

	<p>आयुक्त का कार्यालय, सीमा शुल्क कांडला OFFICE OF THE COMMISSIONER OF CUSTOMS, न्यू कस्टम हाउस, कांडला - 370210 दूरभाष संख्या - ०२८३६-२७१४६८/४६९, फैक्स संख्या- ०२८३६-२७१४६७ Phone No: 02836-271468/469, Fax No. 02836-271467</p>
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DIN- 20250671ML000051565A

A	File No.	GEN/AG/MISC/96/2020-A/G-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-05-2025-26
C	Passed by	Shri M. Ram Mohan Rao Commissioner of Customs, Custom House, Kandla.
D	Date of Order	12.06.2025
E	Date of Issue	12.06.2025
F	SCN No. & Date	The CFS has requested for waiver from issuance of any written Show Cause Notice against them.
G	Name of the Noticee / Party / Importer / Exporter	Ms. A V Joshi & Co. CFS , SS. No. 316/5, National Highway, 8A, Near TATA Showroom, Mithirohar, Gandhidam

1. This Order - in - Original is granted to the concerned free of charge.
2. 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:

Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,

2nd Floor, Bahumali Bhavan Asarwa,
Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

3. Appeal shall be filed within three months from the date of communication of this order.
4. 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. 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. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

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

8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise penalty alone is in dispute.

Brief Facts of the Case:

1. Ms. A V Joshi & Co. CFS, SS. No. 316/5, National Highway, 8A, Near TATA Showroom, Mithirohar, Gandhidam are operating Container Freight Station (hereinafter referred as "*the CFS*"), notified by the Commissioner of Customs, Kandla, under section 8 of the Customs Act, 1962 (hereinafter referred as "*the Act*") to be place for loading/unloading of export/imported goods. The CFS has also been appointed as the "Custodian" of the said premises vide notification No 01/2006 dated 21.04.2006 issued by the Commissioner of Customs, Kandla under Section 45(1) of the Act. Vide the said notification, the CFS was also made responsible for the statutory duties and responsibilities prescribed under section 45(2) & 45(3) of the Act.

1.1 The Commissioner of Customs, Custom House Kandla has also issued a Public Notice bearing No. 45/2006 dated 09.06.2006 prescribing the procedures for import examination, appraisement, export of containerized cargo, their Customs clearance and other formalities at the CFS. The CFS has also been appointed as a Customs Cargo Service Provider (hereinafter referred as "*the CCSP*") by the Commissioner of Customs, Kandla under Regulation 10 of Handling of Cargo in Customs Areas Regulations, 2009 (hereinafter referred as "*the HCCAR, 2009*") and the CFS has submitted a "Custodian Bond" of Rs.26,50,000/- (Rupees Twenty Six Crore Fifty Lakh only) in this regard undertaking to abide by and comply with the provisions of HCCAR, 2009, the Act, and the rules/regulations made thereunder.

2. The Deputy Commissioner, Dock Examination, Custom House Kandla (hereinafter referred as “**DE**”) vide letter F. No. Misc/DE/CFS/AVJ/BE-8452952/2023-24 dated 20.11.2023 addressed to the Assistant Commissioner, Appraising General, Custom House Kandla (hereinafter referred as “**AG**”) has submitted an Incidence Report that, M/s. Simeer Ceramica, Survey No. 144/2, Plot No.3, Near Expert Ceramic, Village Nava Morbi, Gujarat-363642 (hereinafter referred as “**the importer**”) vide Bill of Entry No. 8452952 dated 25.10.2023 filed through the Custom Broker M/s Shivam Seatrans Private Limited (hereinafter referred as “**the CB**”) imported Gypsum Powder in 30x20’ containers; that, said cargo was required to be examined by the Customs officers (Docks Examination), Custom House Kandla due to selection of 03 containers for scanning and mismatch of seals on the 27 containers as reported by the CFS. And, for this purpose the importer moved all those 30x20’ containers from Kandla International Container Terminal Private Limited, Kandla port (hereinafter referred as “**KICT**”) to the CFS.

