

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20325 of 2023

(Arising out of Order dt. 16/02/2023 (DIN -
20230272MR00006214A) passed by Commissioner of
Customs, Bengaluru)

**Palrecha Infrastructure &
Developers,**

No.203, Second Floor, Batavia
Chambers,
Kumarakrupa Road,
Bangalore – 560001.

Appellant(s)

VERSUS

Commissioner of Customs,

Bangalore City Customs,
Queens Road, Bangalore.

Respondent(s)

APPEARANCE:

Ms. Neethu Joseph and Ms. Nivedha Mohan, Advocates for the
appellant.

Mr. Rajiv Kr. Agrawal, Commissioner(AR) for the respondent.

CORAM:

HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)

HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20607 / 2023

Date of Hearing: 21/06/2023

Date of Decision: 21/06/2023

Per : DR. D.M.MISRA

This is an appeal filed against order dt. 16/02/2023
passed by the Commissioner of Customs, Bengaluru revoking the
approvals granted to Appellant for operating Inland Container
Depot(ICD) under Section 8, Section 45 of the Customs Act, 1962

and Regulation 10 of Handling of Cargo in Customs areas Regulations,2009(HCCAR, 2009 for short)..

2.1. Briefly, stated the facts of the present case are that the appellant are engaged in providing warehouse and logistic services i.e. creation, operation and expansion of Inland Container Depots (ICD), Container Freight Stations (CFS), Air Freight Stations (AFS) and such other facilities related to export and import of cargo. As part of its business activities, they have proposed to set up an ICD and logistic support at Iggalur, Anekal Taluk, Bengaluru in the fifteen acres of land allotted by the Govt. of Karnataka, for which necessary approvals have been granted to the appellant by the Government of Karnataka in the year 2012.

2.2. The said ICD and logistic park set up by the appellant is a two storied building designed to utilize the natural slope of the land, which consists of a lower ground level and an upper ground level. The lower ground level is accessible from the northern side of the building and the upper ground level is accessible from the southern side of the building. The administrative building and the approach roads are common to both floors. The upper ground level is divided into export, import and bonded warehouses with direct access to the container yards. The upper ground level where the customs activities are proposed to take place cannot have access from the lower ground level as the same has been sealed.

Also from the main road, there are different drive ways and gates for accessing either of the floors, which is clearly demarcated.

2.3. In 2015, the Assistant Director, Department of Expenditure had sanctioned 13 cost recovery basis posts in respect of ICD set up by the appellant with the approval of the Finance Ministry by order No.17/2015 dt. 21/10/2015. After obtaining necessary completion certificate and structural stability of the building, they have approached various authorities for necessary approvals/permissions and also communicated to the Chief Commissioner of Customs, Bangalore on 10.08.2016 about their readiness to commence the said ICD. First inspection of the said premises was carried out on 21.09.2016. In their letter, they requested various approvals from the Chief Commissioner required for completion of the said project under the relevant provisions of Customs Act, 1962 and thereafter, correspondences were entered into from time to time with the Department about the requirements relating to safety, security, etc. for operating as an ICD from the said premises.

2.4. The officers from the Customs Department visited the said premises for second inspection on 26.4.2009 and the observation of the inspections were communicated to the Appellant on 30.4.2019. The compliance of the remarks during inspections were carried out by the Appellant and communicated to the Commissioner of Customs on 01.8.2019. The third

inspection was carried out on 18.12.2020. In both these occasions the department was aware of the fact of that the floor is rented out to a manufacturing unit. After verification from time to time and on removing the objections pointed out in the inspection reports in granting the permission for operationalization of ICD, the Commissioner of Customs, by Notification No.01/2022(NT) dt. 24/01/2022 notified the premises mentioned in the said notification for operation as an ICD and also necessary approvals have been granted under Section 45 of the Customs Act, 1962 read with Regulation 10 of (HCCAR, 2009). Thereafter correspondences have been exchanged between the appellant and Department about compliance of certain requirements necessary for operationalization of the ICD, which according to the appellant were complied from time to time. The appellant wrote a letter to the Joint Secretary for issuance of a notification for commencement of the operation by the ICD. In consequence to a survey that was conducted by the Customs authorities to verify the infrastructure on 08/02/2023, the Commissioner abruptly on 16/02/2023 revoked the permission granted earlier vide Notification No.01/2022(NT). Against the said revocation, even though a letter addressed to the Principal Chief Commissioner on 12/04/2023 to reinstate the approvals earlier granted, no response was received by the Appellant. Hence, the present appeal.

