



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/20-90/2013-14/AG
B	आदेश में मूल सं./ Order-in-Original No.	<b>KDL/COMMR/SKA/ 09 /2018-19</b>
C	पारितकर्ता/Passed by	<b>SHRI SANJAY KUMAR AGARWAL,</b> COMMISSIONER OF CUSTOMS, KANDLA
D	आदेश की दिनांक/Date of order	20.11.2018
E	जारी करने की दिनांक/Date of issue	20.11.2018
F	एस.सी.एन. सं. एवं दिनांक /SCN F. No. & Date	S/20-67/2013-14/AG dated 1.5.2015
G	नोटिसी / पार्टी /Noticee/ Party	M/s JRE Infra Pvt. Ltd., IOC Offshore Terminals, Opposite Shirav Railway Crossing, New Kandla.

- यह अपील आदेश संबन्धित को निः शुल्क प्रदान किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
- 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, द्वितीय तलबहुमाली भवन आसरवा ,  
गिरधर नगर ब्रिज के समीप, गिरधर नगर, अहमदाबाद -३८० ००४  
**Customs Excise & Service Tax Appellate Tribunal,**  
**West Zonal Bench,**  
2nd Floor, Bahumali Bhavan Asarwa,  
Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad – 380004

- 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.
- 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.
- अपील ज्ञापन के साथ इयूटि/ 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.
- 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.
- 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 JRE Infra Pvt. Ltd., IOC Offshore Terminals, Opposite Shirav Railway Crossing, New Kandla, for non-payment of Cost Recovery Charges in terms of Notification no. 6/2013 dated 11.10.2013 and HCCAR, 2009.



**Brief fact of the case:**

M/s Kandla Port Trust (now Deendayal Port), issued a letter of award No. EG/WK/4652/14<sup>th</sup> to 16<sup>th</sup> CB/76 dated 07.12.2010 for development of 15<sup>th</sup> Multipurpose Cargo (Other than Liquid/Container Cargo) Berth at Kandla Port (now Deendayal Port) on BOT basis to M/s IMC Ltd., "Neeladri, 3<sup>rd</sup> floor, No.9 Cenotaph Road, Alwarpet, Chennai-600001". As per Para 2(a), M/s IMC Ltd. was directed to set up a special purpose company duly incorporated under the Companies Act, 1965 in terms of clause 1.1.2 of the Request of Proposal (REP). Accordingly, a special purpose company i.e. M/s JRE Infra Pvt. Ltd., (*herein after referred as "the custodian" for the sake of brevity*) was incorporated. Kandla Port Trust (now Deendayal Port Trust) and the said company entered onto Confessional Agreement (CA) to develop Berth No. 15 at Kandla Port.

2. After completion of development of the 15<sup>th</sup> Cargo Berth/wharf structure at Kandla Port (now Deendayal Port), the same was declared as Landing Place under Section 8 of Customs Act, 1962, vide Notification No.05/2013 dated 11.10.2013 alongwith its back up area. Further, vide Notification No.06/2013 dated 11.10.2013, M/s JRE Infra Pvt. Ltd., was appointed as the Custodian of the said Berth No. 15 under Section 45(1) of the Customs Act, 1962, subject to fulfillment of various conditions given in the said Notification.

3. M/s JRE Infra Pvt. Ltd. is "Customs Cargo Service Provider" (CCSP) as per Regulation 2(b) of the Handling of Cargo in Customs Areas Regulations, 2009 (*herein after referred as '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 custodian has undertaken to bear the cost of the Customs officers posted, at such customs area, on cost recovery basis by the Commissioner 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. Accordingly, a condition has been imposed in Notification No.6/2013 dated 11.10.2013 issued under Section 45 of the



Customs Act, 1962. Further, as per Regulation 6(1)(o) of the HCCAR, 2009 and 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.6/2013 dated 11.10.2013 and Rule 6(1)(o) of HCCAR, 2009 the Custodian was required to pay establishment charges of the staff posted for the said Jetty on Cost Recovery Basis.

6. Further, in pursuance of the above facts narrated at Para 5, letters dated 22.1.2015, 18.2.2015 and 12.3.2015 were issued to the custodian for payment of CR charges but they failed to comply with the same.