2.1 It was further informed by the DE that, the CFS had cut the seals of all those 30x20’ containers in the absence of the officers of Customs and the representative of the Importer/CB; that, on being inquired, the Manager of the CFS vide letter dated 07.11.2023 clarified that, this incident took place due to regrettable mistake made by their field supervisor; that, this was a mistake on their part, and they (the CFS) accepted full responsibility for the consequences of their actions. The DE further submitted that, in the instant case the CFS has breached the Customs norms and compromised with the security of the cargo and for these reasons, the matter was taken up for further necessary action against the CFS.

3. Accordingly, AG vide letter F. No. GEN/AG/MISC/96/2020-A/G dated 01.05.2024 asked the CFS to submit their stand in the matter. The CFS was further informed that, in view of the provisions of the HCCAR, 2009, jurisdictional Commissioner is the deciding authority in relation to any failure to comply with any of the provisions of the Act and the rules, regulations, notifications and orders made thereunder. The CFS were further requested to inform whether they wish to issue/receive a written Show Cause Notice or Pre-Notice consultation is required in the matter before issuance of Show Cause Notice.

4. The CFS vide letter dated 24.06.2024 submitted that, the containers in question have been under their diligent care and stored at their CFS since October 28, 2023 and October 29, 2023 in loaded condition; that, they have consistently adhered to the directives provided by the CB, who appraised them that the containers would undergo 100% examination by the Customs; that, the container seals to be cut subsequent to verification by Custom Officer. The CFS further submitted that, they regret to inform that, due to an unfortunate oversight by their field supervisor, the seals of all 30x20’ containers were cut prematurely; that, this error arose from the mistaken belief that all containers were earmarked for destuffing; that, they promptly reported this incident to the DE and the CB; that, entire CFS premise is under constant surveillance via CCTV cameras; that, they have provided video recordings of the incident to the DE along with seals that were mistakenly cut; that, following a thorough review of the evidence, the officer concurred that this was an inadvertent mistake devoid of any malicious intent.

4.1 The CFS further acknowledged and took full responsibility for the lapse on their part and submitted that, this is an unprecedented occurrence in their CFS operations, given

their stringent adherence to computerised system where each operation is meticulously tracked via job orders generated by the system; that, they understand the seriousness of this matter and extended their sincerest apologies for any inconvenience or disruption caused; that, they are fully committed to rectify this error and ensuring a seamless resolution to this issue. The CFS has further requested for consideration in waiver from issuance of any Show Cause Notice against them and to give them an opportunity of personal hearing.

5. The AG vide letter F. No. GEN/AG/MISC/96/2020-A/G dated 24.12.2024 asked the DE to submit detail factual report in the matter. The DE vide letter F. No. S/01-03/Misc/DE/2023-24 dated 03.01.2025 submitted factual report alongwith chronology of events in matter as under –

- Bill of Entry No. 8452952 dated 25.10.2023 was filed by the importer through the CB having declared cargo as "Gypsum Powder" totally weighing 840 MTS (total: 33600 Bags) contained in 30x20' containers.
- Out of 30, 3 containers were selected for scanning. However, due to non-functioning of AXIS container Scanner at Kandla Port, Supdt. (CSD) vide letter dated 27.10.2023 requested for 100% Examination of those 3 containers.
- The CFS vide letter dated 30.10.2023 informed DC(DE) that 27 containers were having seal mismatch and requested for carrying out 100% Examination procedure as per facility note 01/2015 dated 20.05.2015.
- The CFS vide letter dated 07.11.2023 informed that- *"The said containers were under their care & stored at their CFS since 28.10.2023 and 29.10.2023 in loaded condition; that, they have been diligently following the instructions provided by the CB, who informed that the containers would undergo 100% examination by the Customs Authorities and the container seals would be cut after verification by the Customs officer. However, they deeply regret to inform that due to a regrettable mistake made by their filed supervisor, the seals of all 30 containers were cut prematurely. The misunderstanding stemmed from the belief that all containers were intended for De-stuffing. They acknowledge that this was a mistake on their part, and they accept full responsibility for the consequences of their actions. Prior to cutting the seals, they meticulously cross-verified the seal numbers, and they have retained physical records of all the seals after cutting."*
- Meanwhile, the DE was directed to carry out an enquiry and submit report in the matter. Accordingly, a letter dated 07.11.2023 was issued to DP Section asking them to furnish the following remarks:-
 - 1) Date & time of dispatch of those containers from KICT and Date & time of the arrival of the same at the CFS,
 - 2) Whether seals were on the containers at the time of dispatch from KICT,
 - 3) Visual record of the container entering the CFS with seals on and them,
 - 4) Any other evidence of this event that may clarify the matter.
- Supdt. (DP) vide letter dated 09.11.2023, has reported that:-
 - 1) the date & time of dispatch of the mentioned containers is received from KICT and the date and time of arrival of the said containers at CFS may please be obtained from CFS,

