CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20215 of 2022

(Arising out of Order-in-Original No.01/2021 Cus Tech CCP Kochi dated 31.03.2021 passed by the Commissioner of Customs (Preventive), Cochin)

The Kerala Maritime Board
Kerala Maritime Board, Valiyathura PO,
Thiruvananthapuram, Kerala. ....**Appellant(s)**

VERSUS

Commissioner of Customs
Customs House, Willingdon Island,
Cochin, Kerala-682 009. ....**Respondent(s)**

APPEARANCE:

Ms. Anjali Menon, Advocate for the Appellant.
Mr. Vikalp Jain, Superintendent (AR) for the Respondent.

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 22177 /2025

Date of Hearing: 03.11.2025
Date of Decision: 03.11.2025

Per: Pullela Nageswara Rao

This appeal is filed against the Order-in-Original No. 01/2021 Cus.Tech CCP, Kochi dated 31.03.2021 passed by the Commissioner of Customs (Preventive), Cochin.

2. Briefly stated the facts of the case are that the appellant, The Kerala Maritime Board under the Ports Department, Government of Kerala has been functioning as the Custodian in seaports located at different customs areas including Vizhinjam Seaport, under the Customs

Act, 1962. As per Section 7 and 8 of the Customs Act, 1962, imports and exports could be effected only from notified ports. Vizhinjam seaport is one of the notified Customs Ports for the purposes of exports and imports. The services of a Custodian at seaports are a requirement under Section 45 of the Customs Act, 1962. All the imported goods shall remain with the Custodian until they are cleared in accordance with various provisions of the Customs Act, 1962. The Custodian is responsible for receipt, storage, delivery, dispatch or otherwise handling of imported goods and export goods. The Handling of Cargo in Customs Areas Regulations (HCCAR), 2009 *inter alia* prescribes the conditions to be fulfilled by the 'Custodian' cum ‘Custom Cargo Services Provider' (CCSP) in connection with handling of imported and export goods in the ports.

3. The Handling of Cargo in Customs Areas Regulations (HCCAR), 2009 *inter alia* prescribes the conditions to be fulfilled by the 'custodian' cum 'Customs Cargo Services provider', in connection with handling of imported and export goods in the ports. Regulation 5 of the said Regulations specifies the conditions *inter alia* thus:-

1) Provide the following to the satisfaction of the Commissioner of Customs, namely:

    (i) Infrastructure, equipment and adequate manpower for loading, unloading, stacking, handling, stuffing and de-stuffing of containers, storage, dispatch and delivery of containers and cargo etc., including:-

    a. standard pavement for heavy duty equipment for use in the operational and stacking area;
    b. free of cost or rent fully furnished office accommodation for Customs, Customs Electronic Data Interchange (EDI) Service Centre, with required amenities and facilities and residential accommodation and transportation facilities for customs staff;
    c. premises for user agencies with basic amenities and facilities;
    d. storage facility, separately for imported, export and transsshipment goods;

e. gate complex with separate entry and exit.
f. adequate parking space for vehicles;
g. boundary wall;
h. internal service roads;
i. electronic weigh-bridge and other weighing and measuring devices;
j. computerized system for location and accountal of goods, and processing of documents;
k. adequate air-conditioned space and power back up, hardware, networking and other equipment for secure connectivity with the Customs Automated system, and for exchange of information between Customs Community partners;
l. facilities for auction, including by e-auction, for disposal of uncleared, unclaimed or abandoned cargo;
m. facilities for installation of scanning equipment;
n. security and access control to prohibit unauthorized access into the premises; and
o. such other equipment or facilities as the Board or Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may specify having regard to the screening, examination, custody and handling of imported or export goods in a customs area,

(ii) safe, secure and spacious premises for loading, unloading, handling and storing of the cargo for the projected capacity and for the examination and other operations as may be required in compliance with any law for the time being in force;

(iii) insurance for an amount equal to the average value of goods likely to be stored in the customs area based on the projected capacity, and for an amount as the Commissioner of Customs may specify having regard to the goods which have already been insured by the importers or exporters.

(2) Undertake 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 in the Ministry of Finance.

(3) Execute a bond equal to the average amount of duty involved on the imported goods and ten per cent of value of export goods likely to be stored in the customs area during a period of thirty days and furnish a bank guarantee or cash deposit equivalent to ten per cent of such duty:

Provided that the condition of furnishing of Bank guarantee or cash deposit shall not be applicable to ports notified under the Major Ports Act, 1962 (38 of 1963) or to the Central Government or State Governments or their undertakings or to the Customs Cargo Service provider authorised under Authorised Economic Operator Programme.

