



प्रधान आयुक्त, सीमा शुल्क का कार्यालय,
न्यू कस्टम हाउस, कांडला
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
NEW CUSTOM HOUSE, KANDLA-370210
Phone No: 02836-271468/469, Fax No. : 02836-271467

A	फाइल संख्या/ File No.	S/20-18/08-Appg (G)
B	आदेश में मूल सं./ Order-in-Original No.	KND- CUSTM- 000- COM- 17- 2018-19
C	पारितकर्ता/Passed by	SHRI SANJAY KUMAR AGARWAL, PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, KANDLA
D	आदेश की दिनांक/Date of order	19.03.2019
E	जारी करने की दिनांक/Date of issue	19.03.2019
F	एस.सी.एन. सं. एवं दिनांक /SCN F. No. & Date	S/20-18/08-Appg (G) dated 20.03.2018
G	नोटिसी / पार्टी /Noticee/ Party	M/s Goodearth Maritime Limited, Sub-Licencee of M/s Well Brines Chemicals Ltd. (now M/s Jakhau Salt Company Pvt. Ltd.), Salt Field, Jakahu, Taluka Abdasa, Kachchh

1. यह अपील आदेश संबन्धित को निः शुल्क प्रदान किया जाता है।

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 129A(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:

"केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण"

पश्चिम क्षेत्रीय बेंच, द्वाितीय तलबहुमाली भवन आसरवा ,
गिरधर नगर ब्रिज के समीप, गिरधर नगर, अहमदाबाद -3८० ००४
Customs Excise & Service Tax Appellate Tribunal,
West Zonal Bench,
2nd Floor, Bahumali Bhavan Asarwa,
Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad – 380004

3. 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.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) 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 5.00/- 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. 5.00/- (Rupees Two only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील जापन 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.

6. अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), 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.

7. 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 शुल्कका 7.5% भुगतान करना होगा।

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.

Subject: Show Cause Notice issued M/s Goodearth Maritime Limited, Sub-Licencee of M/s Well Brines Chemicals Ltd. (now M/s Jakhau Salt Company Pvt. Ltd.), Salt Field, Jakahu, Taluka Abdasa, Kachchh, for non-payment of Cost Recovery Charges in terms of Notification no. 9/2002/CC dated 23.4.2002 and HCCAR, 2009.

Brief fact of the case:

The Private Jetty of M/s Goodearth Maritime Limited, a Sub-Licensee of M/s Well Brines Chemicals Ltd. (now M/s Jakhau Salt Company Pvt. Ltd.), the original Licencee, situated at Salt Field, Jakahu, Taluka Abdasa, Kutch, was declared as a Landing Place under Section 8(a) of Customs Act, 1962, by the Commissioner of Customs, Ahmedabad, vide Notification No. 08/2002/CC dated 23.04.2002 and M/s Goodearth Maritime Limited was appointed as the Custodian of the goods meant for loading of salt for export/import and costal movement under Section 45(1) of the Customs Act, 1962 vide Notification No. 09/2002/CC dated 23.04.2002, subject to fulfillment of various conditions mentioned therein.

2. A letter bearing F. No. VIII/48-06/CUS(T)/2001-02 dated 05.05.2003 was issued by the Assistant Commissioner of Customs, Bhuj Division, Kandla, to M/s Goodearth Maritime Limited, Jakhau, allowing them to operate / continue their jetty on payment of Merchant Over Time (MOT) charges as per Customs (Fees for Rendering Services of Customs officers) Regulations, 1998, whenever they require services of Customs officers at their jetty till separate posting of Customs staff has been made on Cost Recovery Basis. On the basis of the aforesaid letter, M/s Goodearth Maritime Limited, Jakhau, was paying MOT charges for the services rendered by the Customs officers at their jetty.

3. M/s Goodearth Maritime Limited, Jakhau, are "Customs Cargo Service Provider" (*herein after referred to as "the CCSP" for the sake of brevity*) as per Regulation 2(b) of the Handling of Cargo in Customs Areas Regulations, 2009 (*herein after referred to as "HCCAR, 2009"*) in terms of Notification No. 26/2009-Cus.(NT) dated 17.03.2009, as amended, and according to which they are responsible for receipt, storage, delivery, dispatch or otherwise handling of imported goods and export goods. Further, as per Regulation 4 of the HCCAR, 2009, any action taken or anything done in respect of appointment of the CCSP, immediately preceding the coming into force of these Regulations shall be deemed to have been

done under the corresponding provisions of these Regulations. The CCSP already approved on or before the date of coming into force of these regulations shall also comply with the conditions of these regulations within a period of three months or such period not exceeding a period of one year as the Commissioner of Customs may allow from the date of coming into force of these Regulations.