and they provided video recordings of the incident to the DE along with the mistakenly cut custom seals; that, upon reviewing the evidence, the DE concurred that the mistake was inadvertent and without any malicious intent; that, on 16.11.2023 and 17.11.2023, all 30x20' import loaded containers were de-stuffed in their covered godown under Panchnamas were drawn by the Customs Officers and no discrepancy was found in the cargo; that, accordingly the "Out of Charge" for the consignment was given on 21.11.2023 and the cargo was fully delivered to the Importer from the CFS without any issue.

7.2 The CFS further acknowledged that, the incident occurred due to miscommunication and was an inadvertent mistake without any malicious intent. The CFS sincerely apologized for any inconvenience or disruption caused and assured their commitment to ensuring such incident does not recur.

Discussions and Findings:

8. I have gone through entire case records available in file and the submissions put forth before me by the CFS during the course of personal hearing held on 24.12.2024, vide their letter dated 23.12.2024 as well as their further written submission vide letter dated 31.12.2024. I have also gone through the comments and submissions of the DE on the factual grounds of the case.

9. I find that, Bill of Entry No. 8452952 dated 25.10.2023 was filed by the Importer through the CB for import of "Gypsum Powder" totally weighing 840 MTS (total: 33600 Bags) contained in 30x20' containers. All those 30x20' containers were Gated-In into the CFS on 28/29.10.2023 in sealed condition. The cargo was required to undergo 100% examination by the DE due to selection for scanning of 03 containers and seal mis-match of the 27 containers as reported by the Container Scanning Division of the Custom House Kandla and the CFS respectively. Accordingly, seal cutting job permission was requested by the CB, which was granted by the PO (DE) on 06.11.2023. Thereafter, the CFS issued Job-Order dated 06.11.2023 on the basis of permission granted by the PO(DE), which was executed by their field supervisor on 07.11.2023 and seals of all the 30x20' containers were cut by the CFS. However, this seal cutting process was conducted by the CFS in the absence of officers of Customs and representative of the Importer/CB as well.

9.1 I find that, the CFS immediately admitted their mistake and vide letter dated 07.11.2023 informed DE regarding the incidence of seal-cutting prematurely without presence and verification by the Custom officers. Thereafter, a detail enquiry in this regard was conducted by the DE and based on the timings of Gate OUT of the containers from KICT terminal and Timings of Gate IN of containers at the CFS, they found that, the time of transit of containers was within the normal time limit range. Thereafter, DE also examined cargo stuffed in all those 30x20' containers under Panchnamas dated 16.11.2023 & 17.11.2023 and no discrepancy was found. Thereafter, Out Of Charge of the consignment was given on 21.11.2023 by the competent authority and cargo was fully delivered to the Importer without any issue.

9.2 I find that, the only issue raised by the DE, which is before me to be decided in the instant case, is related to action to be taken against the CFS under the provisions of the Act and HCCAR, 2009 as the CFS has breached the Customs norms and compromised with the security of the cargo. I also find that, the CFS has already acknowledged their mistake and

- 2) KICT reported mis-match of seals (and not reported regarding non-availability of seal) on 27 containers, directly to the CFS and hence, the seals were available on the containers at the time of dispatch from KICT,
- 3) Visual record is not available with DP and may please be ascertained from CFS. It has further been reported that, KICT intimates only regarding arrival of containers having "Broken Seal/Without Seal" to DP section and the details of containers having "Seal mis-match" is directly reported by KICT to CFS.