3.1. At the outset, the learned advocate for the appellant Ms. Neethu James has submitted that the learned Commissioner, by the impugned order, revoked the approvals, which were granted earlier under Section 8 and Section 45 of the Customs Act, 1962 read with Regulation 10 of (HCCAR, 2009) without any legal basis. She submits that the premises in question has been visited by the Customs authorities multiple times and on compliance with objections raised in the said reports finally the premises have been notified as Customs Area in terms of Section 8 of the Customs Act, 1962 and granted custodianship to the appellant under Section 45 of the said Act, read with Regulation 10 of (HCCAR, 2009).

3.2. Referring to the inspection report dt. 30/04/2019 and 18/12/2020, she has submitted that the existence of the manufacturing premises was within the knowledge of the Department and the appellant have taken steps to comply with the observations in the inspection reports to separate the manufacturing unit given on rent from the proposed Customs notified area. Only after being satisfied with the steps taken by the appellant to demarcate and separate the ICD premises and the manufacturing Unit, approval was granted by the Department on 24/01/2022. She has vehemently argued that after the 4th inspection dt. 09/03/2021 and the compliance report submitted by the appellant on 26/04/2021, the Department has not raised any objection in respect of the manufacturing unit functioning at the lower ground level. Therefore, it is legally unsustainable to

unilaterally withdraw the approvals granted on 24/01/2022 on the ground of existence of a manufacturing unit in the said premises.

3.3. It is her contention that after the approvals granted consequent to inspection and satisfaction of due compliance with all provisions of law, the respondent becomes *functus officio*; therefore cannot revoke such approvals without following the due process of law unless there is an evidence to show that approvals were obtained by misrepresentation of facts. It is her submission that all steps have been take to operationalize the ICD premises based on the inspection reports issued by the Customs authorities and they have made huge investments to the tune of Rs.121.00 crores; hence revoking the approvals abruptly in absence of allegation of violation of any of the conditions, is legally unsustainable. Further she has submitted that there is no bar under any of the provisions of the law for functioning of the manufacturing unit in the customs area.

3.4. She has submitted that the present order has been passed revoking the approvals granted under section 8, Section 45 of Customs Act,1962 read with Regulation 10 of (HCCAR, 2009) is in gross violation of principles of natural justice. It is her contention that in terms of Regulation No.11(1) of the HCCAR, 2009, the Principal Commissioner of Customs/ Chief Commissioner is empowered to suspend or revoke the approval for appointment of a Customs Cargo Service Provider(CCSP), after following the

procedure prescribed under Regulation 12 of HCCAR, 2009. She has submitted that in terms of Regulation 12, the Principal Commissioner of Customs is required to issue a notice in writing stating the grounds for suspension/revocation of approvals granted to CCSP; therefore the order passed by the Commissioner is unsustainable in law. Further she has submitted that the verification report relied upon by the Commissioner post survey dt. 08/02/2023 was not made available to the appellant; hence non-supply of the said document is also resulted in gross violation of the principle of natural justice.