4. In terms of Regulations 5(2) of the HCCAR, 2009, the CCSP has undertaken to bear the cost of the Customs officers posted, at their jetty, on cost recovery basis by the Commissioner of Customs and to make payments at such rates and in the manner prescribed, unless specifically exempted by an order of the Government of India in the Ministry of Finance. This condition was already in existence as per S.No.13 of Notification No. 09/2002/CC dated 23.04.2002 issued under Section 45 of the Customs Act, 1962. Further, as per Regulation 6(1)(o) of the HCCAR, 2009, it is the responsibility of the CCSP to bear the cost of the Customs officers posted by the Commissioner of Customs on cost recovery basis and shall make payments at such rates and in the manner as specified by the Government of India in the Ministry of Finance, unless specifically exempted by an order of the said Ministry.

5. Further, in pursuance of the above facts as also narrated in the letter F. No. VIII/20-20/Amend/Cus(T)/2014-15 dated 08.05.2015, addressed to the CCSP, the Superintendent (Tech.), Customs Division, Bhuj, requested them to pay Cost Recovery Charges with effect from 17.03.2009 *i.e.* after introduction of HCCAR, 2009 vide Notification No. 26/2009-Cus.(NT) dated 17.3.2009.

6. The CCSP started to pay establishment charges on Cost Recovery basis from April-2015 onwards and have paid the Cost Recovery charges upto December, 2017. However, till date they have not paid Cost Recovery Charges for the work handled by the Customs officers/staffs posted, during the period 17.03.2009 to 31.03.2015 amounting to Rs. 1,42,81,265/- as per the provisions of the HCCAR, 2009.

However, the CCSP has paid charges amounting to Rs. 18,41,005/- on MOT basis during the period 17.03.2009 to 31.03.2015.

7. The CCSP have not paid the cost recovery charges for the Customs staff posted at their private jetty, during the period 17.03.2009 to 31.03.2015, and hence, the CCSP being custodian has contravened the provisions/ conditions of the Notification No. 09/2002 dated 23.04.2002 read with Regulation 6(1)(o) of HCCAR, 2009, by not paying the Cost Recovery charges for the Customs Staff posted at the said jetty and thus their Custodianship is found liable to suspension/ revocation. Further, the CCSP is also found liable to penalty in terms of Regulation 12 (8) of HCCAR, 2009.

8. The instant case is based on the facts available on records and the correctness of which is beyond any doubt. The issues raised in the notice are crystal clear and do not require any examination / cross-examination of witness and / or further addition of oral evidences. The Licence can be cancelled by the authority who had issued it, as also confirmed under Regulation 12(6) & (7) of the HCCAR, 2009. The instant case is not a criminal case *viz.* connivance of the CFS authorities in smuggling or pilfering of goods etc. for which the cross- examination of any person(s) was required. Although it has been prescribed under Regulation 12 (1) of HCCAR, 2009, that the Commissioner of Customs shall issue a notice in writing to the CCSP if the notice is proposed to suspend/revoke the approval and requiring the CCSP to submit his defence reply within thirty days, to the Assistant/Deputy Commissioner of Customs, who will act as inquiry officer, as nominated by the Commissioner and put the inquiry report before Commissioner, yet it seems that in simple matters like the instant case the notice can be decided without going through the rigmarole of process of inquiry.

9. Accordingly, a Show Cause Notice No. S/20-18/08-Appg (Gen) dated 20.3.2018 was issued to M/s Goodearth Maritime Limited asking them as to why :-

- (i) their Custodianship of the jetty granted vide

Notification No.09/2002 dated 23.04.2002, should not be suspended/ revoked in terms of Regulation 12(1) of the Handling of Cargo in Customs Areas Regulations, 2009 in as much as they failed to fulfill the conditions Sr. No. 13 to the said Notification dated 23.04.2002 read with Regulation 6(1)(o) of the Regulations *ibid*;

- (ii) the Establishment charges amounting to Rs.1,42,81,265/-, details of which is annexed in Annexure-A to the notice for the Customs Staff posted on Cost Recovery basis should not be recovered from them;
- (iii) the charges amounting to Rs. 18,41,005/- paid by them on MOT basis during the period 17.03.2009 to 31.03.2015, should not be appropriated against the demand of Rs. 1,42,81,265/- recoverable from them.
- (iv) penalty under Regulation 12(8) of Handling of Cargo in Customs Areas Regulations, 2009, should not be imposed on them.

