

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. I

Customs Appeal No. 40186 of 2016

(Arising out of Order-in-Original No. 44023/2016 dated 14.01.2016 passed by Commissioner of Customs, No.60, Rajaji Salai, Custom House, Chennai – 600 001)

Commissioner of Customs

Chennai VIII Commissionerate,
Custom House,
No. 60, Rajaji Salai,
Chennai – 600 001.

... Appellant

Versus

M/s. Chandra CFS Terminal Operators Pvt. Ltd.

Nallur Village Post, Minjur,
Kammavari Palayam Road,
Minjur – 601 203.

... Respondent

APPEARANCE:

For the Appellant : Ms. Rajini Menon, Authorised Representative
For the Respondent : Mr. Hari Radhakrishnan, Advocate

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40852/ 2026

DATE OF HEARING : 21.04.2026
DATE OF DECISION : 06.07.2026

Per Mr. VASA SESHAGIRI RAO

The present Revenue appeal has been filed against the Order-in-Original No. 44023/2016 dated 14.01.2016 passed by the Commissioner of Customs, Custom House, Chennai (hereinafter referred to as "the impugned order"), whereby the adjudicating authority, while holding that M/s. Chandra CFS & Terminal Operators Pvt. Ltd. had contravened the provisions of HCCAR, 2009 but

declined to revoke its custodianship approval and instead imposed a penalty under Regulation 12(8) of HCCAR, 2009.

2. The facts, as briefly culled out from the appeal records, are that the respondent, a Customs Cargo Service Provider/Custodian under HCCAR, 2009, was entrusted with the custody of a DRU-seized container containing 304 Red Sanders logs weighing about 9430 kg. Investigation revealed that the said seized container with Red Sander Wood had been clandestinely removed from the CFS customs area through forged gate passes and an empty container brought from outside got substituted. Following the recovery of the container and initiation of criminal proceedings against the persons involved, the Department commenced action under Regulation 12(1) of HCCAR, 2009 proposing revocation of custodianship of the CFS. The adjudicating authority, while holding the respondent as guilty of violation of HCCAR and supervisory lapses, declined to revoke the custodianship, but revoked the suspension and imposed a penalty of Rs.50,000/- under Regulation 12(8) of HCCAR, 2009 of HCCAR, 2009.

3. Aggrieved by the said decision to the extent it refrained from revoking the custodianship approval granted to the respondent, the Department has preferred the present appeal.

4.1 The Ld. Authorized Representative Ms. Rajini Menon appearing for the Department submitted that the impugned order suffers from serious legal infirmity insofar as the adjudicating authority, despite recording multiple violations of HCCAR, 2009, refrained from revoking the custodianship granted to the Respondent.

4.2 The Ld. Authorized Representative further submitted that the respondent, as a Customs Cargo Service Provider, is always under a statutory obligation to ensure safe and secure custody of goods kept in the Customs area. The unauthorized removal of a seized container containing Red Sanders through forged gate passes, manipulation of container numbers and substitution of the original container itself established a serious breakdown of security and there was a failure to discharge the obligations cast under HCCAR, 2009. It was contended that the subsequent recovery of the goods does not diminish the gravity of the breach and that the findings recorded in the Review Order disclose systemic deficiencies in supervision and control warranting revocation of the Respondent's custodianship approval. Accordingly, it was prayed that the impugned order be set aside and the Respondent's approval be revoked.

5. The Ld. Advocate Mr. Hari Radhakrishnan appearing for the Respondent contested the appeal and supported the impugned order. He has submitted that the Respondent itself detected the discrepancy, immediately lodged a police complaint and fully cooperated with both Customs and police authorities by furnishing CCTV footage, gate records and other relevant materials. It was contended that the investigation resulted in recovery of the container and Red Sanders cargo and identified the individuals responsible, while no role whatsoever was attributed to the Respondent's management. The Ld. Counsel argued that HCCAR does not contemplate automatic revocation for every security lapse and that, in the absence of evidence showing participation, abetment or conscious facilitation by the Respondent, the adjudicating authority rightly distinguished negligence from deliberate misconduct. Reliance was also placed upon the case laws emphasizing proportionality of punishment, and it was submitted that the Respondent had subsequently implemented corrective measures, continued rule based operations under Customs supervision and obtained AEO recognition, demonstrating restoration of compliance standards. Accordingly, it was prayed that the impugned order be upheld and the Department's appeal be dismissed.

