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F.No.S/20-9/2002-Appg (G)-II



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

BY RPAD/ Speed post

F.No.S/20-09/2002-App.(G)II

Kandla, dated 20.9.2018

CORRIGENDUM

to Order-in-Original No. KDL/COMMR/SKA/05/2018-19 dated
11.9.2018

In the Order-in-Original No. KDL/COMMR/SKA/05/2018-19 dated 11.9.2018 at page no.1 the Sr. No. B of table be read as "KDL/COMMR/SKA/08/2018-19".

(Sanjay Kumar Agrawal)
Commissioner

To

M/s Central Warehousing Corporation,
Container Freight Station,
Opp. KPT West Gate-II,
Kandla, Kutch - 370 210.

Copy to:

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad,
2. The Assistant/Dy. Commissioner (D.P.), C. H., Kandla,
3. The Assistant/Deputy Commissioner (RRA), C.H., Kandla.
4. The Assistant/Dy. Commissioner (Recovery), C.H., Kandla
5. The Assistant/Dy. Commissioner (P&V), C.H., Kandla,
- ✓ 6. Guard File



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

A	फाइल संख्या/ File No.	S/20-09/2002-Appg (G)-II
B	आदेश में मूल सं./ Order-in-Original No.	KDL/commr/SICA/05/1819
C	पारितकर्ता/Passed by	SHRI SANJAY KUMAR AGARWAL, COMMISSIONER OF CUSTOMS, KANDLA
D	आदेश की दिनांक/Date of order	11.9.2018
E	जारी करने की दिनांक/Date of issue	11.9.2018
F	एस.सी.एन. सं. एवं दिनांक /SCN F. No. & Date	(i) S/20-9/2002-Appg(G)I dated 24.9.2015 (ii) S/20-9/2002-Appg(G)I dated 31.3.2016 (iii) S/20-9/2002-Appg(G)II dated 13.2.2018
G	नोटिसी / पार्टी / Noticee/ Party	M/s. Central Warehousing Corporation, Container Freight Station, Kandla

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 तल बहुमाली 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 ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

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(s) issued to Central Warehousing Corporation, CFS, Kandla, for non-payment of Cost Recovery Charges in terms of Notification no.2/2004-Cus dated 7.1.2004 and HCCAR, 2009.

Brief fact of the case:

M/s Central Warehousing Corporation (A Government of India Undertaking) Container Freight Station, Kandla (herein after referred as 'M/s CWC Kandla' for the sake of brevity) have entered into MoU dated 12.2.2002 with M/s Kandla Port Trust (now M/s Deendayal Port Trust) (herein after referred as 'M/s KPT' for the sake of brevity) to develop a Container Freight Station facility next to the Customs Boundary of the Kandla Port.

2. After completion of development of the CFS at Kandla Port (now Deendayal Port), the same was declared as Landing Place under Section 8 of Customs Act, 1962, vide Notification No.1/2003 dated 7.1.2004. Further, vide Notification No.2/2004 dated 7.1.2004, M/s Central Warehousing Corporation (CWC, Kandla) was appointed as the Custodian of the goods meant for export/ import, from the container gate complex of Container Terminal of KPT up-to the CFS gate complex, and CFS notified vide Notification No.1/2003 dated 7.1.2004 under Section 45(1) of the Customs Act, 1962, subject to fulfillment of various conditions given in the said Notification.

3. M/s CWC, Kandla are "Customs Cargo Service Provider" (CCSP) as per Regulation 2(b) of the Handling of Cargo in Customs Areas Regulations, 2009 (HCCAR,2009) under 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 CCSP, immediately preceding the coming into force of these Regulations shall be deemed to have been done under the corresponding provisions of these Regulations. CCSP already approved on or before the date of coming into force of these regulations shall 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. As per Regulation 5(2) of the HCCAR, 2009, the CCSP i.e. M/s CWC, Kandla has under taken to bear the cost of the Customs officers posted at such customs area by the Commissioner on cost recovery basis, and shall make payments

at such rates and in the manner prescribed, unless specifically exempted by an order of the Government of India and the Ministry of Finance. This condition was already in existence as per S.No.13 of Notification No.02/2004 dated 07.01.2004 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 specified by the Government of India and the Ministry of Finance, unless specifically exempted by an order of the said Ministry.