4.1. *Per contra*, the learned AR for the Revenue has submitted that pursuant to application filed by the appellant for setting up of a new ICD, Letter of Intent was issued to the appellant by Department of Commerce which was extended from time to time and last, it was extended by Anti-Smuggling Unit (CBIC) on 26/10/2021 which was valid up to 11/04/2022. The limit of Customs area for the proposed ICD was notified vide Notification No.01/2022(NT) dt. 24/01/2022 under Section 8 of the Customs Act, 1962 and the appellant was also granted custodianship of the ICD under Section 45 of the said Act. Further, on their request for allocation of location code, the Department had conducted further thorough inspection of the premises and the observation was communicated to the applicant vide letter dt. 06/04/2022, however the Appellant has failed to comply with the said observation. For operationalization of the ICD and grant of

location code, highlighting the survey points referred to in the verification report dated 08.2.2023, the approvals granted earlier were revoked on 16.02.2023 and the appellant was given opportunity to re-apply for necessary approvals after compliance of the points raised in the said survey report. Referring to the Regulation 6(2) of the HCCAR, 2009, he has submitted that as per the said provision, it does not empower or provides discretion to the Commissioner to allow leasing of premises to any private 3rd party and the discretion is only to the extent of sub-contract or outsourcing of customs work; hence, the appellant has violated the conditions of Regulation 6(2). Further, he has submitted that under the proviso to Regulation 7 of HCCAR, 2009 no exemption of any condition mentioned in the Regulation shall be allowed where the overall safety and security of the premises are likely to be affected thereby. Further, he has submitted that the appellant are not completely debarred from operating the ICD but can re-apply to the Commissioner after complying the observations made in the survey report, hence, the appeal is devoid of merit.

4.2. The learned AR further submitted that the revocation was not an instant decision by the Department but after the permission was granted, further analysis of the circumstances and correspondences with Board, it has been realized that continuation of such permission in the present status would create future complications like the input and output goods of the manufacturing Unit will invariably pass through the customs notified area. He has

placed the communication received from the Board dt. 06/01/2023 in response to the email of the Commissioner dated 22.11.2023 raising doubts on the subject.

4.3. Responding to the arguments that the Commissioner does not have the power to revoke the approvals/denotify the customs area, he submits that such powers are vested with the Commissioner under the Act and Rules and Regulations made thereunder and referred to the Circular No. 20/21-Cus dated 16.6.2021.

5. Heard both sides and perused records.

6. We find that the present issue revolves in a very narrow compass i.e. whether revocation Order dt.16.02.2023 passed by the Commissioner is in accordance with law.

7. We find after prolonged verification and inspection of the proposed ICD premises commencing from the year 2016 by the Customs Department and taking note of necessary rectifications carried out by the appellant from time to time on the objections raised during the course of inspection, Notification No.01/2022(NT) dt. 24/01/2022 was issued, specifying the Customs area of ICD for the purpose of loading of export goods and unloading of imported goods; also permission was granted

under Section 45 of the Customs Act, 1962 read with Regulation 10 of HCCAR, 2009 for a period of two years w.e.f. 24/01/2022.

8. The ICD could not come into operation immediately after issuance of the said Notification due to non-allotment of location code by the competent authority. Correspondences have been exchanged between the appellant and the Department from time to time in this regard but no positive result has emerged. The appellant was, however, intimated through order dt. 16/02/2023 about the revocation of the permission granted earlier on 24/01/2022 pursuant to a survey conducted on 08.2.2023.

9. The grievance of the appellant is that all the facts which were mentioned in the impugned order dt. 16/02/2023 revoking the earlier approvals were within the knowledge of the Department as inspections carried out by the officers not less than four times spreading over a period of five years. The manufacturing area leased to M/s. Yuto Printing and Packaging India Private Limited is situated at the basement of the import and export shed has been mentioned in the letter of the department 19.03.2021 after visit of the site by the Ld. Commissioner. Pursuant to the direction of the Department post-inspection, the said manufacturing area was sterilized and entry and exit route of the said area made separate from the customs area. After being fully satisfied with the modifications made as directed by the Department from time to time, the notification was issued on

24/01/2022. The said notification was revoked abruptly without any basis nor any allegation of misuse of the said permission

10. Before analysing the issue in detail and rival contentions, the relevant provisions need to be stated. Section 8, Section 45 of the Customs Act, 1962 and Regulation 10 of HCCAR, 2009 read as follows:-

Section 8. Power to approve landing places and specify limits of customs area -

The Principal Commissioner of Customs or Commissioner of Customs may-

(a) approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;

(b) specify the limits of any customs area.