6. We have carefully considered the rival submissions, the records of the case, the Show Cause Notice, the impugned Order-in-Original, the Review Order passed under Section 129D of the Customs Act, the police investigation records relied upon by both sides and the various judicial precedents cited before us. The following issues arise for determination: -

- i. Whether the Respondent committed violations of HCCAR, 2009 warranting revocation of custodianship approval?
- ii. Whether the Respondent can be held vicariously liable for the illegal removal of the seized container and whether the impugned order warrants appellate interference?

7. We now proceed to examine the issues framed for determination sequentially.

8. The first issue for consideration is the extent of responsibility of a Customs Cargo Service Provider for goods kept under Customs control and whether the facts of the present case warrant the extreme consequence of revocation of custodianship.

9. At the outset, it is necessary to note that the Handling of Cargo in Customs Areas Regulations, 2009 were

framed to ensure safe custody and secure handling of goods kept in any customs area. A custodian acts as an extended arm of the Customs administration and is responsible for safeguarding imported, export and seized goods. The obligations under Regulations 5 and 6 are therefore statutory duties intended to maintain the security safety and integrity of the customs area.

10. In the present case, there is no dispute that the DIU-seized container containing Red Sanders logs was illegally removed from the Respondent's premises through forged gate passes and substitution with another container filled with coconut and palm trunks. The Respondent has not at all disputed the occurrence of the incident and has itself acknowledged that a serious security breach has taken place within its premises due to the fraudulent criminal activities indulged in by the employees.

11. The Ld. Authorized Representative is justified in contending that the incident cannot be treated as a mere procedural lapse. The records establish that forged gate passes were accepted, the seized container was substituted and its unauthorized removal escaped detection for lack of proper checks and balances. Such circumstances demonstrate serious deficiencies in supervision and security and complying with the procures prescribed. We also agree

that the subsequent recovery of the goods does not dilute the gravity of the breach, since the violation lies in the unauthorized removal itself from an approval and notified customs area.

12. However, the issue is not merely whether any violation occurred, but whether the violations established on record warrant revocation of custodianship. This requires consideration of the surrounding facts and circumstances in depth.

13. It is important to note that the police investigation resulted in arrest of the persons allegedly involved and recovery of the container along with the seized good intact. More importantly, the Interim Report dated 27.01.2015 submitted by the Inspector of Police specifically recorded that no material or evidence was available to suggest complicity of management of M/s. Chandra CFS & Terminal Operators Pvt. Ltd., except the employees who had been arrested and later on removed from the service.

14. While HCCAR imposes strict obligations regarding custody and security, revocation remains the severest civil consequence under the regulatory framework and cannot be treated as an automatic result of every violation. The discretion conferred under the Regulations

necessarily requires consideration of the nature of the breach, the conduct of the custodian and the surrounding circumstances.

15. We find that the adjudicating authority considered the recovery of the goods, the outcome of the police investigation, the absence of evidence against management and the corrective measures adopted thereafter. These factors are directly relevant in determining whether revocation was warranted.

16. The Department has emphasized that Red Sanders is a prohibited commodity and that the container with contained valuable seized goods kept in the CFS. We fully agree that the nature of the cargo aggravates the seriousness of the incident. At the same time, proportionality remains an integral component of administrative adjudication. Revocation is not intended to be outright punitive but should act as a deterrent against any serious violation of rules and procedures. Therefore, before revocation is ordered, the authority must be satisfied that continuation of the custodianship would be inconsistent with protection of revenue, security of goods and proper administration of Customs law. In this regard, the doctrine of proportionality should also guide the authorities actions.

17. Though the evidence establishes supervisory failures and violations of HCCAR, we find no material showing institutional complicity or conscious facilitation by the Respondent's management. The subsequent inspections, corrective measures and continued operations also indicate that the Respondent undertook remedial steps. Accordingly, while penal action was justified, the facts do not warrant the extreme consequence of revocation. The Adjudicating Authority in the impugned order given his findings which reads as under: -

'22.3 I find that the Custodian M/s Chandra CFS & Terminal Operators Pvt. Ltd. underwent adequate punishment during the period of suspension of their CFS operations in the form of huge economic/financial losses and in terms of management reputation in the trade. Keeping in view the various damages/losses suffered /incurred by the CFS management during the past one year period of suspension of CFS operations; the loss of livelihood for the 50 employees and their families during the one year period; and also in keeping in view of the Government of India's policy of 'ease of doing business', and as a trade facilitation measure, I am inclined to take a lenient view and pass the following orders.'

