

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH- COURT NO. I

**CUSTOMS APPEAL No. 51121 of 2025**

(Arising out of Order-in-Original No. 06-07/2025 dated 11.04.2025 passed by the Principal Commissioner of Customs (Preventive), Jodhpur)

**M/s Thar Dry Port**

**....Appellant**

B-1, Shastri Nagar, Near Shastri Circle,  
Jodhpur-342003

Versus

**Principal Commissioner of Customs  
(Preventive), Jodhpur**

**....Respondent**

NCR Building, Statue Circle,  
C-Scheme, Jaipur- 302005

**APPEARANCE:**

Shri Anil Kumar Makhija, advocate for the appellant

Shri Nikhil Mohan Goyal, authorised representative of the department

**CORAM :**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**Date of Hearing : 26.11. 2025**

**Date of Decision : 04.12.2025**

**FINAL ORDER NO. 51815/2025**

**JUSTICE DILIP GUPTA :**

M/s Thar Dry Port<sup>1</sup> has sought the quashing of the order dated 11.04.2025 passed by the Principal Commissioner confirming the demand of outstanding recovery charges and ordering it to be recovered in terms of regulations 5(2) and 6(1)(o) of the Handling of Cargo in Customs Areas Regulation 2009<sup>2</sup>. The order further directs that in case the appellant fails to pay the dues within three months of

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- 1. the appellant**
  - 2. the 2009 Regulation**

the date of receipt of the order, the approval granted for Custodianship of the appellant will be suspended and security will also be forfeited. A penalty of Rs. 50,000/- has also been imposed upon the appellant under regulation 12 (8) of the 2009 Regulations.

2. The facility of customs clearance of goods for export/ import and for assessment, levy and collection of customs duty in hinterland in important cities with a view to decongest the Ports at Entry Points was started sometimes in 1995. For this purpose, help was sought from private/public sectors for providing premises suitable for Customs Officers and could be declared as "Customs Area" and "Customs Ports" as defined under the Customs Act 1962. Such Container Freight Stations, Air Cargo Complexes<sup>6</sup> and Inland Container Depots (ICD) were opened to facilitate imports and exports of goods. The goods to be exported are brought to the sites for examination by the Customs Officers and after completion of the custom formalities are allowed to be exported. Similarly, goods which are imported are also brought directly from the ship to the sites after unloading them in the specified ports for examination. For providing this facility, the Custodian is permitted to charge a certain amount per container from the exporter/ importer as handling charges.

3. Thar Port submitted an application on 25 October, 1998 to the Government of India, for setting up a Container Freight Station- ICD at Jodhpur in Rajasthan. The Ministry of Finance issued a letter of interest dated 23 March, 2000 informing Thar Port that the Government had approved the setting up of ICD at Jodhpur. The Commissioner of Customs by letter dated 17 January, 2001 allowed Thar Port to operate the Container Freight Station at Jodhpur and

also issued a Public Notice appointing it as Custodian of Imported goods and the goods to be Exported.

4. It needs to be noted that the aforesaid Circular dated 14 December, 1995 was replaced by the Handling of Cargo in Customs Area Regulations 2009. The Ministry of Finance also issued a Notification dated 12 September 2005 regarding Cost Recovery Posts in respect of the Customs staff posted in ICD/CFS/ACC and the same is reproduced below:

"I am directed to bring your kind attention that it has been decided to consider regularization of those cost recovery posts at ICDs/CFSs which have been in operation for two consecutive years with following performance benchmark for past two years:-

- (i) No. of containers handled by ICD : 7200 TEUs per annum
- (ii) No. of containers handled by CFS : 1200 TEUs per annum
- (iii) No. of BE or SB processed by : 7200 per annum for ICDs/CFSs ICD and 1200 for CFSs
- (iv) Benchmark at (1) to (3) shall be reduced by 50% for those ICDs/CFSs exclusively dealing with exports, as per staffing norms.

