	सीमा शुल्क के आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात **OFFICE OF THE PR. COMMISSIONER OF CUSTOMS** **CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT** **Phone No.02838-271165/66/67/68** **FAX.No.02838-271169/62, Email: commr-cusmundra@gov.in**
A. File No.	GEN/AG/MISC/181/2026-Adjn-O/o Pr. Commr- Cus-Mundra
B. Order-in-Original No.	MUN-CUSTM-000-COM-24-2026-2027
C. Passed by	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	11.09.2026 11.09.2026
E. SCN No. & Date	F.No. CUS/AG/MISC/181/2026-A/G-O/o Pr Commr-Cus-Mundra (I/4010096/2026) dated 27.03.2026
F. Customs Cargo Service Provider	M/s Hind Terminals Pvt. Ltd. (CFS), Survey No. 76/1-77/1, Opp. Dhrub GIDC, Mundra Port Road, Mundra, Gujarat - 370421

1. यहअपीलआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
   This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3- 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 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

   "केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004"

   "Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."
3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दांखिल की जानी चाहिए।
   Appeal shall be filed within three months from the date of communication of this order.
4. उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरिततिट्रब्यूनल के सहायक रजिस्ट्रार के

पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं°-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

   The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

   While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal 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.

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT - 370421

Phone No. 02838-271165/66/67/68, Email: adj-mundra@gov.in

A. File No.	CUS/AG/MISC/181/2026-A/G-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	MUN-CUSTM-000-COM-24-2026-2027
C. Passed by	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of Order / Date of Issue	11.09.2026
E. SCN No. & Date	F.No. CUS/AG/MISC/181/2026-A/G-O/o Pr Commr-Cus-Mundra (I/4010096/2026) dated 27.03.2026
F. Customs Cargo Service Provider (CCSP) / Noticee	M/s. Hind Terminals Pvt. Ltd. (CFS), Survey No. 76/1-77/1, Opp. Dhrub GIDC, Mundra Port Road, Mundra, Gujarat - 370421

ORDER-IN-ORIGINAL

1. This order is being passed in pursuance of Show Cause Notice F.No. CUS/AG/MISC/181/2026-A/G-O/o Pr Commr-Cus-Mundra (I/4010096/2026) dated 27.03.2026 (hereinafter referred to as "the SCN") issued to M/s. Hind Terminals Pvt. Ltd. (CFS), Survey No. 76/1-77/1, Opp. Dhrub GIDC, Mundra Port Road, Mundra, Gujarat - 370421 (hereinafter referred to as "M/s Hind" or "the Noticee"), whom this office approved as custodian vide Notification No. 03/2016-17 and Notification No. 04/2016-17, both dated 23.05.2016, read with Addendum/Corrigendum Notification No. 03/2016-17 and No. 04/2016-17, both dated 17.10.2016, issued under the relevant provisions of the Customs Act, 1962.

BRIEF FACTS OF THE CASE

2. M/s Hind hold approval as a Customs Cargo Service Provider (CCSP) and custodian under the Handling of Cargo in Customs Areas Regulations, 2009 (hereinafter referred to as "the HCCAR, 2009"). In that capacity they remain responsible for the receipt, storage, delivery, despatch and other handling of imported and export goods at their Container Freight Station (CFS) at Mundra.

3. M/s. Neelam International (IEC: 0513074856) filed Bill of Entry No. 5998358 dated 29.11.2025 for import of goods declared as "CUT PILE FABRIC" (CTH 60019200, 2030 Kgs) and "LONG PILE FABRICS" (CTH 60011020, 23210 Kgs), covered by Container No. MSBU8730883 and shipping line seal No. FX42781272, imported by vessel MSC VITA under IGM No. 1165669/2025.