18. We accord our consent and approve the above finding of the Adjudicating Authority. Accordingly, we hold that although the Respondent committed violations of the obligations cast under HCCAR, 2009 and was rightly subjected to penalty, the Department has failed to establish circumstances justifying revocation of custodianship altogether solely on the basis of the incident in question.

19. On the second issue, the Ld. AR contends that the Respondent, being a Customs Cargo Service Provider, is responsible for all the acts committed by its employees within the customs area and cannot avoid liability merely because the actual removal was carried out by any individual employee or by third parties. The Respondent, on the other hand, submits that while it may be answerable for supervisory lapses, criminal acts of rogue employees cannot automatically be attributed to the management in the absence of evidence showing authorization, knowledge, connivance or conscious facilitation.

20. While HCCAR casts responsibility upon the custodian for safeguarding goods in the Customs area, the issue here is whether the evidence establishes deliberate involvement or connivance of the Respondent in the illegal removal of the container. In the absence of such evidence, employee's misconduct or supervisory lapses alone cannot justify revocation of the custodianship of the CFS and as a customs area.

21. The records disclose that immediately after detection of the irregularity, the Respondent lodged a complaint before the police authorities, furnished CCTV footage, gate records and other operational documents and fully cooperated with the investigation. The investigation

resulted in recovery of the container and Red Sanders logs and identified the individuals allegedly involved. Significantly, no material emerged indicating participation, knowledge or connivance on the part of the Respondent's management.

22. We agree that absence of criminal prosecution against the management does not by itself exonerate the Respondent under HCCAR. At the same time, mere occurrence of a criminal act within the customs area does not automatically establish complicity of the custodian. The Review Order appears to equate supervisory failure with participation in the offence. In our view, there is a clear distinction between negligence in preventing an offence and active involvement in its commission. While the former may justify regulatory action, the latter alone can justify the severest consequences.

23. The Department has emphasized that a Customs Cargo Service Provider occupies a pivotal and fiduciary position and therefore must be held strictly accountable. While we agree that the standard expected from a custodian is very high, even strict accountability must operate within the limits of fairness and proportionality. Revocation cannot be converted into an automatic consequence every time an employee commits a criminal act. If such an interpretation were adopted, the distinction carefully maintained by the

Regulations between penalty, suspension, revocation and forfeiture of security would become meaningless.

24. Our above conclusion also finds support from the earlier decisions in respect of the Respondent's *viz.*, Chandra Container Freight Station & Terminal Operators v. Commissioner of Customs (Exports), Chennai (Final Order Nos. 40923-40924/2018 dated 20.03.2018), wherein the Tribunal held that severe penal consequences cannot be sustained in the absence of evidence establishing knowledge, collusion, conspiracy or conscious involvement in the offending activity. The Tribunal emphasized that while a custodian bears responsibility for safeguarding goods, revocation or similar drastic consequences must be founded upon evidence of deliberate participation and not merely on supervisory lapses. Though the facts differ, the underlying principle squarely supports the Respondent's case.

25. Though recovery of the container does not erase the original breach, it remains relevant in assessing the extent of institutional failure and the appropriate consequence. The Respondent cooperated with the investigation, the container and seized red sander wood logs were recovered and corrective measures were subsequently implemented. In these circumstances, while the Respondent remains responsible for the supervisory failures that enabled the illegal removal of the container, the Department has

failed to establish any material showing deliberate involvement, connivance or conscious facilitation on the part of its management. The doctrine of vicarious liability cannot be stretched to convert every act of employee's misconduct into a ground for revocation of custodianship irrespective of the surrounding facts.

26. Accordingly, we conclude that the illegal removal of the seized container cannot be attributed to the Respondent in a manner warranting revocation of custodianship and that the findings recorded by the adjudicating authority on this aspect do not call for any interference.

27. Further, having held that the Respondent committed violations of HCCAR, 2009 but that no deliberate involvement or complicity has been established, the issue is whether the impugned order warrants appellate interference. The scope of such interference is limited and a reasoned exercise of discretion cannot be disturbed merely because another view is possible. We find that the adjudicating authority has duly considered the forged gate pass, substitution of the container, deficiencies in supervision and other attendant circumstances, recorded violations of HCCAR and imposed penalty accordingly. The impugned order therefore cannot be said to suffer from any infirmity

warranting interference solely on the ground that the Department seeks a harsher consequence.