1. The waiver of cost recovery charges would be prospective with no claims for past period. Criteria would be applicable on actual performance of ICDs/CFSs.

2. Based on the performance of ICDs/CFSs in the Financial Year 2003-04 and 2004-05, you are requested to provide the information as per enclosure in respect ICDs/CFSs for which regularization of posts are suggested, no cost recovery charges are under dispute or pending payment as on 31 August 2005.

3. Member (Customs) has desired that information should be submitted by 19.09.2005 by return FAX and by email at [anupam.prakash@rediffmail.com\(.\)](mailto:anupam.prakash@rediffmail.com)"

5. In terms of the aforesaid Notification, Thar Port submitted an application for waiver of Cost Recovery Charges but as no decision was taken, it filed a Writ Petition in the Rajasthan High Court being

Writ Petition 87157 of 2017 for waiver of the charges in terms of the Notification dated 12 September 2005 as it claimed to have achieved the requisite target.

6. However, show cause notice dated 9 January 2013 was issued to the appellant purportedly under regulation 12 of the 2009 Regulations. The notice mentioned that previously the procedure for appointment of Custodian as ICD/CSF was prescribed under the Board Circular dated 14 December 1995, but the procedure was now laid down under the 2009 Regulations. After referring to the various provisions of the 2009 Regulations, it was stated that the appellant did not fulfill the conditions set out in regulations 4, 5 and 6 of the 2009 Regulations and the Board Circular dated 14 December 1995 and, therefore, it rendered itself liable for suspension/ revocation of approval of the Custodianship in terms of the provisions contained in regulation 11(1) of the 2009 Regulations and also forfeiture of security and imposition of penalty under regulation 12(8).

7. A detailed reply was filed by the appellant to the show cause notice. It was stated that the Government of India had announced a policy for granting exemption/ waiver on the payment of cost recovery charges if ICD/CSF satisfied the minimum workload criteria as provided for in the Notification dated 12 September 2005 and since they satisfied the conditions, the cost recovery charges were required to be waived.

8. The Commissioner, however, passed an order confirming the demand of outstanding cost recovery charges under regulations 5(2) and 6(1)(o) of the 2009 Regulations and imposed penalty of Rs.5000

but the Custodianship of the appellant was not revoked nor the Security was forfeited.

9. It is against this order of the Commissioner, that Customs Appeal No. 51122 of 2019 was earlier filed by the appellant for quashing that part of the order that confirmed the demand of outstanding cost recovery charges and imposed penalty.

10. This appeal was decided by the Tribunal by a decision dated 26.07.2019. The issue that arose for consideration was whether the recovery of cost recovery charges could have been confirmed by the Commissioner exercising powers under regulations 5(2) and 6(1)(o) of the 2009 Regulations and whether penalty of Rs.5000/- could have been invoked. The Tribunal considered the earlier decision of the Tribunal in **Container Corporation of India vs. Commissioner of Customs, Jodhpur**<sup>3</sup>. After examining the provisions of the 2009 Regulations, the Tribunal observed that the Adjudicating Authority could not have ordered for recovery of the outstanding cost recovery charges. The relevant portion of the decision is reproduced below:

"13. The issue involved in this case is regarding confirmation of cost recovery charge against the Appellant vide the impugned order. The learned Adjudicating Authority has confirmed the demand under the provision raised by the show cause notice dated 29 March, 2016. The show cause notice at para 16 (ii) has invoked the provisions of Regulations 5(2) and 6(1) (o) of HCCAR. However, the Commissioner has confirmed the demand without invoking any of those regulations. For the better appreciation of the issue involved we would like to refer to Regulation 5(2), 6(1)(o) and 12 of the Regulation of HCCAR.