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Section 45. Restrictions on custody and removal of imported goods -

(1) Save as otherwise provided in any law for the time being in force, all imported goods, unloaded in a customs area shall remain in the custody of such person as may be approved by the Principal Commissioner of Customs or Commissioner of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII.

(2) The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force,-

(a) shall keep a record of such goods and send a copy thereof to the proper officer;

(b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer or in such manner as may be prescribed.

(3) Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an arrival manifest or import manifest or, as the case may be, an import report to the proper officer under section 30 for the arrival of convenience in which the said goods were carried.

REGULATION 10. Approval of appointment of a Customs Cargo Service provider and review thereof. —

(1) Where the Principal Commissioner of Customs or Commissioner of Customs, as the case may be is satisfied that the applicant has fulfilled the conditions prescribed in regulation 5, he may approve such an applicant as a Customs Cargo Service provider, for a period of two years from the date of issue of such approval :

Provided that a Customs Cargo Service provider already approved on or before the date of coming into force of these regulations, shall be deemed to be approved as a Customs Cargo Service provider under these regulations for a period of five years from the date of compliance with the conditions of these regulations as stipulated in regulation 4.

(2) The Principal Commissioner of Customs or Commissioner of Customs, as the case may be shall review the approval granted under sub-regulation (1) before the expiry of the initial period of approval of two years or five years, as the case may be, and may extend such approval to a further period of five years at a time :

Provided that the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, for reasons to be recorded in writing, may order for review of the approval granted to any Customs Cargo Service provider before the completion of the period of approval.

Provided further that in case of Customs Cargo Service provider authorised under 'Authorised Economic Operator Programme', the approval granted under sub-regulation (1) may be extended for a further period of ten years at a time.

11. We find that pursuant to application for operating the ICD from the premises mentioned in their application, the Ld. Commissioner after due scrutiny of the said premises on the basis of inspection reports furnished from time to time and also personal visit to the site arrived at a conclusion that the said area is fit to be declared as a customs notified area and consequently notification was issued. The existence of the manufacturing unit at the basement of the area is well within the knowledge of the department as is evident from the letter dated 19.3.2021 of the Joint Commissioner to the Appellant pursuant to the visit of the Commissioner. It is the contention of the Revenue that subsequent to the examination of the permission granted while issuing location code, difficulties that would be encountered once the said area becomes operational, came to the knowledge of the Department pursuant to the survey conducted on 08.2.2023 and accordingly, the permission was withdrawn with a liberty to the Appellant to re-apply after compliance with the observation mentioned in the said Order. We do not find emergence of any new facts after the Notification was issued on 24.01.2022 that has spelt out in the revocation order; the existence of the manufacturing unit in the basement of the Customs notified area has been raised in the inspection reports. Consequent to the observation in the letter dated 21.3.2021 it was sterilised and artificially separated from the proposed customs notified area to enable the department to declare it the premises as Customs Notified area. Now, the

argument of the Revenue is that there would be some GST implications if both the DTA unit as well as Customs notified area are situated in the same premises. It is also seen from the records that such apprehensions have not been spelt out in the order.

12. The Handling of Cargo in Customs Area Regulations, 2009 provide authority to the Commissioner to review the decision after allowing operation by a CCSP in the notified area. The relevant Regulation 11 of HCCAR, 2009 read as under:-

Regulation 11. Suspension or revocation of approval for appointment of a Customs Cargo Service provider:

(1) The Principal Commissioner of Customs or Commissioner of Customs as the case may be, may, subject to the provisions of these regulations, suspend or revoke the approval granted to the Customs Cargo Service provider subject to the observance of procedure prescribed under regulation 12 and also order for forfeiture of security, if any, for failure to comply with any of the provisions of the Act and the rules, regulations, notifications and orders made thereunder;

(2) Notwithstanding anything contained in sub-regulation (1), the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, in appropriate cases where immediate action is necessary, suspend the approval granted to a Customs Cargo Service provider where an enquiry against such Customs Cargo Service provider is pending or contemplated.