28. The grievance of the Department is essentially that once such findings were recorded, revocation necessarily to have followed. We are unable to subscribe to such a proposition. The HCCAR framework itself contemplates a graded mechanism of consequences. Suspension, revocation, forfeiture of security and monetary penalty are distinct remedies designed to address varying degrees of misconduct. The existence of these separate consequences itself demonstrates that every violation does not automatically warrant the most severe action available under the Regulations.

29. The impugned order reveals that the adjudicating authority took into account several mitigating circumstances including the Respondent's immediate reporting of the incident, cooperation with investigation, recovery of the container along with the seized goods, absence of evidence implicating management, the period of suspension already undergone and corrective measures subsequently adopted. These are relevant considerations directly bearing upon whether continued operation of the Respondent would be detrimental to Customs administration. While deterrence remains important in cases involving

breaches of customs security, proportionality is an equally important consideration in determining the appropriate consequence.

30. The Department has not produced any material showing recurrence of similar violations after the incident. On the contrary, the Respondent continued to function under Customs scrutiny, underwent inspections and implemented compliance measures. This assumes significance because revocation is not a forward-looking measure intended to protect Customs administration from future risk.

31. We also cannot ignore the fact that the Respondent subsequently obtained AEO status from Indian Customs and that its custodianship approval was thereafter renewed by the jurisdictional Customs authorities. Though neither circumstance is determinative of the issues arising from the present incident, both are relevant factors while assessing the Respondent's subsequent compliance standards, security practices and fitness to continue as a custodian.

32. The Respondent also relied upon *Harini Freight Logistics v. Commissioner of Customs (General), Mumbai, 2016 (343) E.L.T. 590 (Tri.-Mumbai)*, *UPS Jet Air Express Pvt. Ltd. v. Chief Commissioner of Customs, Chennai, 2023 (8) TMI 1003 (CESTAT Chennai)*, *MBK Logistix Pvt. Ltd. v.*

Commissioner of Customs, 2019 (2) TMI 1381, Commissioner of Customs (General) v. D.S. Cargo Agency, 2024 (14) Centax 119 (Del.), Commissioner of Customs (Airport & General) v. Transworld Cargo & Travels, 2023 (10) Centax 122 (Del.) and Commissioner of Customs (Airport & General) v. Entire Logistics India Pvt. Ltd., 2026 (38) Centax 137 (Del.) in support of the proposition that the consequence to be imposed under HCCAR must depend upon the facts and circumstances of each case, including the nature of the violation, the extent of involvement established against the custodian and the principle of proportionality. The said decisions lend support to the view that revocation is not an automatic consequence of every violation and that the appropriateness of such action must be assessed on the facts of each individual case.

33. We fully agree that the cargo involved, namely Red Sanders, is a prohibited commodity and that its unauthorized removal constituted a serious breach warranting penal action. However, the gravity of the goods involved cannot substitute for evidence regarding the Respondent's own role or automatically justify revocation of custodianship. The adjudicating authority rightly distinguished between negligence and deliberate misconduct and exercised the discretion vested under Regulation 12 after considering all relevant circumstances. The Department

has not demonstrated any perversity in appreciation of evidence, and the mere possibility of a harsher view on the same material does not warrant appellate interference.

34. Upon an overall evaluation of the facts, we hold that although the Respondent committed violations of HCCAR, 2009 and was rightly subjected to penalty, the Department has failed to establish deliberate involvement, connivance or institutional complicity warranting revocation of custodianship. The adjudicating authority rightly considered the police investigation, recovery of the seized goods, absence of evidence implicating the Respondent's management and the principle of proportionality while declining to impose the extreme consequence of revocation. We therefore find no legal or factual infirmity in the impugned order warranting appellate interference.

35. Accordingly, the Department's appeal is dismissed and the Order-in-Original No. 44023/2016 dated 14.01.2016 is upheld. The penalty imposed under Regulation 12(8) of HCCAR, 2009 shall remain undisturbed. Consequential reliefs, if any, shall follow in accordance with the law.

(Order pronounced in open court on 06.07.2026)

Sd/-
(AJAYAN T.V.)
 MEMBER (JUDICIAL)
 MK

Sd/-
(VASA SESHAGIRI RAO)
 MEMBER (TECHNICAL)