4. The Container Scanning Division, Mundra selected the container for scanning vide e-mail dated 29.11.2025. M/s Hind lifted the container from the terminal on 02.12.2025 through a GPS-enabled vehicle bearing registration No. GJ12BZ8326 and routed it through the fixed scanner before bringing it to their CFS. The movement chronology furnished by M/s Hind vide their letter dated 20.02.2026, and reproduced in the Enquiry Report, reads as under:

Activity	Date	Time
Terminal Out	02.12.2025	13:55 hrs
Scanning Point In	02.12.2025	14:55 hrs
Scanning Point Out	02.12.2025	15:58 hrs
Scanning Result	Clean	-
CFS Gate In	02.12.2025	17:31 hrs
CFS Weighment	02.12.2025	18:22 hrs
Container Offloaded at Yard	02.12.2025	18:30 hrs

5. Weighment Slip No. 15WB00198/HT/1328953 dated 02.12.2025, timed 6:22 PM, records Container No. MSBU8730883, Vehicle No. GJ12BZ8326, container tare weight 3840.00 Kgs, cargo weight 27100.00 Kgs and gross weight 43720.00 Kgs, and bears the endorsement "Verified By: DAY SHIFT". The gate-in and weighment records of M/s Hind record shipping line seal No. FX42781272 against the container.

6. SIIB, Mundra directed vide e-mail dated 05.12.2025 that the container be kept on hold for examination by DRI. M/s Hind complied with that direction.

7. Officers of the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (DRI, AZU) visited the CFS of M/s Hind on 15.12.2025 and drew a panchnama commencing at about 13:50 hrs. The panchnama dated 15.12.2025 records the following in relation to Container No. MSBU8730883:

> *"... the officers along with Shri Bipin Maheshwari and authroised representative of the importer starts the examination of Container No. MSBU8730883 and inspect the container for any damage and tear or wear from outside of containers and find that the container is in sound and proper condition. The DRI officers along with we, the Panchas then verify the seal no. FX42781272 of the seal placed on the container and finds the seal placed on the container appears to be damaged. The seal appears to be cut and welded. On being asked by DRI Officers, Shri Bipin Maheshwari informs that the present Seal No. FX42781272 belongs to shipping line and he does know how the seal was cut and welded. On being further asked about damaged seal, he stats that he don't have any idea about the cutting of seal. He further stats that the said seal appear to be cut and welded without their perrnission."*

8. The same panchnama records that the DRI officers placed the container on further hold, that Shri Bipin Maheshwari, Operational Manager of M/s Hind, brought CFS seal No. 31615 and sealed the container "in the manner that the container can't be opened without tempering the seal and where Shipping Line seal no. FX42781272 remains intact in the condition as it was", and that he gave his assurance to keep the container and goods in safe custody and not to permit any movement without the written permission of DRI, AZU, Ahmedabad.

9. DRI, AZU, Ahmedabad vide letter dated 09.01.2026 (RUD-01 to the SCN), copy endorsed to the Commissioner of Customs, Mundra, reported that the seal of Container

No. MSBU8730883 had been cut and thereafter re-welded, indicating unauthorised tampering, and requested this office to initiate enquiry under the provisions of the Customs Act, 1962 read with the HCCAR, 2009.

10. The Assistant Commissioner (A.G.), Custom House, Mundra, vide letter dated 06.02.2026, called upon M/s Hind to explain the reasons for the unauthorised cutting and tampering of the seal, and recorded that during the visit of the officers of this office to the CFS on 03.02.2026 M/s Hind had failed to produce the CCTV footage of the said container for the period 02.12.2025 to 08.12.2025.

11. M/s Hind replied vide letter dated 20.02.2026 (RUD-02 to the SCN). They set out the movement chronology reproduced above, stated that "At the time of gate-in, the Shipping Line seal number No. FX42781272 was duly verified and recorded", and submitted on the question of footage as follows:

> *"Further, during the visit of officers from your good office on 03.02.2026, we regret our inability to provide CCTV footage of the said container for the period from 02.12.2025 to 08.12.2025, as our CCTV data retention policy provides for storage of recordings for 48-50 days only. The same has been informed to your good office on multiple occasions, including vide our letter dated 11.06.2018 (copy enclosed for ready reference)."*

12. This office thereafter issued the SCN dated 27.03.2026 alleging contravention of Regulation 6(1)(i) of the HCCAR, 2009 and calling upon M/s Hind to show cause as to why:

(i) the approval granted to them as CCSP should not be suspended under Regulation 11(1) of the HCCAR, 2009;

(ii) the security in the form of bond should not be forfeited under Regulation 11(1) of the HCCAR, 2009;

(iii) penalty should not be imposed under Regulation 12(8) of the HCCAR, 2009; and

(iv) penalty should not be imposed under Section 117 of the Customs Act, 1962.

13. In terms of Regulation 12 of the HCCAR, 2009, the SCN appointed Shri Ajoy Kumar, Assistant Commissioner of Customs, as Enquiry Officer and directed M/s Hind to file their reply before him.