(4) Execute a separate bond for an amount equal to ten percent of value of export goods with a bank guarantee for an amount equal to ten percent of the value of the bond, towards the export goods transported from the customs area to any other customs area for export or transshipment, as the case may be;

(5) Undertake to comply with the provisions and abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.

(6) Undertake to indemnify the Commissioner of Customs from any liability arising on account of damages caused or loss suffered on imported or export goods, due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, storage, delivery, dispatch or otherwise handling.

4. On the basis of statutory amendments, Customs formalities have been moving towards 100% e-governance in a phased manner. The physical documentations related to imports and exports have been replaced by electronic filing and all the stake holders i.e. exporters, importers, shippers, carriers, customs brokers, custodians etc., have to register in ICEGATE platform and submit IGM, EGM documents digitally

in the various authorised platforms like e-SANCHIT required vide Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 and among other facilities, the Custodians are statutorily required to provide EDI (Electronic Data Interchange) facility at the ports as mandated under Handling of Cargo in Customs Areas Regulations, 2009.

5. As per the Sea Cargo Manifest and Transhipment Regulations, 2018(SCMTR, 2018); 'authorised carriers' are required to deliver arrival/departure manifest and hence need to be registered under Regulation 3. In terms of the definition of ‘authorised carrier' provided under Regulation 2(1)(c) read with Regulation 2(1)(f), approved custodians under Section 45 of the Customs Act is one of the authorised carriers under the said SCMTR, 2018.

6. The Sea Cargo Manifest and Transhipment Regulations, 2018 (SCMTR) came into force w.e.f. 01.10.2020 and all carriers including the custodian coming under Section 45 has to get registered under Regulation 3 of the Regulations, 2018. All the persons (authorised) including the custodian are required to file import /export related documents /information /Data thereof by presenting it electronically on the Customs Automated System only. No physical documentation is statutorily accepted for this purpose. The Customs department has also introduced faceless, contactless assessments of Bills of Entry on pan India basis. And hence EDI facility is an integral and statutory requirement at Vizhinjam Seaport for the continuance as a Seaport under the Customs Act, 1962.

7. As the Appellant failed to fulfil their responsibilities under SCMTR, 2018 and HCCAR, 2009 thereby rendered themselves liable for action under Regulation 11(1) of the Handling of Cargo in Customs Areas Regulations, 2009 a Show Cause Notice No. 02/2020 dated 18.09.2020 was issued to the appellant by the Commissioner of Customs (Preventive), Cochin calling upon them to show cause to the Deputy Commissioner, Customs Prev. Division, Thiruvananthapuram, who has been nominated by the Commissioner under Regulation 12(1) of HCCAR, 2009, as to why Customs operations at Vizhinjam Port should

not be suspended under Regulation 11(1) HCCAR, 2009 and why the appropriate penalty should not be imposed on them under Regulation 12(8) of HCCAR, 2009 and under Section 117 of the Customs Act, 1962 for their failure in complying with the provisions of the said regulations.

8. The appellant in reply to the show cause notice submitted the status of implementation *inter alia* in respect of some of the conditions of Regulation 5 of HCCR, 2009 as follows.

(1) Provide the following to the satisfaction of the Commissioner of Customs, namely:

(i) infrastructure, equipment and adequate manpower for loading, unloading, stacking, handling, stuffing and de-stuffing of containers, storage, dispatch and delivery of containers and cargo, etc: *The port is in the process of putting various infrastructures in place to ensure compliance. Registered local labour is used for loading/unloading purposes etc.*

(a) Standard pavement for heavy duty equipment for use in the operational stacking area: *One ten ton capacity crane is stationed at Vizhinjam port. Pavement for operation of this crane is available at the port.*

(b) Free of cost or rent fully furnished office accommodation for Customs, Customs Electronic Data Interchange (EDI) Service Centre, with required amenities and facilities and residential accommodation and transportation facilities for customs staff: *The office space is proposed and tendered at present. Electronic Data Interchange (EDI) Service Centre is not available at present. Administrative sanction was accorded in 2016 but it had not been commissioned. The administrative sanction is being revised.*

