

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

REGIONAL BENCH- COURT NO. 3

CUSTOMS Miscellaneous Application (Stay) No. 10168 OF 2025

(filed by Applicant)

in

CUSTOMS Appeal No. 10401 of 2025-DB

Arising out of OIO-MUN-CUSTOM-000-COM-50-24-25 dated 01/04/2025 passed by the Principal Commissioner of Customs, Mundra)

ASR INDIA PVT LTD

Office No. 201, 2nd Floor,
Nilesh Owners Association,
Plot No. 80, Sector-8,
Near Gymkhana, Gandhidham
Kutchchh

..... Appellant

VERSUS

COMMISSIONER OF CUSTOMS-MUNDRA

Office of the Pr. Commissioner of Customs,
Customs House, Mundra Port,
Kutch, Mundra Port & SEZ,
Mundra- 370421

.....Respondent

APPEARANCE:

Shri Paritosh Gupta, Advocate for the Appellant

Shri Girish Nair, Assistant Commissioner (AR) for the Respondent

CORAM:

HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10460/2025

DATE OF HEARING: 23.04.2025

DATE OF DECISION: 10.06.2025

SATENDRA VIKRAM SINGH

The appellant M/s. ASR India Pvt Ltd. (Shipping line) were issued a show cause notice dated 25.11.2024 by the Principal Commissioner, Customs House Mundra for violation of Regulation 10(1)(l) and 10(1)(m) of the Sea Cargo Manifest and Transhipment Regulations, 2018 (in short SCMTR) and it was proposed to revoke their authorised carrier registration under Regulation 11 and 12 of the SCMTR, 2018 besides imposition of penalty in terms of Regulation 13 of the said Regulations.

1.1 After receipt of the representation from the appellant, the Learned adjudicating authority decided the show cause notice vide impugned order dated 25.03.2025 vide which he revoked authorised carrier registration of the appellant in the jurisdiction of Mundra Customs with effect from 08.04.2025. The appellant was asked to handover import/export containers laden with goods or empty containers arrived at Mundra port or CFS prior to 08.04.2025. Also, a penalty of Rs. 50,000/- was imposed on the appellant under Regulation 13 of the SCMTR, 2018.

1.2 Aggrieved with the above order the appellant filed an appeal before this Tribunal. They also filed Miscellaneous application for Stay on operation of the above impugned order dated 25.03.2025. Vide order dated 07.04.2025, this Tribunal granted Ad-interim Stay against revocation of carrier registration which otherwise was to be effective from 08.04.2025.

2. In their appeal, the appellant put forth the following points: -

- The appellant received request from a foreign supplier for transportation and delivery of goods consigned to following four parties :-
 - i) Angolate Trading, under Bill of Lading No. HNKASRMUN253570 covering Container No. GESU5949540;
 - ii) Pushkar Shipping Services Pvt. Ltd., under Bill of Lading No. HNKASRMUN253568 covering Container No. GATU8579460;
 - iii) Pahiya Sales Private Limited, under Bill of Lading No. HNKASRMUN253567 covering Container No. KKFU7768534; and
 - iv) Angolate Trading, under a separate consignment bearing Bill of Lading No. HNKASRMUN253569 covering Container No. FSCU6689339.
- The Customs authorities at Mudra placed the above containers under detention based on certain information, for scrutiny and detailed

examination. In respect of three containers, detention commenced on 12.09.2024 whereas the fourth container was detained on 13.09.2024.