DEFENCE SUBMISSIONS OF THE NOTICEE

14. M/s Hind filed their written statement of defence on 24.04.2026. Their contentions, in substance, run as follows:

(a) The Department has not established that the cutting and re-welding of shipping line seal No. FX42781272 occurred at their CFS. The SCN records only the condition of the seal as noticed on 15.12.2025 and offers no evidence fixing the place, time or agency of the tampering. Several points in the logistics chain preceded the CFS, and the Department has not ruled them out.

(b) They maintain a documented Security Manual and SOP Manual providing for layered controls, namely physical verification and matching of seal numbers at gate-in, a 7-point container inspection and a 17-point trailer inspection, controlled gate access and yard supervision, GPS-based vehicle tracking, round-the-clock CCTV surveillance of critical areas, scanning compliance, restricted access and maintenance of contemporaneous records. They followed these procedures in the present case.

(c) Regulation 6(1)(i) of the HCCAR, 2009 does not impose absolute liability. It requires the custodian to establish and implement reasonable, effective and documented security measures.

(d) The non-availability of CCTV footage resulted from the expiry of their pre-existing retention policy of 48 to 50 days, which they had intimated to this office vide letter dated 11.06.2018. The Department requisitioned the footage only on 03.02.2026 and issued no preservation direction on 15.12.2025 when the footage was still available.

(e) The SCN alleges no shortage, pilferage, substitution, excess, undeclared or prohibited goods, unauthorised removal or revenue loss, and quantifies no loss.

(f) Suspension of approval and forfeiture of security under Regulation 11(1) are drastic measures requiring a clear and attributable finding of contravention, and penalty under Regulation 12(8) presupposes a concluded finding of contravention. Section 117 of the Customs Act, 1962 being a residuary provision cannot be invoked in the absence of any proven independent contravention.

REPORT OF THE ENQUIRY OFFICER

15. The Enquiry Officer submitted his Enquiry Report after examining the SIIB investigation records, the panchnamas, the movement documents, the operational records and the submissions of M/s Hind. His findings, so far as material, are as follows:

(a) The allegation rests primarily on the condition of the seal observed during the DRI examination on 15.12.2025.

(b) The investigation records do not reveal the exact time or stage at which the tampering occurred, any evidence that the tampering took place inside the premises of M/s Hind, any evidence of unauthorised access or movement within the CFS, any statement indicating connivance of the personnel of M/s Hind, or any breach of custody attributable to M/s Hind.

(c) M/s Hind produced their Security Manual and SOP Manual, the records show that the prescribed procedures were followed including seal verification at gate-in and compliance with the hold instructions, and no material emerged establishing deviation from the prescribed SOPs.

(d) The retention policy of 48 to 50 days stood intimated to Customs vide letter dated 11.06.2018, the requisition came only on 03.02.2026 after that period had expired, and no direction for preservation of footage had issued within the retention period. The non-availability is therefore attributable to expiry of the retention period and not to deliberate suppression or destruction of evidence.

(e) No shortage, excess, pilferage, substitution, unauthorised removal, prohibited goods, undeclared cargo or revenue loss stands established.

(f) The seal irregularities noticed appear procedural or incidental in nature and do not warrant any adverse inference, and the evidence on record does not substantiate the proposed action under Regulation 6(1)(i), Regulation 11(1) or Regulation 12(8) of the HCCAR, 2009 or under Section 117 of the Customs Act, 1962.

16. This office furnished a copy of the Enquiry Report to M/s Hind in terms of Regulation 12(6) of the HCCAR, 2009. M/s Hind responded vide letter dated 19.06.2026 stating that they agree with the findings of the Enquiry Report, and further stating that they have amended their gate-in SOP to catch seal and container abnormalities and have initiated upgrading of their CCTV footage retention capacity to 180 days.

RECORD OF PERSONAL HEARING AND ADDITIONAL SUBMISSION

17. I granted personal hearing on 07.07.2026. Shri Yogesh Dutt (Cdr., Retd.), Senior Vice President of M/s Hind, appeared and reiterated the written submissions dated 24.04.2026 and 19.06.2026. During the hearing he showed, in electronic form, photographs of some other seals received at the facility in damaged condition, and sought leave to place a further written submission on record. I granted that leave.