9.1 A corrigendum/addendum dated 26.02.2019 was issued by the Principal Commissioner of Customs, Kandla, stating that *“in the Show Cause Notice No. S/20-18/08-Appg (Gen) dated 20.03.2018, wherever, the amount shown as “Rs. 1,42,81,265/-” may please be read as Rs. 1,45,55,246/- (Rupees One Crore Forty Five Lakh Fifty Five Thousand Two Hundred Forty Six only)”*.

DEFENCE REPLY

10.1 The CCSP vide letter dated 19.4.2018 submitted that *“as per our record, there were no posting orders for posting of Superintendent, Inspectors or Sepoy issued to us by the authorities at Bhuj Customs and we had been paying MOT charges as per Challans raised and certified by Bhuj Customs. Hence, the demand of Cost Recovery charges for the period in question is not rational. We had brought this point also to notice of your good office vide our letters dated 11.5.2015 and 17.02.2018. Meanwhile we request you for copies of posting orders of Custom Officers posted at our private jetty from*

17.03.2009 till March, 2015 as referred in your subject notice vide para no. 6 and 7”.

10.2 Further, the CCSP vide letter dated 11.12.2018 submitted that:

(i) we are a law abiding company and have always observed and followed all the rules and regulations as stipulated in Customs Act 1962. We wish to bring to your kind notice that prior to last extension dtd 28-12-2017, we were granted extension of custodianship on 20th December, 2012 on submission of all requisite documents required for renewal including the declaration that we were operating Jakhau Port Jetty and availing services of customs officers under M.O.T. Thereafter we were allowed to operate/work under M.O.T. At no point of the time, the question of Cost Recovery Charges surfaced or was raised until letter dtd 8-5-15 issued by Bhuj Customs demanding payment of Cost Recovery Charges for the period from 17-3-2009 to June, 2015. In this regard, we made written submission to your office on 11-5-15 to which we received no reply.

(ii) Vide our letter dtd 17th February, 2018 we again made submission to Bhuj Customs (with copy to your office) highlighting following points:

- a. Since issue of permission for Custodianship, we have been paying MOT on the basis of demand raised by Bhuj Customs. Even while applying for renewals on 22-4-2008 and 20-12-2012 also we were not informed about the posting of dedicated staff and we continued to pay MOT on the basis of challans served on us.
- b. We were officially informed about payment of CRB charge vide their letter of 30.4.2015 without giving any details on dedicated officials posted for the work.
- c. We are not allowed to use Jetty by Gujarat Maritime Board during the monsoon season.
- d. Consider and calculate differential amount between the apportioned CRB Charges and MOT paid by us during the period in question.

- e. Requested that since 2015, full CRB charges were recovered from us, the same be apportioned for the services rendered to other companies by same officers as no dedicated custom staff had been posted for our jetty.
- f. Since there was no reply to our earlier representation on the matter, we assumed the matter remained settled as we had agreed to operate and function under Cost Recovery basis with prospective effect on actual posting of Custom Staff by the customs department.

(iii) Vide our letter dtd 19th April, 2018 seeking extension to file our reply to SCN, we had submitted that as per our records, no posting orders for posting of Superintendent, Inspector or Sepoy was issued to us as mentioned at para 6 and 7 of SCN.

(iv) Vide our letter dtd 27th June, 2018 we had once again requested for a copy of posting orders posted at our private jetty from 17-03-2009 till March-2015 as referred in para 6 & 7 of SCN.

(v) Vide our letter dtd 22-8-2018 (copy attached as Annexure E) addressed to Bhuj Customs (copy to your office) we had once again made submission requesting them to re-quantifying the demand against Cost Recovery Charges.