5. As per condition Sr.No.13 of Notification No.02/2004 dated 07.01.2004 and Regulation 6(1)(o) of HCCAR, 2009, the Custodian shall bear the cost of the Customs Staff posted at the said CFS.

6. Further, in pursuance of the above facts narrated at Para 5, a letter dated 25.3.2015 was issued to M/s CWC Kandla for payment of CR charges and they were also informed that their application for renewal of the custodianship is kept in abeyance until the conditions are fulfilled. However, they failed to comply the same till date. It appears that CCSP was working since 11.02.2004 and its customs work was handled by the Customs officers/staff as and when it was required.

7. M/s CWC Kandla has not paid establishment charges for the staff posted at CWC CFS, Kandla and hence it appears that the Custodian i.e. M/s CWC, Kandla has contravened the provisions/ conditions of the Notification No.02/2004 dated 07.01.2004 read with Regulation 6(1)(o) of HCCAR, 2009 by not paying the Cost Recovery charges for the Customs Staff posted at the said CFS and thus their Custodianship is found to be liable for suspension/ revocation. Further, M/s CWC is also found to be liable for penalty in terms of Regulation 12 (8) of HCCAR, 2009. Accordingly, following Show Cause Notice(s) were issued by the Commissioner of Customs under Regulation 12(1) of the HCCAR, 2009 directing them to file their defense in writing to the Deputy Commissioner, Custom House, Kandla, as to why their custodianship should not be suspended/ revoked in as much as they failed to fulfill the conditions of the Notification No.02/2004 dated 07.01.2004 read with Regulation 6(1)(o) of HCCAR, 2009 by not paying the Cost

Recovery charges for the relevant period mentioned below:

Sl. No	Show Cause Notice no. & date	Period involved	Amount of Cost Recovery Charges (Rs.)
1	S/20-9/2002-Appg(G)I dated 24.9.2015	01.4.2006 to 31.3.2015	1,13,03,525
2	S/20-9/2002-Appg(G)I dated 31.3.2016	10.2.2004 to 31.3.2006	17,66,118
3	S/20-9/2002-Appg(G)II dated 13.2.2018	01.4.2015 to 31.12.2017	37,29,093
			1,67,98,736

INQUIRY CONDUCTED IN TERMS OF REGULATION 12 OF HCCAR, 2009

8.1 The Commissioner of Customs has assigned the Deputy Commissioner for conducting the inquiry in terms of regulation 12 of HCCAR, 2009. The Deputy Commissioner has gone through the defence replies dated 28.11.2015 & 18.07.2016 submitted by the M/s CWC, Kandla in reply to the notices dated 24.09.2015 and 31.03.2016 issued from F.No. S/20-09/2002-Appg(G)I and the written submission dated 24.04.2017 submitted by M/s CWC Kandla at the time of P.H. held on 11.05.2017. The Deputy Commissioner concluded the inquiry and submitted inquiry report dated 24.5.2017.

8.2 The inquiry report dated 24.5.2017 narrated that M/s CWC was appointed as custodian of the goods along with M/s KPT under notification no. 2/2004 dated 7.1.2004 issued under Section 45 of the Customs Act, 1962. The Inquiring authority found that the contention of CWC, Kandla, that the demand in respect of CWC, CFS- I, is not sustainable as it is evident from the Notification No. 2/2004 dated 07.01.2004 that in case of CFS-I, KPT which is a Major Port Trust is also a Custodian along with CWC, Kandla. Hence, contention of CWC regarding non-payment of CRB in respect of CWC, Kandla seems to be acceptable.

8.3 The Commissioner of Customs, Kandla, has not accepted the inquiry report dated 24.5.2017 and found that the findings of the Inquiry Officer, to the extent below, were not

factually correct for the reasons mentioned below:

- (i) In the Customs notification No. 1/2003 dated 7.1.2004 the words and expressions mentioned as "*... hereby notify the area of Central Warehousing Corporation situated outside the boundary wall of Kandla Port Trust....*", indicates that the CFS (CWC-I) is situated outside the boundary of Kandla Port.
- (ii) Further, the Customs Notification No. 2/2004 dated 7.1.2004 issued under Section 45 of the CA, 1962 split the area of custodianship between M/s KPT and M/s CWC as M/s KPT was appointed as the Custodian of the imported goods and goods meant for export through Kandla Port or any other class of such Goods within the Port area specified as Customs Area in notification 1/2003 dated 7.1.2004 and M/s CWC was appointed as the custodian from the container gate complex of Container Terminal of KPT up to the CFS gate complex as well as the CFS notified as Customs area in Notification 1/2003 dated 7.1.2004, under Section 45(1) of the Customs Act, 1962. Thus when the jurisdictions of the two are separate it would be factually incorrect to say that there was Joint Custodianship. Thus the inference drawn in the Inquiry report dated 24.5.2017, that there was Joint Custodianship of the cargo in the case of CWC CFS-I (CWC, Kandla), is also not correct.
- (iii) The CBEC Circular no. 4/2011 dated 10.01.2011 under para 8 narrates that though the custodians under MPTA, 1963 and AAIA, 1994 shall not require to make an application under Regulation 4 or 9 for approval or renewal, but they would be required to discharge the responsibilities cast upon them in terms of Regulations 5 and 6 of the regulation without any exception, meaning thereby that the Major Ports covered under MPTA, 1963 are not separately notified under Section 45 of the Customs Act as custodian.

8.4 In light of the disagreement note dated 5.4.2018, the Commissioner of Customs, Kandla, ordered for fresh inquiry in the SCNs and appointed Assistant Commissioner (Appg.G), Kandla, as the Inquiry Officer.

9. The Assistant Commissioner (Appg.G.) has conducted inquiry in context of SCN dated 24.9.2015, 31.3.2016 and 13.2.2018 and held personal hearing on 21.5.2018. During the personal hearing, the representative of CWC, Kandla submitted their written reply vide letter dated 20.4.2018 and reiterated the same facts what they have already mentioned in their reply dated 20.4.2018. On the basis of relevant case files available in AG section, Kandla, and also written and oral submissions made by the Manager of CWC, Kandla; the Assistant Commissioner (Inquiry Officer), completed the inquiry and submitted inquiry report dated 8.6.2018 wherein he find that:

(I) As per Regulation 5(3) of the HCCAR, 2009, the cost recovery charges in respect of the customs officers deployed at the customs clearance facility (ICD/CFS/Port/Airport, etc) are required to be paid by the custodian, unless these have been exempted for an individual custodian by an order issued by the Ministry of Finance or by a circular or instruction issued by the Ministry of Finance. In the Circular No. 34/2002-Customs dated 26.6.2002, the Board has issued guidelines in connection with the appointment of custodian of sea ports and air cargo complexes wherein it was mentioned in the Annexure (at Sl. no. 10) that "*the custodian shall bear the cost of the customs staff posted at the Sea Ports and Air Cargo Complexes. The Commissioner of Customs shall decide the number of staff, which is required to be posted in the facility considering the workload in the station.*" Further, it was clarified vide Circular No. 27/2004-Customs dated 6.4.2004 that three specified categories of custodians at ports and airports, would continue to be exempt from the payment of charges for the customs officers deployed therein and the three categories of custodians are

(i) Custodians notified under section 45 of Customs Act, prior to 26.6.2002 and no change in custodianship or area after 26.6.2002.

(ii) Custodians notified prior to 26.6.2002 but part or whole of the same premises transferred (on lease or otherwise) to new custodian on or after 26.6.2002. [e.g. Airport Authority of India (AAI) is the custodian of Mumbai Air Cargo Complex from a period prior 26.6.2002. They have later, after 26.6.2002, transferred custodianship for part of the Air cargo Complex to

Air India].

(iii) Custodians notified prior to 26.6.2002 but premises extended after 26.6.2002 under the same custodianship.

(II) Kandla Port Trust (now Deendayal Port Trust) was notified as a Major Customs Port in 1994 and is comparable to Airport Authority of India, in terms of category (ii) of the Circular No. 27/2004-Customs dated 6.4.2004 read with Circular No. 34/2002-Customs dated 26.6.2002.

(III) It is evident from the KPT letter no. MS/GN/1021-IX/14 dated 19.4.2002 that land admeasuring 700 mtrs x 200 mtrs; outside customs boundary area of Kandla port was allotted to CWC Kandla for development of CFS. The CFS/KPT Kandla came into existence in the year 2004 and it was not in existence as a part of customs area of Kandla port prior to 26.6.2002; as is being emphasized in category (ii) of the Circular No. 27/2004-Customs dated 6.4.2004. M/s KPT is exempted from payment of CR charges in terms of Circular No. 34/2002-Cus dated 26.6.2002 read with Circular No. 27/2004-Cus dated 6.4.2004. M/s CWC Kandla being operated by CWC (under joint custodianship of both CWC and KPT) does not qualify for the exemption from payment of cost recovery charges for the customs staff posted therein since it's operational from 2004.

