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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 13012 of 2018- DB

(Arising out of OIO-KDL-COMMR-SKA-05-2018-19 dated 11/09/2018 passed by Commissioner of CUSTOMS-KANDLA)

Central Warehousing Corporation ....**Appellant**
A Govt of India Undertaking,
Regional Manager, Regional Office,
Mahalaxmi Char Rasta, Paldi,
Ahmedabad, Gujarat

VERSUS

Commissioner of CUSTOMS, Kandla ......**Respondent**
Custom House,
Near Balaji Temple
Kandla, Gujarat

APPEARANCE:
None appeared for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10228/2025

DATE OF HEARING: 01.04.2025
DATE OF DECISION: 01.04.2025

SOMESH ARORA

In the instant case, M/s. Central Warehousing Corporation (CWC) have entered into MoU with M/s. Kandla Port Trust to develop a Container Freight Station facility next to the Customs Boundary of the Kandla Port. After completion of development of the CFS at Kandla Port, the same was declared as Landing Place under Customs Act, 1962, vide Notification No. 1/2003 dated 07.01.2004. While the appellants have been operating at the port, they had undertaken to bear the cost of Customs officer posted at their CFS as may be determined by the Customs Commissioner. The department's view was that the Custodian has to bear the cost of customs officers posted by the Commissioner of Customs on cost recovery basis and to make payment at such rates and in the manner specified by the Government of India and the Ministry of Finance, unless specifically exempted by any order of the said Ministry. As per Condition No. 13 of Notification No. 02/2004 dated 07.01.2004 and Regulation 6(1)(o) of HCCAR, 2009, the Custodian was liable to bear the cost of the Customs Staff posted at the said CFS. Accordingly, three show cause notices dated 24.09.2015, 31.03.2016 & 13.02.2018 were issued for recovery of cost for the period 10.02.2004 to 31.12.2017. The said demand of Rs. 1,60,78,938/- was confirmed on M/s CWC Kandla vide order dated 11.09.2018. Aggrieved by the order of making recovery, present appeal has been filed by M/s/ CWC Kandla.

2. In the absence of anyone from the appellant side, we proceed to hear the matter on merit.

3. The learned AR submits that the matter is now covered by the decision of Hon'ble Telangana High Court (2024) 19 Centex 319 (Telangana) in the matter of Central Board Excise and Customs Vs. GMR Hyderabad International Airport Ltd, in which *inter alia* the decision of Allied ICD Services Ltd Vs. Union of India reported at 2018 (364) ELT 59 (Delhi), ICDs/CFSs/ACCs/EPZ, etc. was also considered. This decision was distinguished by the Hon'ble Telangana High Court. On being asked, the learned AR informed that the matter has been taken up in appeal by the CBEC before the Supreme Court. Though the appeal has been admitted but it is without stay. If it be so, we are inclined to follow the decision of the Hon'ble Telangana High Court (Cited Supra), which is a later decision and considered the view of Hon'ble Delhi High Court and held that such charges are not sustainable in law, as in the present matter. The appeal is liable to be accepted. The order of the lower authority demanding cost recovery charges from M/s. CWC for the period from 10.02.2004 to 31.12.2017 is set aside and the appeal is allowed.

4. Appeal is allowed.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha