular practice followed over several decades that in case of import which is canalized through STEs, the STEs place the order on the foreign supplier and thereafter effect High Seas sale of the same to the Indian Buyers. This would be evident from the following judgements:

- (a) CC V Union Carbide India Ltd. – 1987(27) ELT 241: This case pertains to the period June 1975 when import of Manganese Ore was canalized



- through MMTC and in this case the manganese Ore was sold on High Seas by MMTC to Union Carbide India Ltd,
- (b) Hyderabad Industries Ltd. V UOI – 2000 (115) ELT 593 (SC): In this case before the Supreme Court, asbestos was canalized through MMTC who sold the same on High Seas to Hyderabad Industries and the Supreme Court held that duty was payable on the price charged by MMTC to Hyderabad Industries,
  - (c) CC V Coromandal Fertilizers Ltd. – 1988 (33)ELT 451: In this case rock Phosphate and Sulphur were canalized through MMTC who sold the same on High Sea Sale to Coromandal Fertilizers Ltd,
  - (d) Godavari Fertilizers & Chemicals Ltd. V CC – 1986 (81) ELT 535: In this case Phosphoric Acid was canalized through MMTC who sold the same on High Seas to Godavari Fertilizers & Chemicals Ltd,
  - (e) SAIL V CC – 1999 (112) ELT 946: In this case, Lubricating Oil and Greases were canalized through Indian Oil Corporation who sold the same on High Seas to SAIL and the Tribunal held the import to be valid in law.

It is stated that from the above judgements that right from the 1970s, the practice has been that were the import of any item is canalized through a STE, the STE places the order on the foreign buyer and purchases the same for import and thereafter sells the same on High Seas to Indian Buyer. To suggest that such a practice which is being followed for decades is in contravention of the Import Policy, is to say the least, totally uncalled for.

2.7. It is averred that even the Central Board of Customs and Excise is fully aware and conscious of this practice and has not considered the same to be in contravention of law. This will be evident from the Board's Circular No. 49/89-CX. 8 dated 02-11-1989 in which the procedure for making Modvat Credit has been laid down in respect of the duty paid by Indian Oil Corporation in respect of import of Steel Sheets which was canalized through MMTC and which were purchased on High Seas by IOC from the canalizing through agency, MMTC. The view taken in this circular is reiterated in Circular No. 23/90-CX.8 dated 09-04-1990.

2.8 The noticee has pointed out that the Ministry of Chemicals and Fertilizers had by their letter dated 15-05-2013 is already annexed here to as Annexure-3. The contention in the show cause notice would imply that STEs cannot sell the Urea on High seas basis, it would mean that the STEs and the Ministry of Chemicals and Fertilizers were themselves acting in contravention of law. We submit that such a view is uncalled for.

2.9 In consideration of above factual position and settled legal position as regards import of goods by third parties through canalizing agencies such as STC/MMTC etc. as explained in foregoing para, the inference drawn in the show cause notice that the Noticee suppressed and wilfully misdeclared and

imported Urea by producing the Permission letter dated 15.05.2013 issued by the Ministry of Chemicals and fertilizers New Delhi as it were the import license is totally misleading and baseless. As the goods were correctly imported as per the Policy conditions then applicable read with the letter dated 15.05.2013, the allegation that the goods were rendered liable for confiscation under section 111(d) of the Customs Act 1962 is not legally sustainable.

2.10 It is stated that the above reply will clarify all your doubts about the legally and validity of the import of Urea Technical made by us through MMTC on high sea sale basis and the practice which has been followed all over the country at various ports over several decades.

2.11 In view of the explanations aforesaid, they have submitted that the said goods viz. Urea Technical grade covered under the (5) Bills of entry as detailed in the Table-A to the show cause notice dated 30.05.2018 were correctly imported by us by adhering to the import policy conditions as applicable during April 2012-27.04.2015 read with the Ministry of Chemicals & fertilizers letter dated 15.05.2013. As such, these goods were not liable to confiscation under Section 111(d) of the Customs Act, 196 and consequently, any question of imposition of penalty on us under section 112(a) of the Customs Act, 1962 would not arise at all.

3. **RECORD OF PERSONAL HEARING:-**

Shri Jinkal Gandhi, Purchase Manager of the importer, appeared for personal hearing on 12/04/2019, and reiterates what has been stated in their written submission at 14/07/2018.