(vi) As regards to Cost Recovery Charges, we draw your kind attention to the Board clarification vide F.No. A11018/11/2008-Ad IV dtd 25th July, 2008 wherein at para 2 QUOTE "Cost Recovery System" in respect of ICDs/CFSs is to recover the "Cost" being incurred by the Department. In this context, the points raised by you are being clarified as follow:

- a. The cost recovery charges should be demanded in respect of officials actually posted to ICDs/CFSs, irrespective of the sanctioned strength.
- b. If a particular officer is given charge of more than once ICD/CFS, the cost recovery charges in respect of such officer should be apportioned amongst the concerned ICDs/CFSs.

(vii) As per F.No. A11018/9/91-AD.IV, dtd 1.4.1991 regarding recovery of cost for the posts created on Cost Recovery Basis, the same has to be paid at the rate of 1.85 times of the monthly average cost of the post plus DA, CCA, HRA etc.

(viii) We further wish to bring following facts for your kind consideration:

- We only export SALT from this facility which is a very low value cargo and our average export is about 2-3 million tons per year. Since we were allowed to operate on MOT charge basis during the period in question, we had not factored this additional cost in our product costing during export in the said period and payment of this will be a big financial implication for us.
- Since Jakhau is not a regular port, as per the directives of Gujarat Maritime Board, we are not allowed to use the jetty for 3-4 months during monsoon season.

In view of above submissions, we hereby request your kind self to consider following on basis of factual position:

- (i) Cost Recovery Charges during the period in question be recalculated on the basis of 1.85 times Monthly Average Cost plus DA, CCA, HRA etc.
- (ii) Correct apportioning of Cost Recovery Charges amongst other users for the period in question since no specific posting orders were issued in respect of posting of Custom Officers for our Jetty as mentioned at para 6 and 7 of SCN.
- (iii) Waive Charges for the period of monsoon when we are not allowed to use the Jetty by Gujarat Maritime Board.
- (iv) Since April, 2015, we have been charged Cost Recovery Charges on higher calculations and same do not seem to have been apportioned amongst other users, the same may be recalculated and excess charges paid by us may be adjusted in future Cost Recovery Charges demands.
- (v) MOT charges paid by us during the period in question may be deducted from the final demand as MOT

charges were paid by us as per the demands raised by Bhuj Custom office.

Since we have been always agreeable to pay the recalculated CRB charges pending clarification from the department, the subject Show Cause Notice may please be dropped.

PERSONAL HEARING

11. The personal hearing in this was fixed on 11.12.2018. Shri Rajendra Aswani duly authorised by the Executive Director of CCSP appeared before me on 11.12.2018 and made a written submission dated 11.12.2018 at the time of PH and reiterated the request made in the submission regarding working of CRB charges and deduction of MOT charges etc.

DISCUSSION AND FINDING

12. I have gone through the Show Cause Notice dated 20.03.2018, and written submissions made by the noticee before me. I also find that all the facts related to issue are already stated in SCN and therefore there was no need to appoint any Inquiry Officer. Thus, on the basis of facts available on records and submission of CCSP I proceed to adjudicate the case.

13. I find that M/s Goodearth Maritime Limited i.e. CCSP was appointed as the Custodian of the goods meant for loading of salt for export/import and coastal movement under Section 45(1) of the Customs Act, 1962 vide Notification No. 09/2002 dated 23.04.2002, renewed from time to time, subject to fulfillment of various conditions mentioned therein. A letter bearing F. No. VIII/48-06/CUS(T)/ 2001-02 dated 05.05.2003 was issued by the Assistant Commissioner of Customs, Bhuj Division, Kandla, to the CCSP allowing them to operate / continue their jetty on payment of MOT (Merchant Over Time) charges as per Customs (Fees for rendering services of Customs Officers) Regulations, 1998, whenever

they require services of Customs officers at their jetty till separate posting of Customs staff has been made on Cost Recovery Basis. On the basis of the aforesaid letter the CCSP was paying MOT charges for the services rendered by the Customs officers, at their jetty.

14.1 I find that after introduction of Handling of Cargo in Customs Areas Regulations, 2009 vide Notification No. 26/2009-Cus.(NT) dated 17.03.2009, the CCSP was falling under the ambit of HCCAR, 2009 in terms of Regulation 4 of the HCCAR, 2009. As per Regulation 4 of HCCAR, 2009, the CCSP already approved on or before the date of coming into force of these regulations shall also comply with the conditions of these regulations within a period of three months or such period not exceeding a period of one year as the Commissioner of Customs may allow from the date of coming into force of these Regulations.