PERSONAL HEARING AND DEFENCE REPLY:

10. The personal hearing in the instant matter was held on 14.8.2018, which was attended by Shri Ram Avatar Prasad, Storage Inspection Officer /Manager (I/c), CWC CFS Kandla who made a written submission dated 14.8.2018 and reiterated the contents therein and requested to withdraw all the demand notice toward cost recovery charges under impugned SCN dated 24.9.2015, 31.3.2016 and 13.2.2018.

11. M/s CWC Kandla had made representation dated 14.8.2018 against the Inquiry report dated 8.6.2018 issued by the Assistant Commissioner/ Inquiry Authority. M/s CWC Kandla submitted that:

I. In consonance to the Policy guidelines of the Ministry of Shipping, Govt. of India, Kandla Port Trust issued a global NIT dated 13.04.1998 inviting thereby offers from interested

Parties having proven experience in the field of operating Container Freight Station (CFS) facilities for development of Container Freight Station outside the Customs Boundary Area at Kandla Port. The Bid submitted by Central warehousing Corporation was found acceptable and competitive in the bidding process. Accordingly, the KPT, with due approval from Ministry of Shipping, Govt. of India under Section 42(3) of the Major Port Trust, issued a LOI in favour of CWC vide letter No.MS/GN.1021-VI/08 dated 24.04.2000, for development of Container Freight Station outside the Customs Boundary Area at Kandla Port and license out the Operation, Management and Maintenance for a period of 30 years on BOT basis.

II. The CWC developed a Container Freight Station (CFS) at the allotted plot. The said CFS facility outside customs boundary of Kandla port on the west side was declared as Customs Area under section-8 of the Customs Act by the Commissioner of Customs, Kandla vide Custom Notification No.1/2003 dated 07.01.2004 and Central warehousing Corporation was appointed as Custodian of the facility vide Custom Notification No. 2/2004 dated 7.1.2004. The procedures for clearance of Import / Export Cargo was notified to the trade vide Customs Public Notice No.1 of 2004 dated 07.01.2004 by the Commissioner of Customs Kandla.

III. In terms of the said License Agreement, Kandla Port Trust, declared the said CFS as "Commissioned" vide Gazette Notification No.GA/GN/ 1522, dated 10.02.2004 and accordingly CWC commenced the commercial operations w.e.f. 10/02/2004.

IV. A reading of the agreement signed between Kandla Port Trust and Central Warehousing Corporation reveals that Kandla Port Trust is always an integral part in the CFS project for the entire period of 30 years. In addition to the lease rent they are entitled to performance based royalty. That CFS facility is an integral part of the working of the major port is eloquently disclosed from the following clause contained in the License Agreement:

"7.2.4 Additional facility

After commissioning of the CFS, no stuffing and destuffing of containers shall be carried out in the port and dock area."

V. The CFS developed by CWC at Kandla Port was and essentially is a project of the Kandla Port Trust to create

additional facility for handling the EXIM cargo. The land of CFS belongs to KPT. The CFS facility, though managed exclusively by the CWC, is generally subservient to the Kandla Port Trust, and contents of the Public Notice issued by the Commissioner make it amply clear that Kandla Port Trust and CWC are joint custodians of the CFS. Further, the Government of India while granting permission approving the proposal of creation of CFS and its management by a private player, namely CWC, has categorically declared that CWC shall not be allowed to monopolize the operation of CFS and there shall be no restriction on the KPT creating other similar facilities in its area. Merely because a second or distinct entity has been involved in developing the customs area for handling the export and imported cargo that fact by itself would not mean that CFS is not an integral part of the KPT operations or that the operational area though theoretically outside the boundary of defined port area moves out of jurisdiction of Kandla Port Trust. In the proceeding taken out by the Kandla Customs House Agent Association before the High Court of Gujarat -being Special Civil Application no. 17113 of 2004, the Chief Mechanical Engineer of the Kandla Port Trust while contesting the petition has filed an affidavit wherein it has been clearly stated that "the CFS of CWC is an extended arm of the Kandla Port Trust, which is duly Custom notified area".