18. M/s Hind filed their additional submission dated 08.09.2026. That submission states, in material part:

> *"Receipt of containers with damaged / improper / mismatched seals is a regular phenomenon as is evident from colour photographs attached. The latest such case occurred on 31.08.2026 at 11:20. It is submitted that, the Customs officials posted at our facility are informed of such incidents and such containers are gated in only after obtaining requisite customs permission. The case of the particular seal/container mentioned in subject of this letter could have happened due to oversight by the gate surveyor during the ... failing light in the evening hours. Given the past record of our organisation wherein we have diligently observed laid down customs procedures in letter and spirit, it is humbly requested that this may please be treated as an aberration by our organisation, which has stood the test of time and strictly adhered to all rules and regulations laid down by the Customs authorities for the past 10 years since its inception in July 2016."*

DISCUSSION AND FINDINGS

19. I have carefully examined the SCN, the relied upon documents, the panchnama dated 15.12.2025, the movement and weighment records, the defence submissions dated 24.04.2026, 19.06.2026 and 08.09.2026, the Enquiry Report and the record of personal hearing. This office issued the notice under Regulation 12(1), the Enquiry Officer conducted the enquiry and submitted his report under Regulations 12(2) to 12(5), this office furnished a copy of that report to the Noticee under Regulation 12(6) and received their representation, and I granted personal hearing. The procedure prescribed under Regulation 12 of the HCCAR, 2009 and the principles of natural justice therefore stand complied with, and I proceed to decide the matter under Regulation 12(7) on merits.

20. The SCN rests on two factual foundations, namely (a) the discovery on 15.12.2025 of shipping line seal No. FX42781272 in a cut and re-welded condition while Container No. MSBU8730883 stood in the customs area of M/s Hind, and (b) the failure of M/s Hind on 03.02.2026 to produce CCTV footage for the period 02.12.2025 to 08.12.2025. The following issues therefore arise for determination:

(i) Whether the record establishes that the cutting and re-welding of seal No. FX42781272 occurred inside the customs area of M/s Hind, or occurred on account of any act, omission, negligence or connivance attributable to M/s Hind;

(ii) Whether M/s Hind failed to detect and report the condition of the seal at the time of gate-in on 02.12.2025, and if so, what character that failure bears;

(iii) Whether the non-production of CCTV footage on 03.02.2026 constitutes a contravention of the HCCAR, 2009;

(iv) Whether the approval granted to M/s Hind as CCSP calls for suspension, and the security in the form of bond calls for forfeiture, under Regulation 11(1) of the HCCAR, 2009;

(v) Whether penalty is warranted under Regulation 12(8) of the HCCAR, 2009; and

(vi) Whether penalty is warranted under Section 117 of the Customs Act, 1962.

<u>Issue (i): Whether the tampering occurred within the customs area of M/s Hind</u>

21. Regulation 6(1)(i) of the HCCAR, 2009 reads:

> *"The Customs Cargo Service provider shall - ... (i) be responsible for the safety and security of imported and export goods under its custody;"*

21.1 The obligation cast by Regulation 6(1)(i) is a real and serious one, and I do not read it narrowly. It is reinforced by Regulation 6(1)(f), which forbids the CCSP from permitting goods to be removed from the customs area or otherwise dealt with except in accordance with the written permission of the proper officer, by Regulation 6(1)(j), which fastens duty liability on the CCSP for goods pilfered after entry into the customs area, and by Regulation 5(1)(i)(n), which requires the CCSP to provide "security and access control to prohibit unauthorized access into the premises". Read together, these provisions require the custodian to hold the goods secure against interference and to answer for their integrity while they remain in its charge.

21.2 The obligation, however, is one of custody and control. It does not convert the custodian into an insurer against every irregularity in the condition of a container that comes to light while the container happens to be standing in its yard. Proceedings under Regulations 11 and 12 of the HCCAR, 2009 visit civil and penal consequences upon the CCSP. The burden of establishing the contravention therefore lies on the Department, and it does not shift to the custodian merely because the tampered seal came to notice at the custodian's premises. I must accordingly examine what the investigation actually establishes about where and when the seal was cut and re-welded.

21.3 On that question, the DRI letter dated 09.01.2026 reports the fact of cutting and re-welding. It does not fix the point in the chain where it occurred. The panchnama dated 15.12.2025 records the condition of the seal but nothing else.