- Based on the timings of gate OUT of the containers from KICT and timings of Gate IN of containers at the CFS, it was felt that the time of transit of containers was within the normal time limit range.
- All the containers were examined under Panchnamas dated 16.11.2023 & 17.11.2023 and during the course of panchnama it was informed by the CFS that, after the incidence of premature cutting of seals all those 30x20' containers were again sealed with the seals available with the CFS.
- Upon examination of the cargo under Panchnamas dated 16.11.2023 & 17.11.2023 no discrepancy was found and thereafter, based on approval given by the competent authority, Out Of Charge (OOC) of the Cargo was given on 21.11.2023.

Personal Hearing:

6. As the CFS has requested for waiver of written show cause notice in the matter, there was no need to follow sub-regulations (1) to (6) of Regulation 12 of the ICCAR. 2009. However, as requested by the CFS, an opportunity of personal hearing was given on 24.12.2024 before the Commissioner of Customs, Custom House Kandla. Shri Mahesh Kuksal, Manager of the CFS and Shri Rameshwar Ambati, representative of the CFS appeared for hearing on the scheduled date. They pleaded that, the lapse was on account of CB communication to destuff cargo for examination of containers by Customs Officer, for which job order was already generated. They further submitted that, video footage of two days in question was submitted to Customs to establish their bonafide. They also submitted written submission dated 23.12.2024 and requested for one week time to submit further submissions, which was accorded with.

Further Submissions:

7. The CFS vide their letter dated 31.12.2024 further submitted that, the 30x20' containers in question have been under their diligent care and stored at their CFS in loaded condition since October 28, 2023 and October 29, 2023; that, on the basis of the seal cutting permission given by the PO Customs (DE) which was obtained by the CB on the Check List of Bill of Entry, they issued a system generated "Seal Cutting Job-Order" on 06.11.2023; that, on 07.11.2023, their supervisor commenced the seal cutting process as per the said job order, as the 30x20' import loaded containers were to be de-stuffed in their covered warehouse; that, during the process, a representative of the CB arrived and informed them that, seal cutting should be conducted under Customs supervision while by that time, seal cutting had already been completed.

7.1 The CFS further submitted that, they promptly reported the incident to the DE vide letter dated 07.11.2023; that, their entire premises are under constant CCTV surveillance

accepted full responsibility for the consequences. Hence, now, I proceed to discuss the same as follows.

10. I find that, the CFS has been notified by the Commissioner of Customs, Kandla under section 8 of the Act to be place for loading/un-loading of export/import goods vide notification No 01/2006 dated 21.04.2006. Vide the said notification, the CFS has also been appointed as the “Custodian” of the CFS premises under Section 45(1) of the Act and also made responsible for the statutory duties and responsibilities prescribed under section 45(2) & 45(3) of the Act. The relevant provisions of the Act are as under:

Section 8 . Power to approve landing places and specify limits of customs area. –
The Principal Commissioner of Customs or Commissioner of Customs may, -

- (a) *approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;*
- (b) *specify the limits of any customs area.*

Section 45. Restrictions on custody and removal of imported goods. –

(1) *Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Principal Commissioner of Customs or Commissioner of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII.*

(2) *The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force, -*

- (a) *shall keep a record of such goods and send a copy thereof to the proper officer;*
- (b) *shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer or in such manner as may be prescribed.*

(3) *Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an arrival manifest or import manifest or, as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.*

10.1 I find that, the Commissioner of Customs, Custom House Kandla has also issued a Public Notice bearing No. 45/2006 dated 09.06.2006 prescribing the procedures for import examination, appraisement, export of containerized cargo, their Customs clearance and other formalities at the CFS. The relevant portion of the said Public Notice is as under:

.....
 1.3 *M/S Arvind.V.Joshi & Co. CFS will act as the custodian of the goods at the said CFS. The movement of containers by road vehicles between the said CFS facility and the customs area inside Gateway ports will be undertaken by M/S Arvind V. Joshi & Co.*