(c) Premises for user agencies with basic amenities and facilities; (Range officer had notified this office that there is no backup generator, one common toilet is available for all agencies and no permanent drinking water facility is being provided): *Appellant responded that the generator available with the port is beyond repair. New toilets are part of the tender presently floated. Water connection is available and drinking water is made available as 20 litre cans at port.*

(d) Storage facility, separately for imported, export and transshipment goods: *Godowns and transit sheds are available at port.*

(e) Gate complex with separate entry and exit: *No separate entry and exit is available since the geography of the area does not allow for the same. Security is present at the gate. Fencing is available at some areas in the vicinity and the port is in the process of replacing the said fencing with proper walled structure.*

(f) Adequate parking space for vehicles; *Parking space is available at present.*

(g) Boundary wall; *Fencing is available at some areas in the vicinity and the port is in the process of replacing said fencing with proper walled structure.*

(h) Internal service roads; only one road is available for the port premise. Since the port area is very small, the road sufficiently caters to the requirements.

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9. As it is clearly established in the inquiry report of the Deputy Commissioner, Customs Prev. Division, Thiruvananthapuram that the

appellant has failed to provide the necessary infrastructure as stipulated in the Handling of Cargo in Customs Area Regulations (HCCAR), 2009 and have not registered themselves under SCMTR, 2018 despite multiple communication through various letters and has been admitted by the appellant and they have sought 6(six) months' time to comply with all the regulations and guidelines. Therefore, it is evident that the appellant has failed even after receipt of repeated communications, to fulfil the obligations cast upon them, as envisaged in the HCCAR, 2009 and SCMTR, 2018.

10. On adjudication the Learned Commissioner has held that although Vizhinjam Port has been notified under Section 8 of Customs Act, 1962 but no custodian has been approved under Section 45 of Customs Act, 1962 and as CCSP under Regulation 10 of HCCAR, 2009, since the requirements as mentioned in Regulations 5 & 6 ibid have not been fulfilled by the Appellant. Since the said procedure has not been complied, custodian code and terminal operator code from DG Systems could not be obtained resulting in failure of installation of EDI system. Many correspondences were made with the appellant, who has replied that there was no technical staff posted to the relevant section after 2016, therefore the staff handling the correspondences did not understand the implications of the letters received and same went unanswered. Therefore, there appears to be a wilful negligence from the side of the appellant. Further, Government of Kerala has appointed Port Officer, Kollam as Custodian of Vizhinjam Port as per G.O.(RT) No. 230/2016/F&PD dated 05.03.2016. However, Customs Department was not informed about the same.

11. In view of the above, the learned Commissioner refrained from suspension of operations of the Appellant at Vizhinjam Port under Regulation 11(1) of the Handling of Cargo in Customs Areas Regulations, 2009, as the appellant has assured that within 6(six) months necessary infrastructure will be provided in terms of HCCAR, 2009, however held that ends of justice will be met only if a suitable penalty is imposed on the Appellant. Accordingly, the learned

Commissioner did not suspend the operations as provided under Regulation 11(1) of the Handling of Cargo in Customs Area Regulations, 2009, considering the assurance given by the appellant that they will provide all the IT and other infrastructure as stipulated in HCCAR, 2009 within 6(six) months. Further, the Commissioner has refrained from imposing penalty on the appellant under Regulation 12(8) of HCCAR, 2009 as they have not been notified as custodian under Section 45 of Customs Act, 1962 and as CCSP under Regulation 10 of HCCAR, 2009. However, a penalty of Rs. 4,00,000/- was imposed on the appellant under Section 117 of the Customs Act, for not complying with Customs procedure. Aggrieved by the impugned order, the appellant has filed this appeal before this Tribunal.

12. The learned counsel for the appellant during the hearing reiterated the submissions made in the grounds of the appeal memorandum. The appellant in the grounds of appeal submitted that; the Port Officer, Kollam is the custodian of Vizhinjam Port as per G.O.(RT) No. 230/2016/F&PD dated 5.3.2016 and he has also undertaken necessary steps for approval under Section 45 of the Customs Act, 1962 vide letter No. 476/2020/KMB/VZM dated 12.9.2020 to the Commissioner of Customs, Preventive Division, Kochi; further, necessary steps are being taken to register the custodian in the ICEGATE platform; the detailed reply with respect to the various issues raised in the show cause notice were submitted; since only controlled crew change and supplies to Adani Port are only carried out at present, temporary arrangements are made in the port premises for user agencies with basic amenities; all the security and basic facilities required have been also arranged; it is also requested that condition of insurance may be waived since at Vizhinjam Port only exports of perishables and essential commodities are handled which are being loaded directly to the vessel and not stored in the port for any prolonged period. It was also informed that other regulatory requirements are also in the process of being complied.