14.2 I also find that in terms of Regulations 5(2) of the HCCAR, 2009, the CCSP has undertaken to bear the cost of the Customs officers posted, at their jetty on cost recovery basis and to make payments at such rates and in the manner prescribed, unless specifically exempted by an order of the Government of India in the Ministry of Finance. This condition was already in existence as per S.No.13 of Notification No. 09/2002 dated 23.04.2002 issued under Section 45 of the Customs Act, 1962.

14.3 The regulation 6(1)(o) of HCCAR, 2009 states that *“the Customs Cargo Service Provider shall bear the cost of the customs officers posted by the Commissioner of Customs on cost recovery basis and shall make payments at such rates and in the manner specified by the Government of India in the Ministry of Finance unless specifically exempted by an order of the said Ministry”*. In the instant case the custodian has failed to submit the exemption in his favour from order of Ministry of Finance.

14.4. During the Personal Hearing held on 11.12.2018 the CCSP in addition to their written submission dated

11.12.2018 requested for re-calculation of Cost Recovery Charges. The Cost Recovery Charges for the period from 17.3.2009 to 31.3.2015 has been re-calculated by the field formation in accordance with the Board's instruction F.No. A-11018/9/91-A.D.IV dated 1.4.1991. The Assistant Commissioner, CD Bhuj reported vide letter dated 21.02.2019 that CR charge has been re-calculated by adding sum of all allowances into the result arrived at by multiplying average basic pay of each post with 1.85. After re-calculation the amount of Cost Recovery Charges for the period from 17.3.2009 to 31.3.2015 comes to Rs.1,45,55,246/-. Accordingly, a Corrigendum/Addendum dated 26.02.2019 was issued correcting the demand amount from Rs.1,42,81,265/- to Rs.1,45,55,246/-.

15. I find that the CCSP started to pay establishment charges on Cost Recovery basis from April-2015 up to date as per HCCAR, 2019. However, till date they have not paid Cost Recovery Charges for the work handled by the Customs officers/staffs posted, during the period 17.03.2009 to 31.03.2015 amounting to Rs. 1,45,55,246/- as per the provisions of the HCCAR, 2009. However, the CCSP has paid charges amounting to Rs. 18,41,005/- on MOT basis during the period 17.03.2009 to 31.03.2015 in terms of Customs (Fees for rendering services of Customs Officers) Regulations, 1998.

16. I rely upon the judgement dated 27.08.2018 of Hon'ble Delhi High Court in case of Allied ICD Services Ltd vs. UOI & Ors. in W.P.(C) 13770/2009, wherein the Hon'ble Court observed that:

27. Customs officers may perform statutory or sovereign functions, however, the sovereign is not liable to provide service and permit setting up ICDs/CFSS/ACCs/EPZs. Additional posts are created/sanctioned for the ICDs/CFSS/ACCs/EPZ for which the developer undertakes to bear the cost of the staff posted. The payment is in the nature of fee for the services rendered. Further, payment of cost recovery charges for the customs officers who are posted for manning such additional facilities is one of the conditions of appointment as a custodian in terms of Notification

under Section 45(1) of the Act and Regulation 5(2) of the impugned Regulation. In this regard, necessary undertakings were given by the petitioners before they were so appointed as custodian under Section 45 of the Act. They are therefore bound to bear the cost of the customs staff, posted for the ICDs/CFSS/ACCs/EPZs. The payment of cost recovery charges by the custodian of ICDs/CFSS/ACCs/EPZs has the statutory force of law and is within the jurisdiction of the respondents.

17.1 I also rely upon the judgement dated 13.11.2014 of Hon'ble High Court of Gujarat in case of M/s Sanghi Industries Ltd. vs. UOI & Ors. in Special Civil Application No.12301 of 2014, wherein the Hon'ble Court disposed the petition with the following directions:

“(i) The department will examine the shortage of deployment of staff from 1.4.2013 till 31.10.2014. It would be open for the petitioner to place the materials at the disposal of the authority enabling it to gather such facts.

(ii) To the extent there was shortfall of staff, it would be open for the department to recover the establishment charge from the petitioner. Same shall be adjusted and given credit to the petitioner to the extent shortfall is found.