2.3 *All customs formalities including physical examination of goods will be carried out at the CFS. This will help in the expeditious clearance of goods as well as permit co-ordination between documentary assessment including through EDI and the physical examination of goods.*

10.2 I also find that, the CFS has been appointed as a CCSP by the Commissioner of Customs, Custom House Kandla under Regulation 10 of HCCAR, 2009 and the CFS has submitted a "Custodian Bond" time to time which is accepted by the Commissioner of Customs, Custom House Kandla. The relevant conditions of the said Custodian Bond are as under:

.....

1. *The custodian of goods keep safe custody of imported/to be exported goods brought to the CFS and save these goods from pilferage, theft, damage or from any kind of loss which can cause loss to Government revenue in any manner.*
2. *The custodian of the goods bind themselves as per section 45 of the Customs Act, 1962 for payment of Customs duty on imported goods and Central Excise duty, Drawback amount or any other amount of incentives on export goods lost to the Government due to pilferage, theft, damage etc., of imported/to be exported goods from the custody of the custodian.*

10.3 I find that, the Regulation (1) of the HCCAR, 2009 prescribes certain definitions and Regulation (5) of the HCCAR, 2009 prescribes certain conditions to be fulfilled by a custodian/ CCSP. Relevant portion of the HCCAR, 2009 is as under:

Regulation 1. In these regulations, unless the context otherwise requires, -

- (a) *"Act" means the Customs Act, 1962 (52 of 1962);*
- (b) *"Customs Cargo Services provider" means any person responsible for receipt, storage, delivery, dispatch or otherwise handling of imported goods and export goods and includes a custodian as referred to in section 45 of the Act and persons as referred to in sub-section (2) of section 141 of the said Act;*

.....

Regulation 5. Conditions to be fulfilled by Customs Cargo Service provider - The Customs Cargo Service provider for custody of imported goods or export goods and for handling of such goods in a customs area shall fulfill the following conditions, namely:-

(1) Provide the following to the satisfaction of the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, namely:

(i) Infrastructure, equipment and adequate manpower for loading, unloading, stacking, handling, stuffing and de-stuffing of containers, storage, dispatch and delivery of containers and cargo etc., including :-

.....

(n) security and access control to prohibit unauthorized access into the premises, and

.....

- (ii) safe, secure and spacious premises for loading, unloading, handling and storing of the cargo for the projected capacity and for the examination and other operations as may be required in compliance with any law for the time being in force;
-
- (5) Undertake to comply with the provisions and abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.
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10.4 I find that, the regulation (6) of the HCCAR, 2009 cast upon certain responsibilities on a custodian/ CCSP. Relevant portion of the regulation (6) of the HCCAR, 2009 is as under:

Regulation 6. Responsibilities of Customs Cargo Service provider:

- (1) The Customs Cargo Service provider shall -
-
- (f) not permit goods to be removed from the customs area, or otherwise dealt with, except under and in accordance with the permission in writing of the Superintendent of Customs or Appraiser;
-
- (i) be responsible for the safety and security of imported and export goods under its custody;
-
- (q) abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.

10.5 I find that, the regulation (11) of the HCCAR, 2009 prescribes actions that may be taken against a Custodian/CCSP. Relevant portion of the regulation (11) of the HCCAR, 2009 is as under:

Regulation 11. Suspension or revocation of approval of a Customs Cargo Service provider:

- 1. The Commissioner of Customs may, subject to the provisions of these regulations, suspend or revoke the approval granted to the Custom 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;
- 2.

10.6 I find that, the regulation (12) of the HCCAR, 2009 prescribes procedure for suspension or revocation of approval and imposition of penalty on a Custodian/CCSP. Relevant portion of the regulation (12) of the HCCAR, 2009 is as under:

Regulation 12. Procedure for suspension or revocation of approval and imposition of penalty:

- (1) The Principal Commissioner of Customs or Commissioner of Customs, as the case may be shall issue a notice in writing to the Customs Cargo Service provider stating the grounds on which it is proposed to

suspend or revoke the approval and requiring the said Customs Cargo Service provider to submit within such time as may be specified in the notice not being less than thirty days, to the Assistant Commissioner or Deputy Commissioner of Customs nominated by him, a written statement of defence and also to specify in the said statement whether the Customs Cargo Service provider desires to be heard in person by the said Assistant Commissioner or Deputy Commissioner of Customs.