13. The learned counsel further submits that; Section 45 of the Customs Act, 1962 only mandates that all imported goods 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; the Port Officer, Kollam is appointed as the custodian by the relevant government order; since no import is taking place at the port, there is no contravention of this section; the original authority accepted the reasons for certain delays and shortcomings regarding compliances of Regulations and Rules under the Customs Act and granted 6(six) months' time for its compliance; it is highly disproportionate and irregular to impose penalty under Section 117 in these circumstances; there is no finding of contravention of any provision of the Customs Act, 1962 in the impugned order, hence, it is wrong and illegal to impose penalty under Section 117 of the Customs Act, 1962.

14. The learned Authorized Representative (AR) for the Revenue reiterated the findings in the impugned order.

15. Heard both sides and perused the records.

16. We find that in this case the appellant, The Kerala Maritime Board is operating the minor port at Vizhinjam, Kerala for the import and export operations. However, we find that the appellant is not approved as the 'Custodian', "Customs Cargo Services Provider (CCSP)" by the Commissioner of Customs under section 45 of the Customs Act, 1962 and under Regulation 10 of HCCAR, 2009, respectively for the Vizhinjam port since they have not complied with certain conditions / requirements/ facilities to be provided by CCSP under the Handling of Cargo in Customs Area Regulations, 2009 (HCCAR, 2009) read with section 45 of the Customs Act, 1962. However, they are handling the import-export cargo operations at the Vizhinjam port pending the approval by Customs Department has Custodian under Section 45 of the Customs Act, 1962 and as Customs Cargo Services Provider (CCSP) under Regulation 10 of HCCAR, 2009. The appellant has given an assurance to the Customs to comply with the conditions /requirements / facilities to be provided by a custodian *inter alia* under Regulation 5 of

the HCCAR, 2009 within 6(six) months during the inquiry conducted by the Deputy Commissioner of Customs, who was appointed by the Commissioner of Customs to enquire and report on compliance of the conditions/ requirements/ facilities to be provided by a CCSP under HCCAR, 2009 for according approval of the appellant as 'CCSP' for Vizhinjam port by the Commissioner of Customs.

17. We find that appellant has also submitted that the operations at the Vizhinjam port are very minimal and that only crew change operations and certain direct loading of the perishable items like vegetables is predominantly undertaken and there are very few import consignments. We also find that the learned Commissioner has refrained from suspension of the operations of the appellant and imposition of penalty under Regulations 11(1) and 12(8) of HCCAR, 2009, respectively, however he has imposed a penalty of Rs. 4,00,000/- under section 117 of the Customs Act, 1962, penalty can be imposed under section 117 of the Custom Act, 1962, for the contravention of the provisions of Customs Act, where no express penalty is elsewhere provided for such contravention in the Customs Act. The penalty under this section has been enhanced from Rs. 10,000/- to Rs. 4,00,000/- from time to time. We find that the imposition of penalty under section under 117 of the Customs Act on the appellant though they have not been approved as a 'Custodian' under Section 45 of the Customs Act, 1962 and as 'CCSP' under the HCCAR, 2009 is not proper. We do not find that the appellant has contumaciously violated any of the provisions of the Customs Act, 1962 except that they have not fulfilled the required conditions and have not provided the required facilities as per the provisions of HCCAR, 2009. We find that the appellant is in the process of providing the required facilities as per Regulation 5 of HCCAR, 2009 and it may also be noted that during the relevant period their operations were also affected by COVID and they were not able to fulfill the requirements as per Regulation 5 of HCCAR, 2009 to the satisfaction of the Customs Department. In the facts and circumstances of the case in our opinion we find that the imposition of penalty of Rs. 4,00,000/- on the appellant

being an entity under State Government of Kerala is inappropriate, therefore the penalty imposed is unsustainable and liable to be set aside.

18. Accordingly, the order is set aside, and the appeal is allowed with consequential relief, if any, as per law.

(*Operative part of this Order was pronounced in Open Court on conclusion of the hearing)*

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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