Regulation 12 of HCCAR, 2009 prescribes the procedures need to be followed for suspension or revocation of the approval, which reads as under:-

REGULATION 12. Procedure for suspension or revocation of approval and imposition of penalty. —

(1) *The Principal Commissioner of Customs or Commissioner of Customs, as the case may be]shall issue a notice in writing to the Customs Cargo Service provider stating the grounds on which it is proposed to suspend or revoke the approval and requiring the said Customs Cargo Service provider to submit within such time as may be specified in the notice not being less than thirty days, to the Assistant Commissioner or Deputy Commissioner of Customs nominated by him, a written statement of defence and also to specify in the said statement whether the Customs Cargo Service provider desires to be heard in person by the said Assistant Commissioner or Deputy Commissioner of Customs.*

(2) *On receipt of the written statement from the Customs Cargo Service provider, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), the Assistant Commissioner or Deputy Commissioner of Customs may inquire into such of the grounds as are not admitted by the Customs Cargo Service provider.*

(3) *The Assistant Commissioner or Deputy Commissioner of Customs shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings and he may also put any question to any person tendering evidence, for or against the Customs Cargo Service provider, for the purpose of ascertaining the correct position.*

(4) The Customs Cargo Service provider shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings and where the Assistant Commissioner of Customs or Deputy Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the aforesaid inquiry, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall prepare a report of the inquiry recording his findings.

(6) The Principal Commissioner of Customs or Commissioner of Customs, as the case may be shall furnish to the Customs Cargo Service provider a copy of the report of the Assistant Commissioner or Deputy Commissioner of Customs and shall require the Customs Cargo Service provider to submit within the specified period not being less than thirty days any representation that he may wish to make against the findings of the Assistant Commissioner of Customs or Deputy Commissioner of Customs.

(7) The Principal Commissioner or Commissioner shall, after considering the report of the inquiry, and the representation thereon, if any, made by the Customs Cargo Service provider, pass such orders as he deems fit.

(8) If any Customs Cargo Service provider contravenes any of the provisions of these regulations, or abets such contravention or who fails to comply with any provision of the regulation with which it was his duty to comply, then, he shall be liable to a penalty which may extend to fifty thousand rupees.

(9) Any Customs Cargo Service provider aggrieved by any decision or order passed under this regulation, may appeal under section 129A of the Act to the Customs Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act.

13. During the course of arguments, it is indicated by the Revenue that there could be some misuse and complications in the implementation of GST laws if both the manufacturing unit as well as customs operations under the Customs notified area are allowed simultaneously. However, we find from the records that the said apprehension and other objections have not been communicated to the appellant by way of issuance of a show-cause notice and response from the appellant in this regard in complete disregard and blatant violation of Regulation 12 of HCCAR, 2009. Therefore, we are of the view that the appellant be given a reasonable opportunity, by way of issuance of a show-cause notice and reply thereof, to explain the apprehensions now raised by the Department on the basis of a survey report dated 08.2.2023(not issued to the Appellant), even after modifications/alternation carried out by the Appellant from time to time.

14. In the result, to meet the ends of justice, and taking note of the fact that the Appellant has made huge investment in this regard, and the ICD could not be made operational even though the necessary infrastructure is in place since 2017, we

direct the Department to issue a notice to the appellant within a week's time from the date of receipt of this order raising all issues clearly stating the grounds for proposed action. Also, copy of the survey report dated 08.2.2023 be issued to the Appellant, if not delivered. The learned advocate for the appellant undertakes to file their reply within one week from the date of receipt of notice even though the time limit for filing reply prescribed under the said Regulation 12 of HCCAR, 2009 is thirty days. On receipt of the reply to the Notice and after affording an opportunity of hearing to the appellant, the learned Commissioner should decide the issue maximum within a fortnight thereafter. Both sides to cooperate in completing the adjudication process as expeditiously as possible.

15. In view of the above, the impugned Order dated 16.2.2023 is set aside and the Appeal is allowed by way of remand.

(Operative portion of this order was pronounced in open court
on conclusion of the hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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