- After detailed examination and on finding that the goods were in conformity with the declarations, NOC was issued by SIIB on 25.09.2024.
- As per the appellant, they had in their possession the documents issued by the Dubai Customs for very same consignments indicating gross under valuation of the imported goods as declared before Indian Customs. In spite of such discrepancies, NOC was given by SIIB which raises serious concerns about objectivity and intent of the proceeding.
- They received a letter dated 30.09.2024 from SIIB, Mundra Customs followed by another communication dated 06.11.2024, directing not to charge any rent or demurrage in respect of aforesaid consignments. The letter dated 30.09.2024 regarding waiver of detention charges was actually addressed to Saurashtra CFS and a copy of that was only marked to them.
- The said communication sought to rely on Regulation 10(1)(m) of the SCMTR, 2018 to not charge such levies until permission for movement granted by the DP section. The appellant is of the view that the said regulation entitles the authorised carrier to recover container detention charges beyond a period of 60 days irrespective of Customs detention.
- The action of issuance of show cause notice by Mundra Customs and consequent adjudication order of the learned Principal Commissioner was out of a complaint filed by a warehousing unit which was not the importer of these containers. As per the appellant, the said complaint was not only factually and legally untenable but also procedurally irregular. The appellant submitted detailed response in his defence on 12.01.2025 before the Assistant Commissioner (inquiry officer) denying the charges levelled by the department but he did not accept their contentions and submitted inquiry report dated 06.02.2025 against

them leading to issuance of the present show cause notice and the impugned order.

- In the grounds of appeal, the appellant has mentioned that they have already granted full waiver of detention charges for 60 days period in respect of each of the concerned consignments as per the Regulation under SCMTR, 2018. As they had not violated any conditions of the Regulations, the impugned order is liable to be set aside.

3. During arguments, learned Advocate on behalf of the appellant highlighted the points taken in their appeals and drew the attention of the Bench towards relevant provisions of SCMTR, 2018. He stressed that as per these regulations, they have agreed to waive detention charges for upto 60 days and therefore, the action taken by the Customs against them, is disproportionate and tantamounts to closer of their business at Mundra. He also explained calculation of number of days and charges payable thereon by the importers. In his support, he cited two case laws namely decision of Hon'ble Madras High Court in the case of G. K. International Vs. Pr. Commissioner of Customs, Chennai- 2022 (1) Centax 157 (Mad.) & another judgment dated 13.08.2021 passed by Madras High Court in the case of S. U. Sirajdeen. In the first case, it has clearly been held that demurrage and detention charges waiver is permissible upto a maximum period of 60 days in view of Proviso to Regulation 10(1)(i) of SCMTR, 2018 and any detention beyond 60days, waiver is not permissible. In the second case also, Hon'ble Court has ordered that the goods cannot be released without the demand of detention charges being met or an adjudication that the demand may not be tenable.

4. Learned Authorised Representative reiterated the findings of the adjudicating authority and mentioned that the appellant's claim of not agreeing to waive detention charges on the ground that SCMTR, 2018 was not yet implemented is clearly wrong as the said Regulation came into effect vide

Notification No. 38/2018-Cus (NT) dated 11.05.2018. He stresses that the response of the appellant was not very clear as some times they agreed to waive detention charges while at other times, they denied in toto. No proper response was forthcoming from the appellant on various letters issued by Mundra Customs regarding waiver of detention charges. He thus requests for upholding the impugned order as violation of the provisions of Regulation 10(1)(l) and 10(1)(m) of SCMTR, 2018 is clearly established.

5. We have heard the rival submissions. The short point to be decided in this matter is whether the appellant has violated Regulation 10(1)(l) and 10(1)(m) of the SCMTR, 2018. The said provisions are reproduced as under:

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***"10(1)(l)** not demand any container detention charges for the containers laden with the goods detained by customs for purpose of verifying the entries made under section 46 or section 50 of the Act, if the entries are found to be correct.*

***Provided** that the authorised carrier may demand, container detention charges for the period, commencing after expiry of sixty days.*

***10(1)(m)** abide by all the provisions of the Act and the rules, regulations, notifications and orders issued there under."*

5.1 We find that prior to issue of show cause notice to the appellant, an inquiry was conducted by the Assistant Commissioner regarding violations of SCMTR, 2018 who found that M/s ASR India Private Ltd has violated Regulation 10(1) of the SCMTR, 2018 by not obliging the waiver letter dated 30.09.2024 issued by SIIB, Mundra and submitted vague replies. We find that vide this letter addressed to Manager Saurashtra CFS Mundra with a copy each to KA SEZ entity M/s. Varsur Impex Pvt Ltd and M/s ASR India Private Ltd direction was issued not to charge any rent or demurrage charges in view of Regulation 10(1) of the SCMTR, 2018 till the date of Customs clearance.