21.4 Now, cutting a bolt seal and thereafter re-welding it is not an easy act to be performed by hand. It requires a cutting tool and a welding apparatus, a power source, an operator with the relevant skill, and a period of time spent alongside the container. The customs area of M/s Hind is a walled and gated facility with controlled access, weighbridge, yard supervision and, on the Department's own case, a 44-camera CCTV installation. That such an operation was carried out there on a container that was under hold from 05.12.2025, and that it left no trace whatsoever in any record, in any statement or in any observation, is a proposition the record does not support.

21.5 The purpose of the alleged act points in the same direction. A person cuts a container seal in order to reach the cargo. The gain lies in removing, substituting, adulterating or adding to the goods. Here no such gain materialised. The enquiry report of the Enquiry Officer reveals no pilferage of the imported goods. The single act which would have amounted to an abdication of custodial responsibility by M/s Hind, namely the removal of goods from the container and their passage out of the customs area, did not occur. The goods left the container only when the officers themselves caused it to be destuffed, in the presence of panchas, and the officers thereafter handed them back to M/s Hind for safe custody.

21.6 Two further features of the record deserve notice. First, the seal number remained FX42781272 throughout. It matched the number declared in the Bill of Entry and the Bill of Lading at gate-in on 02.12.2025, and the DRI officers verified the very same number on 15.12.2025. A person who cuts a seal within the CFS in order to interfere with cargo has no reason to preserve and re-weld the identical seal; he would ordinarily replace it. The re-welding of the same seal, so that the declared number survives a subsequent number-based check, is more consistent with interference at a stage upstream of the CFS, where a later documentary verification had still to be passed, than with interference at the last point of custody before examination. Secondly, the panchnama dated 15.12.2025 records that the DRI officers inspected the container "for any damage and tear or wear from outside" and found it "in sound and proper condition". Had the container been opened and reclosed within the yard, the doors, gaskets and locking gear would ordinarily have carried some sign of it. The officers recorded none.

21.7 The container also passed through the fixed scanner on 02.12.2025 between 14:55 hrs and 15:58 hrs, before it reached the CFS, and the scanning result reads "Clean". It travelled on a GPS-enabled vehicle bearing registration No. GJ12BZ8326 whose tracking record M/s Hind placed before this office. It was weighed at 18:22 hrs on 02.12.2025 and the recorded cargo weight of 27100.00 Kgs is found slight in excess of the declared quantity of 25240 Kgs of fabric together with packing. Such finding of excess quantity of goods in the container indicates no sign of pilferage or unauthorised removal of the goods from the custody of M/s Hind compromising any government revenue. None of these contemporaneous records discloses any interference during the custody of M/s Hind.

21.8 I therefore hold that the record does not establish that the cutting and re-welding of shipping line seal No. FX42781272 took place within the customs area of M/s Hind. I further hold that the record discloses no deliberate act, no connivance, no collusion and no mala fide on the part of M/s Hind or of any of their personnel. The allegation that M/s Hind failed in the safety and security of the goods under Regulation 6(1)(i) of the HCCAR, 2009, insofar as it rests on the act of tampering itself, does not survive.

<u>Issue (ii): The failure to detect and report the condition of the seal at gate-in</u>

22. That, however, does not exhaust the matter. A separate question arises on the same facts, and I must address it because it goes to the working of the custodial system that the HCCAR, 2009 exists to secure.

22.1 The gate-in record and the weighment record of 02.12.2025 record the seal number FX42781272 against Container No. MSBU8730883. What those records do not disclose is any verification of the physical condition or integrity of the seal, as distinct from its number. M/s Hind stated in their letter dated 20.02.2026 that "At the time of gate-in, the Shipping Line seal number No. FX42781272 was duly verified and recorded". On its own terms that statement asserts verification of the number, and the number did match.

22.2 M/s Hind have explained how the condition of the seal would have escaped notice by their security personnel. Their letter dated 08.09.2026 states that the case "could have happened due to oversight by the gate surveyor during the ... failing light in the evening hours". That explanation fits the record. The container gated in at 17:31 hrs on 02.12.2025, in the first week of December, when daylight at Mundra fails soon after that hour. The same letter states that receipt of containers with damaged, improper or mismatched seals is a regular occurrence at the facility, that M/s Hind inform the Customs officers posted at the facility of such incidents, and that such containers are gated in only after obtaining the requisite customs permission, and it cites an instance of 31.08.2026 at 11:20 hrs supported by photographs shown at the hearing.