4. **DISCUSSION & FINDING:-**

I have gone through the Show Cause Notice dated 30/05/2018 also the written submission dated 14/07/2018 and the record of personal hearing dated 12/04/2019 and proceed to decide the case.

4.1 The importer has referred to and relied upon the permission letter dated 15/05/2013 of Ministry of Chemicals & Fertilizers addressed to the importer on the subject of permission of import of Technical Grade Urea for Industrial use and have stated that opening paragraph of the said letter itself proves that M/s. Pooja Chemicals was specially granted to import 11000 MTs of Technical Grade Urea for Industrial use through any of the STEs during 2013-14 subject to certain conditions and one such Condition at (xiv) warranted necessary information to be supplied to Ministry through the STE from whom the urea of technical grade was imported by the noticee- M/s. Pooja Chemicals. The importer has contended that at no stage this condition could be read to mean that the said permission was granted to the noticee for domestic purchase of

urea as contended in the Show Cause Notice. The noticee also has contended that a bare reading of Heading No. 31021000 of the ITC (HS) of Policy as it stood before 28/04/2015 would show that as per Policy conditions then applicable import of urea was allowed through STC, MMTC and Indian Potash Ltd. The word used in the said Heading 31021000 is through and not by STC, MMTC and by M/s. Indian Potash. According to the noticee, imports through STC, MMTC, Indian Potash means that purchase order on the foreign buyer has to be placed by State Trading Enterprises (STEs) STC, MMTC and Indian Potash and importer in India has inturn to purchase the same from STC, MMTC and Indian Potash. According to the noticee, this purchase can be a High Sea Sale purchase and can file a Bill of Entry. It is argued that with this in mind the Mundra Customs had allowed the imports clearance on High Sea Sale basis without demur. The contention of the Department that STEs cannot sell the urea on High Seas to the Indian buyer is baseless. The show Cause Notice is contrary to the accepted practice followed by Customs over several decades and also contrary to the case laws cited in their written submission and also Contrary to Circular 49/89-Cx-8 dated 02/11/1989 and 23/90-CX-8 dated 09/04/1990.

5. I find that "import" is defined in Section 2(23) of the Customs Act, 1962 as bringing into India from a place outside India and the "importer" is defined in term of section 2(26) of the Customs Act, 1962, which is as under:

*"Importer" in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer". Even under Foreign Trade (Regulation) Rules, 1993 Importer means "a person who imports goods and have valid IEC No."*

The para 2.11 of Foreign Trade Policy 2009-2014 states:

*"2.11 :- Any goods, import or export of which is governed through exclusive or special privileges granted to STE(s), may be imported or exported by STE(s) as per conditions specified in ITC (HS). DGFT may, however, grant an Authorisation to any other person to import or export any of these goods".*

*"Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales".*

6. Hence it is evident that special & exclusive privilege has been granted to State Trading Enterprises (STEs) to be importer of Technical Grade

Urea as para 2.11 of the relevant Foreign Trade Policy in force at the time of imports. Moreover, the very condition no. (xiv) of the letter dated 15/05/2013 of Ministry of Chemical & Fertilizers State that:

“TG urea users shall inform this department through STEs/ any other company under licence from DGFT, from whom he/ she is buying TG urea.....”

The plain reading of the condition indicate that importer should be STE or other company to whom Licence has been granted by DGFT. In the subject case the importer even as per definition under Customs Act, 1962 is envisaged to be STEs only.