7. The custodian was not paying establishment charges for the staff posted at 15<sup>th</sup> Cargo Berth and hence it appears that the Custodian has contravened the provisions/ conditions of the Notification No.6/2013 dated 11.10.2013 read with Regulation 6(1)(o) of HCCAR, 2009 by not paying the Cost Recovery charges for the Customs Staff posted at 15<sup>th</sup> Cargo Berth and thus their Custodianship was found to be liable for suspension/ revocation. The Custodian is also found to be liable for penalty in terms of Regulation 12 (8) of HCCAR, 2009.

8. Further, vide letter dated 25.3.2015, the Custodian has submitted that Kandla Port Trust has withdrawn the Provisional Completion Certificate extended to their terminal with effect from 1.11.2014 and hence they are not authorized to operate the terminal and since 1.11.2014 they have not handled any cargo at 15<sup>th</sup> Cargo Berth. But they have not applied before the customs for de-notification of their facility during the material time, hence they are liable to pay all the related charges.

9. Accordingly, a Show Cause Notice F.NO. S/20-67/2013-14/AG dated 01.05.2015 was issued to the Custodian asking them to file their defense reply in writing to the Assistant Commissioner, Custom House, Kandla as to why their Custodianship should not be suspended/cancelled in as much as they failed to fulfill the condition of the Notification No.6/2013 dated 11.10.2013 read with regulation 6(1)(o) of HCCAR, 2009 by not paying the Cost Recovery Charges amounting to Rs. 25,06,309/- from the date of notification of appointment of Custodian i.e. October-2013 to 31.3.2015 for the Customs staff posted at Berth No.15. Further, as per Circular No. 52/97-cus. dated 17.10.1997, the CCSP shall make advance deposit for quarter but in the present case the Custodian has failed to do so and Cost Recovery charges for April- 2015 to June-2015 amounting to Rs. 4,38,194/- has also not deposited. Also, the action for penal action against them under Regulation 12(8) of HCCAR, 2009 should not be taken.



**INQUIRY CONDUCTED IN TERMS OF REGULATION 12 OF HCCAR, 2009**

10. The Commissioner of Customs has assigned the Assistant Commissioner, Customs House, Kandla for conducting the inquiry in terms of regulation 12 of HCCAR, 2009. The inquiry officer has submitted inquiry report dated 02.05.2016 after taking into the record of their defence submissions vide letters dated 4.7.2015 & 9.2.2016, report of Presenting Officer and after granting personal hearing to the custodian. The inquiry officer found that:

(i) The CCSP in his reply contended that the entire port limits of Kandla Port Trust have already been notified as "Customs Area" under Section 8(b) of Customs Act, 1962 which is not correct. The multipurpose Cargo Berth No. 15 developed by the CCSP was notified vide Notification No.5/2013 dated 11.10.2013, on the specific request of the CCSP. Earlier to this Notification, the said Berth was never notified by the Department. Hence, the contention of CCSP re-notifying the same area vide aforesaid Notification does not have any merits. As far as Kandla Port Trust (now Deendayal Port Trust) is concerned, they have been covered under Major Port Trust Act, 1963 and being Major port, the norms prescribed for waiver of CRB charges are instantly met by the said Ports covered under the aforesaid Act considering the huge volume of cargo handled by them. Therefore, there is no question of recovering establishment charges on CR basis from any of the Major Ports covered under Major Port Trust, 1963. Here, the Custodian of the said facility i.e. Cargo Berth No. 15 are M/s JRE Infra Pvt. Ltd. and not KPT, hence, the CCSP is bound to pay the CRB charges as required under Regulation 6(1)(o) of HCCAR, 2009.

(ii) In the instant case, the CCSP has been appointed as "Custodian" vide Notification No.6/2013 dated 11.10.2013 as such they are falling under the aforesaid Regulations. Further, condition No. 13 of the said Notification says he shall bear the establishment charges of the Customs staff posted for the said jetty. The CCSP has executed a Custodian Bond abiding all the condition including the aforesaid condition before commencement of the operation at the said Berth.