(iii) The petitioner shall make representation to the department for change of regime to MOT which may be considered expeditiously and preferably by 31.12.2014. We are conscious that the present term of notification is till 16.3.2015. There is however, nothing in the notification during its currency which would prevent the department from changing the terms thereof, if otherwise permissible and the request is accepted by the department.

17.2 I find that the judgement dated 13.11.2014 of Hon'ble High Court of Gujarat in case of M/s Sanghi Industries Ltd. vs. UOI & Ors. in Special Civil Application No.12301 of 2014, is squarely applicable in instant case.

18. Thus, I find that the CCSP have to pay the Cost Recovery charges on quarterly basis in advance. I find that after the introduction of HCCAR, 2009, the CCSP fall under ambit of HCCAR, 2009 in terms of Regulation 4 ibid. The CCSP has paid MOT charges as per the provisions of Customs (Fees for Rendering Services of Customs Officers) Regulations, 1998 up to March, 2015. I find that the amount paid by the CCSP as MOT is liable to be appropriated against the liability of Cost Recovery charges for the relevant period during 17.3.2009 to

31.3.2015.

19. As far as the sharing of CRB charges among the other CCSPs is concerned, I find from the report dated 21.02.2019 of Assistant Commissioner, CD Bhuj, that the Cost Recovery Charges has been apportioned among the custodian of Jetties functional at the material time. Thus, I find that the demand of Cost Recovery charges from the Custodian was in accordance with the CBIC's letter F.No.A11018/11/2018.Ad.IV dated 25.7.2008 and apportioned between the facilities functional at the material time.

20. I find that the Custodian was appointed under Section 45(1) of Customs Act, 1962 with certain conditions under Notification No. 9/2002/CC dated 23.04.2002 including condition no. (13) that "*the Custodian shall bear the establishment charges of the Customs staff posted for the said jetty.*". The claim of CCSP for waiver of CR charged for the monsoon period when they are not allowed to use jetty by Gujarat Maritime Board is not sustained as the provisions of Cost Recovery Charges are permanent in nature and may not be considered on the basis of ad-hoc work is performed. The custodian had paid the MOT charges instead of Cost recovery charges in terms of Regulation 6(o) of HCCAR, 2009 and violated the condition no. 13 of Notification No. 9/2002/CC dated 23.04.2002 and Regulation 6(o) of HCCAR, 2009 and attract penal provision as per under Regulation 12(8) of HCCAR, 2009.

21. In view of aforesaid finding, I pass the following order:

ORDER

- (i) I hereby order for recovery of Cost Recovery Charges of **Rs. 1,45,55,246/- (Rupees One Crore Forty Five Lakh Fifty Five Thousand Two Hundred Forty Six)** for the period from 17.3.2009 to 31.3.2015 from M/s Goodearth Maritime Limited. As the custodian has paid MOT of Rs.18,41,005/- (Rupees Eighteen Lakh Forty One Thousand Five only) during the same period, I order to appropriate the said amount against total demand of CR

charges.

- (ii) I impose a penalty of **Rs. 20,000/- (Rupees Twenty Thousand only)** on M/s Goodearth Maritime Limited under Regulation 12(8) of Handling of Cargo in Customs Areas Regulations, 2009.
- (iii) If M/s Goodearth Maritime Limited failed to pay the above confirmed demand along with penalty at Sr.No.(i) & (ii) before **30.06.2019**, the operations stand suspended on **01.07.2019** till they deposit the above confirmed demand along with penalty in terms of Regulation 11(1) of HCCAR, 2009.

(Sanjay Kumar Agrawal)
Principal Commissioner

F.No.S/20-18/08-Appg (G).

Kandla, dated 19.03.2019

To
M/s Goodearth Maritime Limited,
Sub-Licencee of M/s Jakhau Salt Company Pvt. Ltd.,
Salt Field, Jakahu,
Taluka Abdasa, Kachchh

Copy to:

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad,
2. The Assistant/Deputy Commissioner (RRA), C.H., Kandla.
3. The Assistant/Dy. Commissioner (Recovery), C.H., Kandla
4. The Assistant/Dy. Commissioner, Customs Division, Bhuj,
5. The Superintendent, Custom House, Jakhau,
6. Guard File