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Citation: *Sadasivam v Canada Border Services Agency*, 2021 CART 02

Docket: CART – 2008

BETWEEN:

DHARMASABAIESAN SADASIVAM

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Dharmasabaiesan Sadasivam, representing the Applicant; and
Ms. Gaynor Holden, representing the Respondent**

DECISION DATE: February 11, 2021

WRITTEN SUBMISSION ONLY

DECISION

The Canada Agricultural Review Tribunal, by ORDER, confirms the settlement agreement of the parties.

1. OVERVIEW

[1] The concerns the request for review of Notice of Violation (NOV) # 4971-18-1559 pursuant to paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMPA).

[2] The NOV alleges that on October 16, 2018, Mr. Sadasivam failed to produce a valid permit number and foreign Phytosanitary Certificate or a foreign Phytosanitary Certificate for Re-export for the quantity of onions he was importing. The Canada Border Services Agency (Agency) issued a NOV for a violation of section 29 of the [Plant Protection Regulations](#).

2. OFFER TO SETTLE

[3] On December 22, 2020, the Agency, made Mr. Sadasivam a written offer to settle this case by amending the NOV originally issued with a penalty of \$800 to a NOV with warning, without monetary penalty.

[4] Mr. Sadasivam accepted this offer via email dated December 24, 2020.

[5] The Agency's offer to settle noted that the existing record of the violation may be considered in the event of any future instances of non-compliance.

3. THE SETTLEMENT

[6] The Canada Agricultural Review Tribunal (Tribunal) has the sole and exclusive jurisdiction to hear and determine all questions of fact or law regarding any matter over which it is given jurisdiction under the [AAAMPA](#) or any Act of Parliament. (Subsection 38(1) of the [AAAMPA](#))

[7] The Tribunal is a court of record and has powers over all matters necessary or proper for the due exercise of its jurisdiction and to fulfil the purpose and objective of the statutory regime. (Section 8 of the [Canada Agricultural Products Act](#) and section 41 of the [AAAMPA](#))

[8] The [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (Rules) are interpreted and applied in order to permit the just, most expeditious and least expensive conduct of proceedings. The Tribunal may determine any procedural matter not provided for in the Rules in a manner consistent with the Rules.

[9] The Tribunal does not have the explicit authority to vary a NOV with penalty to a NOV without penalty. However, the Tribunal has the jurisdiction by necessary implication and practical necessity to give effect to the settlement agreement as demonstrated in the Tribunal's decision in [Atkinson](#)¹.

[10] Given these powers provided to the Tribunal by statute, I find that the most just, expeditious and least expensive outcome in this case is to amend the NOV with penalty of \$800 to a NOV without penalty in accordance with the settlement agreed to by the parties.

[11] This settlement constitutes a final settlement of the rights of both parties in relation to docket CART - 2008 and the events which occurred on October 16, 2018.

[12] This settlement should not be cited as a precedent or otherwise relied on except in relation to the NOV in this case.

4. ORDER

[13] As requested by the parties and pursuant to the powers conferred on the Tribunal, I confirm, by **ORDER**, the settlement agreement.

[14] I wish to inform Mr. Sadasivam that this violation is not a criminal offence. After five years, he may apply to the Minister of Public Safety and Emergency Preparedness to have the violation removed from the records, in accordance with section 23 of the [AAAMPA](#).

Dated at Ottawa, Ontario, on this 11th day of February 2021.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal

¹ [Atkinson v. Canada \(Minister of Public Safety and Emergency Preparedness\)](#), 2018 CART 3.