(iii) The CCSP is a new custodian appointed vide Notification No.6/2013 dated 11.10.2013. Here, neither the custodianship transferred to the CCSP nor the CCSP was in existence before 26.6.2002, hence the CCSP is not covered under the clause (ii) of the Para 1 of Circular No. 27/2004-Cus dated 6.4.2004.

(iv) Publishing the annual cargo handling performance by KPT (now DPT) thereby including the cargo handled by the CCSP at berth No.15 is an act on the part of DPT projecting their performance which does not



have any nexus with the issue of payment of CRB charges. The CCSPs stand of paying CRB charges would be an additional financial burden on them is not justified. Before arriving at a tariff rate, the CCSP should take all the factors into consideration as they are involved in such a big project. Their view of non-inclusion of CRB charges is mandatory for all custodians. Further, this does not have any bearing on Customs as this is purely an internal matter of the CCSP.

(v) The CCSP presumption of winding up the facility before the expiry period and taking over by KPT also involves a sequence of procedure. Even if the same is to be de-notified, the CCSP has to clear the outstanding CRB charges first then only the said facility can be de-notified and subsequently the same can be taken over by the KPT. Once it is taken over by the KPT it becomes a part of Kandla Port operated by KPT, hence, there is no question of CRB charges as KPT has already been exempted from paying CRB charges.

(vi) Officers of Customs have been continuously posted for Berth No. 15 to supervise the operation at all times. This has been accepted by the CCSP himself at Para 6 & 13 that the operations at their Berth has been done under the supervision of the Customs Officers. As such the allegation of CCSP that no Customs Officers were posted to their facility is totally a willful contradictory statement.

(vii) All the case laws cited by the CCSP are pronounced by CESTAT in various EOU cases and saying that unless the officers are not posted to any facility CRB charges can not demanded. In the instant case, Customs Officers have been posted and the CCSP himself confessed that the cargo handled at their facility was under the supervision of the Customs Officers. Hence, there is no dispute at all.

(viii) The CCSP has stated that they have paid MOT charges but, during inquiry they stated that the MOT charges are paid by the concerned Importer/ Exporter/Stevedores for the services utilized by them and not a single penny was paid by the CCSP. Payment of MOT after office hours and during holiday is mandatory and this MOT charges are no way related to CRB charges or paid in lieu of CRB charges. The CCSPs contention on this issue is misleading the Department.

(ix) The CCSP was contending that the notice does not disclose the method of calculation for arriving at the amount of cost recovery charges. The norms for arriving cost recovery charges for any post has been given in the letter F.No. A-11018/9/91-Ad.IV dated 01.4.1991 and as per the same 1.85 time of the average salary to be deposited quarterly in advance.

(x) HCCAR, 2009 has been implemented vide Notification No. 26/2009-Cus (NT) dated 17.3.2009. On careful reading of the definition



under Regulation 2(b) gives the clear view of who is "Customs Cargo Service Provider" which includes the Custodians appointed under Section 45(1) of Customs Act, 1962. As such the contention of CCSP that the Notification No. 6/2013 dated 11.10.2013 appointing them as Custodian does not contain any reference to HCCAR, 2009 is baseless.

(xi) Customs Officers have been posted to Berth No.15 to supervise the import/export operations at the time and the contention of CCSP that customs officers have not been posted is totally unacceptable. Further, the department has already sent the proposal for sanctioning posts for this facility under CR basis. However, if the Berth was not notified on the grounds that the CR basis posts have not been sanctioned as a pre-requisite, the CCSP would not have operated the Berth and done his business and would have been in irrecoverable loss by now. In fact, for facilitating the CCSP, the department has taken a lenient view and notified the Berth even though the posts are not sanctioned prior to the notification. Hence, the CCSP is trying to contend the issue without proper evidence and records.

(x) The CCSP's request for not demanding CRB charges during the period when their provisional certificate has been withdrawn by KPT i.e. from 1.11.2014 to 22.9.2015 may be considered as there was no operation taken place at their Berth during the aforesaid period. Also, their request for sharing of CRB charges among other CCSPs if the same officer is posted may also be considered.