7. Whereas, due to purchase of goods a High Sea sale from M/s. MMTC the noticee, M/s. Pooja Chemicals have themselves become an “importer” which is in itself contrary to the condition of the permission granted by the Ministry of Chemicals & Fertilizers vide their letter dated 15/05/2013. In view of the above, after harmonious reading of definition of “imports” and “importer” under Customs Act, 1962 and para 2.11 of the Policy 2009-2014, it is evident that subject case the imports are not only in violation of letter of permission no. 6-4/2013-FM (Vol-II) dated 15/05/2013 but also in violation of para 2.11 of the Foreign Trade Policy 2009-14. The contention of the importer that the word used in ITC (HS) heading 31021000 is “through” and not “by” STC, MMTC and Indian Potash Limited, means that purchase order is to be placed by STEs Viz. STC, MMTC, Indian Potash and that there is no restriction in the policy for effecting purchase from STC/MMTC/Indian Potash on High Sea Basis or filling the Bill of Entry. In this context, I find that said interpretation has been done by the importer for their own advantage and convenience. The importer under Customs Act, 1962 is defined as “importer” in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer. Thus, it is clear that the exclusive privilege of being importer is granted to STC, MMTC, Indian Potash and it is they who are required to clear the goods for home consumption. The fact that M/s. Pooja Chemicals has filed the Bill of Entry as an importer is contrary to the privilege granted to STEs, and thus, imports become liable for confiscation for imports being contrary to the prohibition imposed by any other law for time being in force, viz., the para 2.11 of FTP (policy provision) in force, and hence, the impugned Urea (2205.942 MTs) are liable for confiscation under section 111(d) of the Customs Act, 1962. This view is also supported by the Legal Meaning of the word “through”. [http://legal\\_dictionary.thefreedictionary.com](http://legal_dictionary.thefreedictionary.com) states legal meaning of the word “through” as:

“through (by means of), adverb- by means of, by the hand of, by the way of, using, using the help of.

Through (from beginning to end), adverb- all along, all the way, by way of, via.

Thus, imports of Technical Grade Urea should be at the hands of STEs or by the way of STEs, using STEs, using the help of STEs, all along through STEs, via STEs. Thus, it is evident and I hold that importer M/s. Pooja Chemicals have violated the Policy provision under para 2.11 of the Foreign Trade Policy 2009-14, and thus, the said imports of Technical Grade Urea (2205.942MT) valued at Rs.4,60,84,447/- are liable for confiscation under Section 111(d) of the Customs Act, 1962.

8. I find that noticee has submitted the following case Laws:-

- (i) CC vs. Union Carbide India Ltd. – 1987(27) ELT 241
- (ii) Hyderabad Industries Ltd. vs. UOI – 2000 (115) ELT 593 (SC)
- (iii) CC vs. Coromandal Fertilizers Ltd. – 1988 (33)ELT 451
- (iv) Godavari Fertilizers & Chemicals Ltd. vs. CC – 1986 (81) ELT 535
- (v) SAIL vs. CC – 1999 (112) ELT 946

The common theme in all these cited case law is that various item, like Manganese Ore (in June 1975) was canalized through MMTC were sold on High Seas by MMTC to Union Carbide India Ltd., asbestos which was canalized through MMTC were sold on High Seas to Hyderabad Industries, so also rock Phosphate and Sulphur were canalized through MMTC and sold on High Sea Sale to Coromandal Fertilizers Ltd., phosphoric acid which is also canalized through MMTC who sold the same on High Seas to Godavari Fertilizers & Chemicals Ltd. The noticee has stated that right from 1970s the practice has been followed that where the import of any item is canalized through STE, the STE sells the item on High Seas to Indian Buyer. Hence, there is no contravention in the subject case, they have also referred to and relied upon Circular No. 49/89-CX-8 dated 02/11/1989 and Circular No. 23/90-CX-8 dated 09/04/1990 in this context, to proffer that steel sheets canalized through MMTC were purchased by IOC from MMTC (Canalising Agency).

9. In this context, I find that the cited case laws are very old 1986, 1987, 1988, 1999, 2000 vintage. I refer to a more recent case law of Marico Industries Ltd. Vs Commissioner of Customs (EP), Mumbai [2007 (209) ELT 403 (Tri-Mumbai)] wherein the coconut oil was canalized item under the provisions of Foreign Trade Policy and could only be imported through State Trading Corporation (STC). The importer claimed that they had purchased the goods on High Sea Sales basis from M/s. STC and the Bill of Lading and invoice issued by overseas supplier were in the name of State Trading Corporation and after purchase on High Sea sale, they had filed Bill of Entry

only. The Department had issued a Show Cause Notice on the ground that coconut oil was not imported through a Canalizing Agency and the Commissioner on adjudication had held that goods were liable for confiscation under section 111(d) of the Customs Act, 1962, for violation of policy restrictions and redemption fine of Rs.1.20 Crore was imposed on goods valued at Rs.1.39 Crore approximately. A penalty of Rs.20 Lakh was also imposed. I find that in appeal, the hon'ble Tribunal held that there was violation of policy as sale was on high Sea Sale basis and not through STC. The confiscation was upheld though the redemption fine was reduced. The hon'ble Tribunal in para 11 of the cited decision has held ".....We however hold that the goods were liable for confiscation under section 111(d) as the procedure prescribed in the policy was not followed.....".