VI. The present inquiry report, which we have been called upon to respond, does not consider any of the above mentioned facts or the position of law. Also, the report does not mention or even cursorily refer to any new facts or development that has surfaced or become known to the Customs Authority subsequent to the earlier inquiry report necessitating a re-look at the finding given in the earlier report.

DISCUSSION AND FINDINGS:

12. I have gone through the Show Cause Notice(s), inquiry reports submitted by the Inquiring Authority, written submissions as well as submissions made during the personal hearing. Since the issues involved in all 3 Show Cause Notices are identical, these are taken up together for disposal through a common order.

13. I find that the following main issues are involved in the subject Show Cause Notice(s), which are required to be decided:-

- (a) Whether the notified area of M/s CWC Kandla under Notification No. 01/2003 dated 7.1.2004 was integral part of KPT, a Major Port Trust, under the provisions of Custodianships notified under Section 45 of the Customs Act, 1962;
- (b) Whether the exemption of Cost Recovery charges would be available to M/s CFS Kandla in terms of para (ii) of Circular No. 27/2004-Cus dated 6.4.2004;
- (c) Whether the provisions of Circular No. 128/1995-Cus dated 14.12.1995, and Regulations of HCCAR, 2009, as amended, are applicable on custodian of M/s CWC Kandla (a CFS) for recovery of CR charges, failing so attracted the suspension of custodianship notified vide Notification No.2/2004 dated 7.1.2004.

14. After having framed the main issues to be decided, now I proceed to deal with each of the issues individually, herein below.

15.1 I find that it is an established fact that the CFS is a place where containers are stuffed, de-stuffed and aggregation/ segregation of export/import cargo take place. A CFS is an extended arm of the Port/ICD/Aircargo Complex, where import/export goods are kept till completion of their examination and clearance. The imported goods can be immediately shifted from the port to CFS which also helps in the reduction of port congestion. For the purpose of Customs clearance at the ICDs/CFSSs, Customs staff is provided at the ICD/CFS on cost recovery basis. The custodians appointed under Section 45 of the Customs Act, 1962, are required to pay @185% of total salary of officers actually posted at the ICD/CFS unless otherwise exempted.

15.2 I find that M/s KPT and M/s CWC entered into an agreement in 2002 for the development of CFS/KPT, Kandla on BOT basis on KPT land, near the container terminal gate, outside 'customs area' of Kandla Port, on the lease for a period of 30 years. M/s CWC commenced the commercial operations at the said CFS w.e.f. 10.2.2004. The CFS Kandla (CFS-KPT) was notified as 'Customs area' under section 8 of

Customs Act, 1962, vide Notification No. 1/2003-Cus dated 7.1.2004 issued by the Commissioner of Customs, Kandla. Further, vide Notification No.2/2004-Cus dated 7.1.2004, M/s KPT was appointed as the Custodian of 'the imported goods and goods meant for export through Kandla Port or any other class of such Goods within the Port area specified as Customs Area in notification 01/2003 dated 07.01.2004' and the Central Warehousing Corporation as the custodian 'from the container gate complex of Container Terminal of KPT upto the Container Freight Station gate complex as well as the Container Freight Station notified as customs area in Notification No. 1/2003 dated 7.1.2004 of this office'. Thus, I find that the CWC Kandla and KPT were notified custodian jointly on the Customs area of CWC CFS-I.

15.3 Further, I find that Notification No. 1/2005-Cus (NT) dated 31.1.2005 has issued in which area of CWC Kandla (CWC CFS-I) was not made part of notified customs area of KPT. The relevant portion of said notification is re-produced below:

"In exercise the powers conferred under by Section 45(1) of the Customs Act, 1962 and in supersession all earlier of Notification issued in this regard, except as respects things done or omitted to be done before such supersession, I, C.M. Mehra, Commissioner of Customs, Customs House, Kandla, hereby appoint the Kandla Port Trust as the Custodian of the imported goods and goods meant for Export through Kandla Port or any other class of such goods within the Port area specified as Customs area vide Notification No.1/2005-Cus(N.T.) dated 31.1.2005 of this office....."