10.1 The inquiry officer concluded that " the CCSP, M/s JRE Infraport Pvt. Ltd., Kandla Port have failed to fulfill/comply with the conditions of the Notification No. 06/2013 dated 11.10.2013 read with Rule 6(1) (o) of HCCAR,2009 and require to pay all the outstanding Cost Recovery Basis Charges. He also holds that the request of non-inclusion of CRB Charges for the non-operative period i.e. from 01.11.2014 to 22.09.2015 and sharing of CRB charges among other CCSPs, if the same Customs officer remained posted is genuine and may be considered".

### **DEFENCE REPLY**

11. The Inquiry report dated 2.5.2016 was forwarded to the Custodian vide letter dated 19.5.2016 with a request to make representation, if any, against the said Inquiry Report within thirty days.

11.1 The Custodian has not submitted any representation against the Inquiry Report dated 2.5.2016. However, the Custodian vide letter dated 22.7.2017 addressed to the Deputy Commissioner of Custom (P&V), Custom House, Kandla submitted that "In the conclusion of the said Inquiry Report, the Authority has held that and we quote "I also hold that the request of non-inclusion of CRB Charges for the non-operative period i.e. from 01.11.2014 to 22.09.2015 and sharing of CRB charges



*among other CCSPs, if the same Customs officer remained posted is genuine and may be considered."* They submitted that the competent authority may take in to cognizance, the above recommendation of the Inquiry Authority and order the revision of the demand of Cost Recovery Charges applicable to their terminal.

### **PERSONAL HEARING**

12. The personal hearing in this was fixed on 23.10.2018. Shri R. Govindrajan, Authorized Signatory of the Custodian has attended the Personal hearing. During the hearing, he stated that vide their letter dated 25.3.2015 they informed to the Department that KPT has withdrawn the provisional completion certificate w.e.f. 1.11.2014 and they are not authorized to operate the terminal, copy of the letter submitted at the time of P.H. He further stated that vide their letter dated 18.9.2015, they informed the restarting of commercial operation to the Department. Copy of the letter submitted at the time of P.H. He further submitted that for non-operative period CR charges are not payable by them.

### **DISCUSSION AND FINDING**

13. I have gone through the Show Cause Notice dated 1.5.2015, Inquiry report dated 2.5.2016 submitted by the Inquiring Authority, written submissions made before the Inquiry Authority.

14. I find that M/s JRE Infra Pvt. Ltd., entered into Confessional Agreement (CA) with M/s Kandla Port Trust (now M/s Deendayal Port Trust) to develop Berth No. 15 at Kandla Port. After completion of development of the 15<sup>th</sup> Cargo Berth/wharf structure, the same was declared as Landing Place under Section 8 of Customs Act, 1962, vide Notification No.05/2013 dated 11.10.2013 alongwith its back up area. Further, vide Notification No.06/2013 dated 11.10.2013, M/s JRE Infra Pvt. Ltd., was appointed as the Custodian of the said Berth No. 15 under Section 45(1) of the Customs Act, 1962, subject to fulfillment of various conditions given in the said Notification.

14.1 I find that as per Regulation 5(2) of the HCCAR, 2009, the custodian had undertaken to bear the cost of the Customs officers posted, at such customs area, on cost recovery basis by the Commissioner 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. Further, as per Regulation 6(1)(o) of the HCCAR, 2009 and 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. As per condition Sr. No.13 of Notification No.6/2013 dated 11.10.2013 the Custodian was required to pay establishment charges of the staff posted for the said Jetty on Cost Recovery Basis.

14.2 I also find that the Custodian has submitted vide letter dated 25.3.2015 that Kandla Port Trust has withdrawn the Provisional Completion Certificate extended to their terminal with effect from 1.11.2014 and hence they are not authorized to operate the terminal and since 1.11.2014 they have not handled any cargo at 15<sup>th</sup> Cargo Berth.

14.3 As the custodian had not paid the establishment charges for the staff posted at 15<sup>th</sup> Cargo Berth and the Custodian has contravened the provisions/ conditions of the Notification No.6/2013 dated 11.10.2013 read with Regulation 6(1)(o) of HCCAR, 2009 by not paying the Cost Recovery charges for the Customs Staff posted at 15<sup>th</sup> Cargo Berth a Show Cause Notice F.No. S/20-67/2013-14/AG dated 01.05.2015 was issued to the Custodian asking them to file their defense reply in writing to the Assistant Commissioner, Custom House, Kandla as to why their Custodianship should not be suspended/cancelled in as much as they failed to fulfill the condition of the Notification No.6/2013 dated 11.10.2013 read with regulation 6(1)(o) of HCCAR, 2009 by not paying the Cost Recovery Charges amounting to Rs.25,06,309/- from the date of notification of appointment of Custodian i.e. October-2013 to 31.3.2015 for the Customs Staff posted at Berth No.15. Further, the Custodian has failed to pay Cost Recovery charges in advance for the period from April- 2015 to June-2015 amounting to Rs. 4,38,194/-.