.....

(7) The Principal Commissioner or Commissioner shall, after considering the report of the inquiry, and the representation thereon, if any, made by the Customs Cargo Service provider, pass such orders as he deems fit.

(8) 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.

11. From plain reading the legal provisions of Act, HCCAR, 2009, I find that, the CFS is required to fulfill the responsibilities laid down under the HCCAR, 2009 and this includes both in respect of activities undertaken by him as custodian as well as in respect of various service providers contracted or employed by the CFS for providing the services on their behalf. One of the conditions to be fulfilled for appointing as CCSP under Regulation 5(1)(i)(n) and 5(1)(ii) is that the CCSP shall provide security and access control to prohibit unauthorized access into the premises, as well as provide safe, secure and spacious premises for loading, unloading, handling and storing of the cargo and for the examination and other operations as may be required in compliance with any law for the time being in force.

12. I find that, the DE vide letter dated 20.11.2023 has submitted Incidence Report and stated that, in the instant case the CFS has breached the customs norms and compromised with the security of the cargo and escalated the matter to this office for further necessary action against the CFS. I also find that, on being specifically asked, DE vide letter dated 03.01.2025 has submitted a factual report alongwith chronology of events in the matter and submitted that, they had carried out investigation with regard to the imported cargo and reached at the conclusion that, goods may be released and accordingly OOC was granted by the competent authority and cargo was fully delivered to the importer without any issue.

13. In view of above discussions, I find that, the cargo imported in 30x20' containers was required to be kept in the safe & secure custody of the CFS and to undergo 100% examination by the DE. However, seals of all the 30x20' containers were cut by the CFS without presence of Customs officers and representative of the Importer/CB as well. These facts have already been admitted by the CFS and they never disputed it and took full responsibility for lapse on their part and are ready for the consequences as well.

14. I find that, the CFS has been notified by the Commissioner of Customs, Kandla, under section 8 of the Act to be place for loading/un-loading of export/import goods. The CFS has also been appointed as the "Custodian" of the said premises vide notification No 01/2006 dated 21.04.2006 issued by the Commissioner of Customs, Kandla under Section

45(1) of the Act. Vide the said notification, the CFS was also made responsible for the statutory duties and responsibilities prescribed under section 45(2) & 45(3) of the Act. I also find that, the Commissioner of Customs, Custom House Kandla has also issued a Public Notice bearing No. 45/2006 dated 09.06.2006 prescribing the procedures for import examination, appraisement, export of containerized cargo, their Customs clearance and other formalities at the CFS. The CFS has also been appointed as a CCSP under Regulation 10 of HCCAR, 2009 and the CFS has also submitted Custodian Bond as required under Regulation 5(3) of the HCCAR, 2009.

15. In view of the above detailed discussions, I find that, the CFS is required to fulfill the conditions prescribed under Regulation 5 of the HCCAR, 2009 and are required to discharge their responsibilities as laid down under Regulation 6 of the HCCAR, 2009. Any violations of the said regulations may attract initiation of necessary action by the jurisdictional Commissioner in terms of Regulation 11, 12 ibid. In as much as following the due process of Regulation 12 of HCCAR, 2009 is concerned, I find that, the CFS has already waived the requirement of written show cause notice and asked for personal hearing in the matter, which was accorded to and hence, the principles of natural justice in passing this order is duly followed.