15.4 I also find that KPT had allotted the land which was situated 'outside the customs area of KPT' to CWC Kandla on 19.4.2002. Later on the said area was notified as customs area on 7.1.2004 vide Notification No. 01/2003 i.e. after 26.2.2002. The custodianship of KPT on the customs area pertaining to CWC CFS-I was annulled vide Notification No. 2/2005-Cus (NT) dated 31.1.2005 in suppression of Notification No. 01/2003. Thus, I find that said customs area was not part of notified customs area pertaining to KPT w.e.f. 31.1.2005.

15.5 I also find that the administrative and operational

control over the CWC CFS-I was with CWC Kandla and the KPT has not made any interference within the business of CWC Kandla. I also find from the Affidavit-in reply before Hon'ble High Court of Gujarat filed by the KPT in case of SCA No. 17113 of 2004 that as per the License Agreement vide clause No. 3.8.1 (II)(b) the Central Government while approving the proposal of creation of CFS have stated that CWC shall not be allowed to monopolize the operation of CFS in future for creating new facilities by Kandla Port Trust.

15.6 I find that though the contention that CWC CFS-I is extended arm of KPT is correct but as far as the provisions of Customs Act is concerned, the notified customs area i.e. CWC CFS-I under the sole custodianship of CWC Kandla is not an integral part of KPT customs area.

16 I find that the Board had issued a Circular No.128/1995 dated 14.12.1995 on the standard set of guidelines for appointment of custodian of EPZs/ ICDs/CFSSs. Later on, in absence of guidelines for appointment of custodianship for appointment of Sea Port and Air Cargo Complex, the Board has issued separate guidelines for such purposes vide Circular No. 34/2002-Cus dated 26.6.2002. I find that being a CFS the CWC CFS-I was established under the standard set of guidelines for appointment of custodian of EPZs/ICDs/CFSSs as per Circular No.128/1995 dated 14.12.1995 and all the conditions under Circular dated 14.12.1995 were applicable on them.

16.1 The Board vide Circular No.27/2004-Cus dated 6.4.2004 exempted the following three category of functional ports or air cargo complex from the applicability of new guidelines issued vide Circular No. 34/2002-Cus dated 26.6.2006:

(i) Custodians notified under section 45 of Customs Act, prior to 26.6.2002 and no change in custodianship or area after 26.6.2002.

(ii) Custodians notified prior to 26.6.2002 but part or whole of the same premises transferred (on lease or otherwise) to new custodian on or after 26.6.2002. [E.g. Airport Authority of India (AAI) is the custodian of Mumbai Air Cargo Complex from a period prior 26.6.2002. They have later, after 26.6.2002, transferred custodianship for part of the Air cargo Complex to Air India].

(iii) Custodians notified prior to 26.6.2002 but premises extended after 26.6.2002 under the same custodianship.

16.2 I find that the part of KPT land which was transferred to the CWC Kandla was not a part of notified customs area of KPT at the material time. Thus, the category mentioned under para (ii) of Circular No.27/2004-Cus dated 6.4.2004, as claimed by the CWC Kandla, is not applicable on them. However, I find that the customs area of KPT has been extended over the notified area of CWC CFS-I under Notification No. 1/2003-Cus. dated 7.1.2004 and thus, the condition No. (iii) of Circular No.27/2004-Cus dated 6.4.2004 is applicable to KPT till 31.1.2005 i.e. the date of issuance of Notification No. 02/2005-Cus(NT). Thus, I find that the exemption of Cost Recovery charges in terms of para (iii) of Circular No. 27/2004-Cus dated 6.4.2004 is available to CWC Kandla for the joint custodianship on CWC CFS-I for the period from 10.2.2004 to 31.1.2005 only.

17. As far as the applicability of Cost Recovery charges on CWC Kandla is concerned, I find that CWC Kandla was notified under the provisions of Circular No. 128/1995-Cus dated 14.12.1995, as amended, and later on regulated under Regulations of HCCAR, 2009. There was a condition under Notification 2/2004 dated 7.1.2004 that "the Custodian shall bear the cost of the Customs Staff posted at the said CFS, if required." I also agree with finding of Inquiry Report dated 8.6.2018 that CWC Kandla is NOT eligible for exemption of CR charges for CWC CFS-I. However, the Inquiry Report also dealt with the issue of CR charges for CWC-2 (CFS-II/KPT Scrap yard) which is not a part of any of the SCNs under adjudication and the said area was also de-notified vide Notification No. 11/2013 dated 19.11.2013 by the Commissioner of Customs, Kandla. Thus, I refrain myself on adjudicating on the finding of Inquiry officer in respect of recoverability of CR charges in respect of CWC-2 (CFS-II/KPT Scrap yard).