22.3 That last submission cuts both ways, and I have weighed it accordingly. It establishes that M/s Hind operate a working protocol for exactly this situation, and that the protocol ordinarily functions. It also establishes that on 02.12.2025 the protocol did not function, because the gate surveyor on duty did not observe the condition of the seal and consequently did not report it to the Customs officer posted at the facility. I hold that a lapse occurred at the gate of the CFS on 02.12.2025.

22.4 I must, however, characterise that lapse correctly, because the consequence turns on its character. The lapse consists of a single failure of observation by one individual employee, at dusk, on one container out of the many the facility handles. It is not a failure of system design. The Enquiry Officer examined the Security Manual and the SOP Manual of M/s Hind and found a documented, layered framework providing for seal verification, 7-point container inspection, 17-point trailer inspection, controlled access, yard supervision, GPS tracking, CCTV surveillance and record maintenance, and he found no material establishing deviation from the prescribed SOPs. It is not a failure of infrastructure either. The Explanatory Memorandum to the HCCAR, 2009 identifies the object of these regulations as, among other things, providing adequate control over cargo handling entities so as to ensure that adequate infrastructure is set up at such facilities for efficient handling of imported or export goods. Nothing on this record suggests any infrastructural or systemic deficiency at this CFS.

22.5 Nor did the lapse cause any loss. The goods remained as it is. No pilferage of the goods occurred. The real cost of the lapse is of a different kind. Had the gate surveyor observed and reported the condition of the seal at 17:31 hrs on 02.12.2025, the Customs officer posted at the facility would have recorded the condition of the seal at the moment of entry into the customs area. That record would have fixed the point in the logistics chain at which the tampering occurred, and the investigation into the tampering would have proceeded from a firm footing rather than from an unresolved question.

<u>Issue (iii): Non-production of CCTV footage</u>

23. Circular No. 03/2013-Customs [F.No. 450/13/2012-Dir (Cus.)] issued by the Board draws attention to para 5(1)(i)(n) of the HCCAR, 2009 and records the Board's decision that the Commissioner of Customs, at the time of notification under Section 8 and appointment of custodian under Section 45 of the Customs Act, 1962, should ensure that video cameras and CCTV systems are installed in the customs area for security and to prohibit unauthorised access to the premises, and that "The video footage should be available to Customs, which shall regularly monitor the same." The Circular required custodians and CCSPs to ensure this within one month of its issue.

23.1 M/s Hind have complied with that requirement. In response to the proforma called for by the Chief Commissioner of Customs, Gujarat Zone, vide letter F.No. 11/39-02/Vig./CCO/2017-18 dated 07.06.2018, M/s Hind reported vide their letter dated 11.06.2018 that they had installed "44 Nos of Cameras (including PTZ, Bullet camera, Dome camera in office area)" at their facility; and, in the column headed "Duration for which the CCTV footage is being stored by the custodian", that "The CCTV footage is stored for 48 - 50 days". That disclosure travelled to this office through the Assistant

Commissioner (A.G.) vide F.No. VIII/48-33/AG/Misc./CHM/2017-18 dated 12.06.2018 along with the reports of all CFSs. The retention period of M/s Hind has therefore been on the record of this office since June 2018.

23.2 Neither the HCCAR, 2009 nor Circular No. 03/2013-Customs prescribes any minimum period for which a custodian must retain CCTV footage. In the absence of a prescribed period, a custodian who discloses its retention period to the Department and adheres to it cannot be said to have contravened the regulations when footage older than that period proves unavailable.

23.3 The chronology is decisive. The period for which footage was sought runs from 02.12.2025 to 08.12.2025. DRI officers examined the container at the CFS on 15.12.2025, when footage of the entire period was between seven and thirteen days old and therefore well within the disclosed retention window. No DRI officer issued any direction on that date, or at any time thereafter within the retention window, requiring M/s Hind to preserve the footage. The officers of this office thereafter sought the footage on 03.02.2026 by which time the footage had been overwritten.

23.4 No material on record suggests that M/s Hind deleted the footage deliberately, or destroyed or suppressed evidence, or declined to cooperate. I accordingly hold that the non-production of CCTV footage on 03.02.2026 does not constitute a contravention of the HCCAR, 2009 by M/s Hind, and that the consequence of the delay in requisitioning the footage cannot be visited upon the Noticee.