16. I find that, as per sub-regulation 5(1)(i)(n), 5(1)(ii) & 5(5) and 6(1)(f), 6(1)(i) & 6(1)(q) of HCCAR, 2009, safe custody and handling of import laden containers is the prime responsibility of the CFS. I find that, in the instant case, there is clear violation of these regulations as there appeared to be lack of internal control, security system, proper handling of import laden containers and supervision on the part of the CFS. I find that, it is crystal clear and also admitted by the CFS that they had violated the obligations casted upon them under Regulations 5(1)(i)(n), 5(1)(ii) & 5(5) and 6(1)(f), 6(1)(i) & 6(1)(q) of HCCAR, 2009, and hence I do not have any hesitation in arriving at the conclusion that the CFS failed to provide safe and secure storage facility of imported goods kept in their custody in 30x20' containers by way of allowing to remove the seals of those import laden containers in the absence of Customs officer and representative of the importer/CB.

17. I find that, HCCAR, 2009 provides that CCSP, the CFS in the present case, for custody of imported goods or export goods and for handling of such goods in a customs area, is under a mandate to fulfill the conditions as set out in the HCCAR, 2009. The opening words of the HCCAR, 2009 itself makes the provision mandatory when it uses the word "*shall fulfill the following conditions*". It is manifest that sub-regulations (2), (5) and (6) of the Regulation 5 are in the nature of undertakings. Even otherwise, there needs to be a holistic reading of Regulation 5 taking into consideration the scheme of the HCCAR, 2009 read with substantive provisions of the Act, namely, the provisions of Section 141 which become relevant in the present context, which reads thus:

"141. Conveyances and goods in a customs area subject to control of officers of customs

- (1) *All conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of this Act, be subject to the control of officers of customs.*
- (2) *The imported or export goods may be received, stored, delivered, dispatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid*

activities shall be such as may be prescribed."

18. I find that, Section 141(2) applies to the imported or export goods which may be received, stored, delivered, dispatched or otherwise handled in a customs area only in a manner "*as may be prescribed*", so as to provide that the responsibilities of persons engaged in the said activities shall be such as may be prescribed. As per the provisions of Section 2(32) of the Customs Act "*prescribed*" is defined to mean prescribed by regulations made under the Act, hence, all activities of the CFS were required to be undertaken as per the Regulations as framed under the Act and in the present case HCCAR, 2009. I find that, it is clear that the CFS had breached its responsibility in discharging its duties insofar as the custody of import laden 30x20' containers in question was concerned and seals of which were cut by the CFS in without presence of the officer of Customs and representative of the Importer/CB.

19. Inssofar as the imposition of penalty under Regulation 12(8) is concerned, I find that, Regulation 12(8) of the HCCAR, 2009 mandates that if the CCSP (the CFS in the present case) contravenes any of the provisions of the said Regulations or abets such contravention or fails to comply with any provisions 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. I find that, in the present case, there is a clear contravention of Regulation 5 and Regulation 6, as noted above, hence, I am of the considered view that the CFS is liable for imposition of penalty under Regulation 12(8) of HCCAR, 2009.

20. I find that, it is not in dispute that the CFS is governed by the provisions of the Act and the CFS is notified as the place for loading/ unloading of export/import goods vide Not. No. 01/2006 dated 21.04.2006 issued by the Commissioner of Customs, Custom House Kandla. The CFS is also appointed as "Custodian" under section 45(1) of the Act vide the said notification subject to compliance of provisions of section 45(2) and 45(3) of the Act. I also find that, Section 117 of the Act provide for imposition of penalty on any person who contravenes any provision of the Act or abets any such contravention or who 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, to be liable to a penalty not exceeding four lakhs rupees.

20.1 I find that, the CFS failed to fulfill the conditions and to abide by the responsibilities casted upon them as CCSP. Hence, there is clear violation of the HCCAR, 2009 and sections 45(2), 45(3) and 141(1) & (2) of the Act by the CFS and thus I find that, the CFS is also liable for penalty under section 117 of the Act. The relevant portion of the Act is as under:

Section 117. Penalties for contravention, etc., not expressly mentioned. -

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.