10. I find that case of Marico Industries Ltd. Vs Commissioner of Customs (EP), Mumbai, is similar to the subject case and the decision would be applicable to the subject case. In view of the above, I find that the case laws cited (i) to (v) in para 8 (supra) need to be distinguished. In view of the above, the citation of circular No. 49/89-CX-8 dated 02/11/1989 and 23/90-CX-8 dated 09/04/1990 are not applicable to the facts and circumstances of the case.

11. In view of the above, I hold that the 2205.942 MT of Technical Grade Urea valued at Rs.4,60,84,447/- imported by M/s. Pooja Chemicals in violation to para 2.11 of the Foreign Trade Policy (2009-14) is also liable for confiscation under section 111(d) of the Customs Act, 1962 and I also hold that importer M/s. Pooja Chemicals is also liable for penalty under section 112(a) (i) of the Custom act, 1962 for acts and omission on their parts to render the goods liable for confiscation under Section 111(d) of the Customs Act, 1962.


9. However, I find that 2205.942 MT of urea covered under five Bills of Entry, as discussed in Table A of the show Cause Notice have been assessed finally and Technical Grade Urea which is liable for confiscation has already given out of charge of Customs on various dates as detailed in Table A (page 3) of the Show Cause Notice. The goods have been assessed to duty finally and not released against Bond/ Undertaking on provisional assessment basis. The hon'ble Larger Bench of Tribunal in case of Shiv Kripa Ispat Pvt. Ltd. vs. C.CE & Cus, Nasik [2009 (235) ELT 623 (Tri-LB)] has held that redemption fine in lieu of confiscation was not imposable when goods were allowed to be cleared without execution of Bond/ undertaking and goods cannot be confiscated when not available for confiscation. The hon'ble High Court of Mumbai vide the decision cited at [2015 (318) ELT A 259 (Bom)] has upheld the decision of

hon'ble Tribunal in case of Shiv Kripa Ispat Pvt. Ltd. cited supra. Similar decision has been taken by hon'ble Punjab & Haryana High Court in the case of Raja Impex (P) Ltd. [2008 (229) ELT 183 (P&H)] wherein it is held that when goods in question were cleared by authorities without execution of any bond/undertaking by the assessee, redemption fine is not imposable and is set aside. In view of the above legal decisions of higher legal fora, I pass the following order.

**ORDER**

(i) I hold that 2205.942 MT of Technical Grade Urea imported under five Bills of Entry mentioned in Table-A (page-3) of the Show Cause Notice and valued at Rs.4,60,84,447/- (Rupees Four Crores Sixty Lakhs Eighty Four Thousand Four Hundred Forty Seven only) are liable for confiscation in terms of Section 111(d) of the Customs Act, 1962. However, in view of the various case laws, discussed above, since goods have been released/ out of charged on final assessment without any Bond/ undertaking and since not available for confiscation, I do not confiscate the impugned Technical Grade Urea (2205.942MT).

(ii) However, I impose a penalty of Rs.30,00,000/- (Rupees Thirty Lakhs Only) in term of Section 112(a)(i) of the Customs Act, 1962, on M/s. Pooja Chemicals, FF-2, Shreeji Complex, Opp. Indra Complex, Manjalpur, Vadodara, Gujarat.

  
(PRASHANT KADUSKAR) 26/11/2019  
Additional Commissioner  
Custom House, Mundra

By Speed post

To

M/s Pooja Chemicals,  
FF-2, Shreeji Complex,  
Opp. Indra Complex,  
Manjalpur, Vadodara, Gujarat

Copy to:

- (i) The Principal Commissioner, Custom House, Mundra
- (ii) The Deputy Commissioner (RRA), Custom House, Mundra.
- (iii) The Deputy Commissioner (SIIB), Custom House, Mundra.
- (iv) The Deputy Commissioner (Gr-II), Custom House, Mundra.
- (v) The Deputy Commissioner (TRC), Custom House, Mundra.
- ✓(vi) The Deputy Commissioner (EDI), Custom House, Mundra.
- (vii) Guard File.