23.5 This finding is confined to the facts before me and to the retention period disclosed in 2018. Retention of 48 to 50 days is a thin margin for a facility of this size, and the present case shows precisely how thin. I note that M/s Hind have, of their own motion, initiated an upgrade of retention capacity to 180 days, and I issue a direction in that regard in the operative portion of this order.

Issue (iv): Suspension of approval and forfeiture of security under Regulation 11(1)

24. Regulation 11(1) of the HCCAR, 2009 provides:

> *"The Principal Commissioner or Commissioner, as the case may be, of Customs may, subject to the provisions of these regulations, suspend or revoke the approval granted to the Customs Cargo Service provider subject to the observance of procedure prescribed under regulation 12 and also order for forfeiture of security, if any, for failure to comply with any of the provisions of the Act and the rules, regulations, notifications and orders made thereunder;"*

24.1 Suspension or revocation of approval is the gravest consequence the HCCAR, 2009 contemplates. It halts the operations of a notified customs area, affects the importers, exporters, shipping lines and transporters who use it, and displaces the workforce employed there. The power exists to protect the integrity of the customs area, not to punish. It answers to a demonstrated failure of the custodian's capacity or willingness to hold goods securely, such as unauthorised removal or delivery of goods, diversion, pilferage, substitution, unauthorised alteration of the premises or entry and exit points, unauthorised subletting or outsourcing, disregard of the directions of the proper officer, or an infrastructural or systemic deficiency that leaves the customs area unsafe.

24.2 This record shows none of that. M/s Hind lifted the container under a valid ENBLOCK from the shipping line, routed it through the scanner as directed, moved it on a GPS-enabled vehicle, weighed it, recorded it and stored it in the yard. They complied with the hold instruction of SIIB dated 05.12.2025. They produced the container, the records and their officers for the DRI examination on 15.12.2025 and, at the instance of the officers, affixed CFS seal No. 31615 and gave their assurance to hold the container without movement. They answered the departmental correspondence within the time allowed. They participated in the enquiry, attended the personal hearing and placed additional material on record. They have operated this facility since July 2016 and there is no previous adverse record. Also, multiple incidents of seal damage prior to this incident, are noticed to have been duly reported by M/s Hind to the department in accordance with the Facility Notice No. 13/2015 dated 20.05.2015 issued by this office prescribing relevant SOP in such case. Against that background, the single lapse found at Issue (ii) above falls far short of the threshold that Regulation 11(1) contemplates.

24.3 I therefore hold that the proposal to suspend the approval granted to M/s Hind as CCSP, and the proposal to forfeit the security furnished by them in the form of bond, are not sustainable, and I reject both.

<u>Issue (v): Penalty under Regulation 12(8) of the HCCAR, 2009</u>

25. Regulation 12(8) of the HCCAR, 2009 provides:

> *"If any Customs Cargo Service provider contravenes any of the provisions of these regulations, or abets such contravention or who fails to comply with any provision of the regulation with which it was his duty to comply, then, he shall be liable to a penalty which may extend to fifty thousand rupees."*

25.1 The provision fixes a ceiling and confers a discretion. The word used is "liable", and the penalty "may extend to" fifty thousand rupees. The regulation prescribes no minimum. The adjudicating authority must therefore apply its mind to whether penalty should be imposed at all, and not merely to quantum.

25.2 On the exercise of that discretion the law is settled. In Hindustan Steel Ltd. v. State of Orissa, (1969) 2 SCC 627 = AIR 1970 SC 253, the Supreme Court held:

> *"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a*

statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed,.the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

25.3 Applying that test to the present facts, I find as follows. M/s Hind did not act deliberately in defiance of law. Their conduct was neither contumacious nor dishonest. They did not act in conscious disregard of their obligations; on the contrary, they operate a documented protocol for reporting defective seals to the Customs officer at the facility, and the failure on 02.12.2025 lay in the non-observance of that protocol by one gate surveyor on one occasion, and not in its absence. The breach is a single failure of human observation at dusk. It caused no loss of goods and no loss of revenue. It stands admitted and explained by the Noticee rather than concealed. This is, in the language of Hindustan Steel, a venial breach.