17.1 I find that after issuance of Notification No. 1/2005-Cus (NT) and 2/2005-Cus (NT) both dated 31.1.2015 the KPT has no custodianship on the notified customs area of CWC CFS-I. Further, the KPT was exempted from payment of CR charges in terms of Circular No. 27/2004-Cus.dated 6.4.2004

and 13/2009-Cus. dated 23.3.2009. After, issuance of Notification No.1/2005-Cus (NT) dated 31.1.2005, the CWC Kandla was the sole custodian of customs area of CWC CFS-I w.e.f. 01.2.2005 and liable to follow the conditions imposed under Circular No. 128/95 dated 14.12.1995 and HCCAR, 2009, as amended.

17.2 Further, I also find that CR charges for CWC CFS-I was demanded for the officers actually posted therein during the initial period i.e. one Inspector and one Superintendent. Later on, the officers posted at were also looking after the work relating to other CFSs, so the CR charges were demanded proportionally amongst the CFSs in terms of clarification issued by the Board vide F.No.A.11018/11/2008-Ad.IV dated 25.7.2008.

17.3 I find that the CWC Kandla being the sole custodian on the Customs area of CWC CFS-I from the period from 1.2.2005 onwards, is liable to pay cost recovery charges in terms of condition (13) of Notification No. 2/2004-Cus dated 7.1.2004 and Regulation 6(1)(o) of HCCAR, 2009. Thus, the CWC Kandla is liable to pay cost recovery charges of total Rs. 1,60,78,938/- for the period from 01.2.2005 to 31.12.2017. The demand of CR charges of Rs. 7,19,798/- for the period from 11.2.2004 to 31.1.2005 under the SCN dated 31.3.2016 is not sustainable being under the joint custodianship of KPT and CWC over the CWC CFS-I during the material period.

PENALTY:

18. I also find that the CWC Kandla has not complied the condition no.13 imposed under Notification No. 2/2004-Cus dated 7.1.2004 and also contravened the Regulation 6(1)(o) of HCCAR, 2009, as amended, as they have failed to pay the Cost Recovery charges of total **Rs. 1,60,78,938/- (Rupee One Crore Sixty Lakhs Seventy Eight Thousand Nine Hundred Thirty Eight only)** for the period from 1.2.2005 to 31.12.2017. Thus, I find that the custodianship of CWC, Kandla is liable for suspension under Regulation 11(1) of HCCAR, 2009 and attract a penalty in terms of Regulation 12(8) of HCCAR, 2009. However, since the issue was raised by the Department first time with issuance of SCN on 24.09.2015 i.e. after a gap of more than 10 years from the

date from with CWC, Kandla has been found liable to pay CR charges, I refrain from taking any drastic action like suspension of licence or imposition of penalty.

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

ORDER

- (i) I hereby order for recovery of Cost Recovery Charges of **Rs. 1,60,78,938/- (Rupee One Crore Sixty Lakhs Seventy Eight Thousand Nine Hundred Thirty Eight only)** for the period from 01.02.2005 to 31.12.2017 from M/s CWC Kandla;
- (ii) I hereby drop the demand of C.R. charges of **Rs. 7,19,798/- (Rupee Seven Lakhs Nineteen Thousand Seven Hundred Ninety Eight only)** for the period from 11.2.2004 to 31.1.2005;
- (iii) I hereby order for recovery of Cost Recovery Charges from M/s CWC Kandla for period beyond 31.12.2017 also.


(Sanjay Kumar Agrawal)
Commissioner

F.No.S/20-09/2002-App.(G)II

Kandla, dated 11.9.2018

To

M/s Central Warehousing Corporation,
Container Freight Station,
Opp. KFT West Gate-II,
Kandla, Kutch - 370 210.

Copy to:

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad,
2. The Assistant/Dy. Commissioner (D.P.), C. H., Kandla,
3. The Assistant/Deputy Commissioner (RRA), C.H., Kandla.
4. The Assistant/Dy. Commissioner (Recovery), C.H., Kandla
5. The Assistant/Dy. Commissioner (P&V), C.H., Kandla,
6. Guard File