15. I find that the Deputy Commissioner of Customs, Kandla, i.e. the Inquiry Officer has concluded the inquiry after taking into the record of their defence submissions vide letters dated 4.7.2015 & 9.2.2016, report of Presenting Officer and after granting personal hearing to the custodian. The Inquiry Officer concluded that *"the CCSP, M/s JRE Infra Pvt. Ltd., Kandla Port have failed to fulfill/comply with the conditions of the Notification No. 06/2013 dated 11.10.2013 read with Rule 6(1) (o) of HCCAR,2009 and require to pay all the outstanding Cost Recovery Basis Charges. He also holds that the request of non-inclusion of CRB Charges for the non-operative period i.e. from 01.11.2014 to 22.09.2015 and sharing of CRB charges among other CCSPs, if the same Customs officer remained posted is genuine and may be considered"*.

16. I also find that Custodian vide letter dated 22.7.2017 addressed to the Deputy Commissioner of Custom (P&V), Custom House, Kandla accepted the finding of Inquiry officer and requested that the competent authority may take in to cognizance, the recommendation of the Inquiry Authority and order the revision of the demand of Cost Recovery Charges applicable to their terminal.



17. I have gone through the finding of Inquiry Officer and find that the Inquiry Officer left the following points required to be decided by me:

- (i) Whether the demand of Cost Recovery Charges for the non-operative period i.e. from 01.11.2014 to 22.09.2015 is recoverable from the custodian;
- (ii) Sharing of CRB charges among the other CCSPs, if the same Customs Officers remained posted is feasible or otherwise.

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

18.1 I find that the Custodian vide letter dated 25.3.2015 addressed to the Commissioner of Customs, Kandla, stated that the Kandla Port Trust has withdrawn the Provisional Completion Certificate extended to their terminal with effect from 1.11.2014 and hence they are not authorized to operate the terminal. I also find that the custodian has not opted for de-notification of custodianship appointed vide Notification No. 6/2013 dated 11.10.2013. I find that the then Commissioner of Customs, Kandla has posted 2 Superintendent and 2 Inspectors for the purpose of work relating to Custodians appointed at Kandla port. The CR charges for the post of 2 Superintendent and 2 Inspectors have been apportioned amongst the Custodians appointed at Kandla Port during the material time in terms of CBIC's letter F.No.A11018/11/2018.Ad.IV dated 25.7.2008.

18.2 The para 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 not exempted by way of any order of Ministry of Finance.

18.3 I have gone through the judgments cited by the custodian before the Inquiry Officer and also find that all the case laws cited by the CCSP are pronounced by CESTAT in various EOU cases and saying that unless the officers are not posted to any facility CRB charges cannot demanded, are not squarely applicable in this case. In the instant case, Customs Officers have been posted and deployed in terms of guideline issued by the CBIC vide Circular No. 34/2002-Cus dated 26.06.2002 vide F.No.434/12/92-Cus.IV. In the said Circular it is mentioned that undertaking to be given by the Custodian that "*(10) 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.*"



18.4 As regards the judgment in GMR Hyderabad International Airport Ltd. v. Central Board of Excise & Customs, 2012 (193) ECR 188 (AP), relied upon by the Custodian in their letter dated 4.7.2015 before Inquiry officer, 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 stated that "*the Bombay High Court has patently distinguished the same in its subsequent judgment in the case of Mumbai International Airport Private Ltd. (supra) in para 61 thereof and has expressed its dissent with the decision of the Single Judge of the Andhra Pradesh High Court.*" Further, the Hon'ble Delhi High Court in the same case 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.*