25.4 Three further circumstances weigh with me. First, M/s Hind cooperated fully at every stage of the investigation, the enquiry and the adjudication. Secondly, they took remedial action on their own motion and before this order, by amending their gate-in SOP to capture seal and container abnormalities and by initiating an upgrade of CCTV retention capacity to 180 days; they did so, moreover, at a stage when the proceedings were still live and its outcome uncertain. Thirdly, there is no previous adverse record against this CCSP before me in respect of a facility operating since July 2016.

25.5 I therefore decline to impose penalty under Regulation 12(8) of the HCCAR, 2009. I consider that the ends of the regulation are met by placing the lapse on record and administering a caution, which I do in the operative portion of this order. I make it clear that this office will view any repetition of a comparable lapse, or any failure to give effect to the directions issued below, in a substantially different light.

Issue (vi): Penalty under Section 117 of the Customs Act, 1962

26. Section 117 of the Customs Act, 1962 is a residuary provision. It applies where a person contravenes any provision of the Act, or abets such contravention, or fails to comply with any provision of the Act with which it was his duty to comply, "where no express penalty is elsewhere provided for such contravention or failure".

26.1 Two reasons stand in the way of invoking it here. First, the only contravention the SCN alleges is a contravention of Regulation 6(1)(i) of the HCCAR, 2009. Those regulations are framed under Section 141(2) read with Section 157 of the Customs Act, 1962, and Regulation 12(8) provides an express penalty for their contravention. Where the specific provision applies, recourse to the residuary provision is not open. Secondly, and independently, I have held above that no contravention stands established against M/s Hind on the tampering allegation and none on the CCTV allegation, and I have declined to impose penalty in respect of the gate-in lapse for the reasons at paragraphs 25.3 to 25.4. A residuary penalty cannot rest on a foundation that does not exist.

26.2 I accordingly hold that no penalty is imposable under Section 117 of the Customs Act, 1962.

ORDER

27. In view of the foregoing discussion and findings, I pass the following order:

(i) I hold that the approval granted to M/s. Hind Terminals Pvt. Ltd. as Customs Cargo Service Provider is not liable to be suspended under Regulation 11(1) of the Handling of Cargo in Customs Areas Regulations, 2009, and I drop the proposal in that regard.

(ii) I hold that the security furnished by M/s. Hind Terminals Pvt. Ltd. in the form of bond is not liable to be forfeited under Regulation 11(1) of the Handling of Cargo in Customs Areas Regulations, 2009, and I drop the proposal in that regard.

(iii) I refrain from imposing penalty on M/s. Hind Terminals Pvt. Ltd. under Regulation 12(8) of the Handling of Cargo in Customs Areas Regulations, 2009, and I drop the proposal in that regard. I administer a caution to M/s. Hind Terminals Pvt. Ltd. in respect of the failure of their personnel concerned on 02.12.2025 to observe and report the condition of shipping line seal No. FX42781272 at the time of gate-in of Container No. MSBU8730883. Any repetition of a lapse of the same nature will be dealt strictly in accordance with the Handling of Cargo in Customs Areas Regulations, 2009.

(iv) I refrain from imposing penalty on M/s. Hind Terminals Pvt. Ltd. under Section 117 of the Customs Act, 1962, and I drop the proposal in that regard.

28. I pass this order without prejudice to any action that may be taken against any other person under the provisions of the Customs Act, 1962 or under any other law for the time being in force in relation to the tampering of shipping line seal No. FX42781272 or in relation to the goods imported under Bill of Entry No. 5998358 dated 29.11.2025.

Digitally signed by
Nitin Saini
Date: 11-09-2026
15:21:54

(NITIN SAINI)
Commissioner of Customs,
Custom House, Mundra.

File No.: CUS/AG/MISC/181/2026-A/G-O/o Pr Commr-Cus-Mundra

To,

M/s. Hind Terminals Pvt. Ltd. (CFS),

Survey No. 76/1-77/1, Opp. Dhrub GIDC,

Mundra Port Road, Mundra, Gujarat - 370421.

Copy to:

1. The Chief Commissioner of Customs, Customs Zone, Ahmedabad.
2. The Additional Director General, DRI, Ahmedabad Zonal Unit, Ahmedabad.
3. The Deputy / Assistant Commissioner of Customs (A.G.), Custom House, Mundra, for monitoring compliance
4. The Deputy / Assistant Commissioner of Customs (EDI), Custom House, Mundra.
5. Guard File.