21. I find that, on a plain reading of Section 117¹ of the Act, it is quite clear that the provision pertains to penalties for contravention of the provisions of the Act or in the event of abetment of any such contravention and /or failure to comply with the provisions of the

Act, with which the person was under a duty to comply and where no express penalty elsewhere is provided for such contravention or failure, it is only in that event, Section 117 can be invoked. Thus, Section 117 of the Act is an independent provision inter alia dealing with the contravention of the provisions of the Act. In the facts and circumstances of the present case, I find that, the CFS is also liable for imposition of penalty under section 117 of the Act. I find no fault in imposition of simultaneous penalty under Section 117 of the Act and Regulation 12(8) of the HCCAR, 2009.

21.1. In this regard I rely upon the judgment passed on 6 December, 2023 by the Hon'ble High Court of Bombay in the case of M/s Container Corporation Of India Ltd vs Commissioner Of Customs, Nhava Sheva wherein, Hon'ble court has held that, the Commissioner was justified in imposing simultaneous penalties for contravention of the provisions of the Act and Regulation under section 117 of the Act and regulations 12(8) of the HCCAR, 2009. Relevant Para-28 of the said judgment is reproduced as under:

"28. In the facts and circumstances of the present case, the Commissioner was justified in imposing a penalty for contravention of the provisions of Customs Act by the appellant in relation to the goods in question. Also the appellant has not raised a dispute, as the contention of the appellant is that there cannot be a simultaneous penalty under Section 117 of the Customs Act and Regulation 12(8) of the 2009 Regulations. Thus, no fault can be found on the penalty of Rs.4,00,000/- as imposed under Section 117."

22. In view of above discussions, case law and provisions of section 45, 117, 141 of the Act, the regulations 5 & 6 of the HCCAR, 2009, I hold that, the CFS is liable of penalty under section 117 of the Act and Regulation 12(8) of the HCCAR, 2009 as well simultaneously and I hold it apt to impose penalties upon the CFS under section 117 of the Act and Regulation 12(8) of the HCCAR, 2009. However, since the CFS has immediately reported the incidence to the Customs and upon investigation carried out by the DE, no issue was noticed with the cargo and Out Of Charge was granted by the competent authority and cargo was also fully delivered to the Importer without any issue, I refrain from taking drastic action like suspension of licence of the CFS under the Regulation 11 of the HCCAR, 2009.

23. In view of the above discussions and findings, I, Commissioner of Customs, Custom House Kandla in exercise of powers conferred upon under Regulation 12(7) of the HCCAR, 2009, pass the following order:

: ORDER :

- i. I order to impose penalty of **Rs.50,000/-** (Rupees Fifty Thousands only) under Sub-Regulation (8) of Regulation 12 of Handling of Cargo in Customs Area Regulations, 2009 on Ms. A V Joshi & Co. CFS, SS. No.316/5, National Highway, 8A, near TATA Showroom, Mithirohar, Gandhidam and order to recover the same from them.
- ii. I order to impose penalty of **Rs.2,00,000/-** (Rupees Two Lakhs only) under Section 117 of the Customs Act, 1962 on Ms. A V Joshi & Co. CFS, SS. No.316/5, National Highway, 8A, near TATA Showroom, Mithirohar, Gandhidam and order to recover the same from them.

24. This order is issued without prejudice to any other action that can be taken against the CFS or any other person under the Customs Act, 1962, Rules/Regulations made thereunder or any other law for the time being in force.

Digitally signed by
M Ram Mohan Rao
Date: 12-06-2025
^{15:06:07}
(M. Ram Mohan Rao)
Commissioner of Customs
Custom House Kandla

F. No.: GEN/AG/MISC/96/2020-A/G-O/o Commr-Cus-Kandla
Date: 12-06-2025

To,

Ms. A V Joshi & Co. CFS,
SS. No.316/5, National Highway, 8A,
near TATA Showroom, Mithi Rohar,
Gandhidam

Copy to:

- i. The Office of the Chief Commissioner of Customs, Ahmedabad Zone, Ahmedabad.
- ii. The DC/AC (DE) & DC/AC (DP), Custom House Kandla for information.
- iii. The Assistant Commissioner (TRC), Custom House Kandla for information and necessary action at their end.
- iv. The Superintendent (EDI), Custom House Kandla for information with a request to upload it on the website of Kandla Customs.