18.5 Thus, I find that the Custodian have to pay the Cost Recovery charges on quarterly basis in advance. The Custodian vide letter dated 25.3.2015 stated that they are not authorized to operate the terminal being withdrawal of Provisional Completion Certificate by KPT with effect from 1.11.2014. The custodian has failed to intimate the withdrawal of Provisional Completion Certificate prior to 1.11.2014. The officers of concerned section of Custom House have been deployed before each and every month at each facility to look after works. As far as the CR charges for the month of April' 2015 to June' 2015 is concerned, I find that one of the Custodian of other facility i.e. IFFCO has already made advance payment for the said period. Thus, I opined that the apportioned of Cost recovery charges for the period from 01.11.2014 to 22.09.2015 from the custodian may not be waived in the absence of any exemption from the Ministry. Thus, I find that the Custodian is liable to pay the Cost Recovery Charges for the said facility till the day of de-notification.



18.6 I also find that the Custodian has paid Rs.50,00,000/- (Rupees Fifty Lakh) vide TR-6 challan no. 550 dated 21.8.2017 against the outstanding dues of Cost recovery charges of Rs. 72,81,417/- for the period up to September, 2017. Thus, I find that amount paid by the custodian is inclusive of the amount involved in present adjudication and the amount of CR charges to the tune of Rs. 29,44,503/- for the period from October, 2013 to June, 2015 is liable to be appropriated against the payment of Rs.50,00,000/-.

19. As far as the sharing of CRB charges among the other CCSPs is concerned, I find from the demand letter dated 28.4.2015 that the Cost Recovery Charges has been apportioned between the custodian of Jetty functional at the material time. The relevant table of the said letter is reproduced below:

*CALCULATION SHEET FROM APRIL-2015 TO JUNE-2015*

<i>Designation</i>	<i>No. of Post</i>	<i>Total Amount</i>
<i>SUPDT</i>	<i>2 (between 3 Pvt. Jetty)</i>	<i>2,21,572/-</i>
<i>INSPECTOR</i>	<i>2 (between 3 Pvt. Jetty)</i>	<i>2,16,622/-</i>
	<i>TOTAL</i>	<i>4,38,194/-</i>

19.1 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. Therefore, in the facts before me, the recommendation of Inquiry officer in this regard is immaterial.

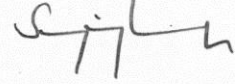
20. I find that the Custodian was appointed under Section 45(1) of Customs Act, 1962 with certain condition under Notification No. 6/2013 dated 11.10.2013 including condition that the Custodian shall bear the establishment charges of the Customs staff posted for the said jetty. I also find that after appointment of custodianship for the said facility, the custodian claimed exemption under clause (ii) of Circular No. 27/2004-Customs dated 6.4.2004 which was disallowed vide this office letter F.No.S/60-67/2013-14/AG dated 18.2.2015. In spite of issuance of letter dated 23.12.2014, 22.1.2015, 18.2.2015 and 12.3.2015 the custodian had failed to pay the Cost Recovery Charges till 21.8.2017 and violated the condition no. 13 of Notification No. 6/2013 dated 11.10.2013 and Regulation 6(o) of HCCAR, 2009. I also find that on request of custodian the Notification 6/2013 dated 11.10.2013 has already been revoked/canceled vide Notification no. 7/2018 dated 18.10.2018. However, since the Custodian has paid the CR charges for entire period before de-notification of their Custodianship, I refrain from imposing penalty under Regulation 12(8) of HCCAR, 2009.

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



**ORDER**

I hereby order for recovery of Cost Recovery Charges of **Rs. 29,44,503/- (Rupee Twenty Nine Lakhs Forty Four Thousand Five Hundred Three only)** for the period from October, 2013 to June, 2015 from M/s JRE Infra Pvt. Ltd. As the custodian has paid Rs. 50,00,000/- for the period inclusive above, I order to appropriate amount of Rs. 29,44,503/- from the amount paid by M/s JRE Infra Pvt. Ltd.



**(Sanjay Kumar Agrawal)**  
Commissioner



F.No.S/20-90/2013-14-A.G.

Kandla, dated 20.11.2018

To  
M/s JRE Infra Pvt. Ltd.,  
IOC Offshore Terminals,  
Opposite Shirav Railway Crossing,  
New Kandla.

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