Subsequently, letter dated 07.10.2024 was issued to the appellant intimating about the complaint dated 06.10.2024 filed by M/s. Varsur Impex Pvt Ltd regarding not following the directions of SIIB contained in letter dated 30.09.2024 and seeking their reply within 3 days of the receipt of the said letter. One more letter was issued to the appellant on 23.10.2024 mentioning contravention of Regulation 10(1)(l) and 10(1)(m) of SCMTR, 2018, as well as para 6(1)(q) of the Handling of Cargo in Customs Area Regulation, 2009 and seeking their reply for above violations. Another letter dated 06.11.2024 was also issued to the appellant mentioning that they have allowed waiver for only 3 days of SIIB examination and were asked to follow the directions of SIIB letter dated 30.09.2024. After this, one more letter dated 11.11.2024 was issued to the appellant highlighting Regulation 10(1)(l) and 10(1)(m) of SCMTR, 2018 and reminding them to abide all the provisions of the Act.

5.2 We have also gone through the response given by the appellant through emails. Initially, they took a position that they will waive detention charges only for 3 days i.e. detention period by the SIIB. Vide email dated 11.11.2024, they expressed readiness for waiver of detention charges from 12.09.2024 to 25.09.2024 (i.e. period for which SIIB put hold on the containers).

5.3. From the provisions of relevant Regulation of SCMTR, 2018, we find that Regulation 10(1)(l) clearly stipulates that an authorised carrier shall not demand any container detention charges for the container laden with goods detained by customs for the purpose of verifying the entries made under Section 46 or 50 of the Act, if the entries are found to be correct. Proviso to this Regulation further mentions that the authorized carrier may demand, container detention charges for the period, commencing after expiry of 60 days. This means that any waiver of detention charges beyond period of 60 days is purely a discretion of the Authorized carrier, may be a business sense or mutual negotiation between the authorised carrier and its users. As per

record, detention period in respect of these four containers is given in below table.

Sr. No.	Container No./Bill of Lading No.	Date of Inward (IGM)	No. Of Days before Hold	Date of Hold i.e. Detention	No. of days of Detention	Date of Noc	Date of Bill of Entry	No. of Days from NOC to Transfer Permission	Date of transfer permission
1	KKFU7768534/H NKASRMUN2535 67	01.08.2024	42	12.09.2024	14	25.09.2024	28.08.2024	43	06.11.2024
2	GATU8579460/H NKASRMUN2535 68	01.09.2024	11	12.09.2024	14	25.09.2024	18.10.2024	45	08.11.2024
3	FSCU6689339/HN KASRMUN2535 69	19.08.2024	12	31.08.2024	26	25.09.2024	18.10.2024	45	08.11.2024
4	GESU5949540/H NKASRMUN2535 70	08.08.2024	35	12.09.2024	14	25.09.2024	16.08.2024	49	12.11.2024

From the above, we find that period of detention on account of SIIB hold was 14 days in respect of 3 containers (Sr. No. 1,2 & 4) and 26 days in respect of the 4th container. We further observe that there was additional delay ranging from 43 days to 49 days from the date of NOC by SIIB till the date of transfer permission. Therefore, in our considered view, direction dated 30.09.2024 of SIIB for not charging any rent or demurrage till the date of customs clearance is improper. The findings of the Learned Adjudicating authority in the impugned order are not correct as the appellant seems to have acted as per the SCMTR, 2018 Regulations. We therefore set aside the impugned order dated 25.03.2025 and allow appeal. At the same time, we find that the response of the authorized carrier has been quite unclear and not as per the spirit of the SCMTR, 2018 Regulations. We therefore advise the carrier to follow the Regulations in correct spirit so as to avoid any similar issue in future and not to indulge in wavering responses in their correspondence. Department should also note that proviso to Regulation 10(1)(I) gives discretion to

authorized carrier to demand or not to demand charges after 60days and therefore, the Department should not issue any directions/order in derogation of above discretion.

6. Appeal is allowed. MA stands disposed of.

(Pronounced in the open court on 10.06.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)