A perusal of the regulations reveals that the same is intended for levying of cost recovery charge and payment thereof. Similarly, the condition at 5(2) only states that

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3. **2019(366) E.L.T. 745 (Tri. Del)**

custodian or CCSP will have to undertake to bear expenses of the Customs officers posted in the Customs area on cost recovery charge basis as per the manner prescribed unless and until the same is exempted by the Ministry of Finance. Therefore, Regulation 6(1)(o) of the Regulation (6) is not meant for recovery of default payment but only it says that the CCSP will have to bear the cost of officer deployed at their premises. Similarly, Regulation (12) of the CCAR does not prescribe for the recovery of defaulted cost recovery charge. But only states that the same is procedure for suspension or revocation of approval and imposition of penalty.

**14.** In view of above, we find that the learned Adjudicating Authority has not appreciated the legal provision as contained in HCR, referred above which do not indicate the machinery for realisation of cost recovery charge on account of being defaulted as is the case before us. In fact, we find that the show cause notice has invoked the provisions of Regulation 12 of HCCAR which does not provide for the realisation of the cost recovery charge but only revocation of the licence granted to CCSP on account of various breaches as contained therein. This regulation has no provisions for recovery of unpaid cost recovery charge on account of non-fulfilment of criteria as laid down in the CBEC circular. Thus, we find that the order passed by the learned Adjudicating Authority is beyond the scope of the provisions of HCCAR, 2009 more so when he has decided not to cancel the licence of the Appellant and only imposed penalty. Further, the learned Adjudicating Authority has also held that there is no provision of recovery of interest under the Regulation 2009. It is not appreciable that when he has held that there is no provision for imposition of interest under the Rule for the default made by the CCSP then how his attention escaped to notice that there is also no similar provision for recovery of default payment either under Regulations 5(2), 6(1)(o) of the Regulation. We also find that the Regulation 5(2) states 'undertaken to bear the cost of Custom Officer posted, at such Customs area, on cost recovery basis, by the Commissioner and shall make payment at such rate and in the manner prescribed unless specifically exempted by an order of the Government of India in the Ministry of Finance.'

11. In view of the aforesaid, decision of the Tribunal in **Container Corporation of India**, it was held that the Commissioner committed an illegality in ordering recovery of the cost recovery charges under the aforesaid provisions of the 2009 Regulations.

12. The Tribunal also noticed that penalty is imposed under regulation 12(8) of the 2009 Regulations if a Customs Cargo Service provider contravenes any of the provisions of the Regulations or it fails to comply with any provision of the Regulation which placed a duty on it. The Tribunal held that as cost recovery charges could not have been recovered under the aforesaid provisions of the 2009 Regulations, penalty also could not have been imposed as there would be no contravention of the 2009 Regulations.

13. This decision dated 26.07.2019 of the Tribunal was assailed by the department in Customs Appeal No. 2 of 2021 before the Rajasthan High Court. The Rajasthan High Court disposed of this appeal with many other appeals and the relevant portion of the judgment is reproduced below:

**19.** The learned CESTAT after detailed consideration found that the recovery of the cost recovery charges under the aforesaid provisions of HCCAR, 2009 was not possible. The penalty as per the learned CESTAT was imposed under Regulation 12 (8) of the HCCAR, 2009, and thus, the cost recovery charges could not have been recovered under the provisions of HCCAR, 2009.

**20.** In the opinion of this Court, the impugned notices and the order of the Commissioner, ought to have been considered on merits by the learned CESTAT while also dealing with the issue as to whether such recovery was lawful or not. Further, it was also a point of determination as to whether if at all the recovery was [2024:RJ-JD:52966-DB] (18 of 19) [CW-16982/2019] required, under which provisions the same can be made. This is more so when the record reveals that the revenue has not

been able to point out any such provision. The learned CESTAT in such circumstances should have remanded the matter back to the Commissioner for passing appropriate orders pertaining to recovery in question under the relevant provisions, if any, which it has missed out.

**20.1.** Rather than resorting to the above-said exercise under appeal, though the learned CESTAT did not disagree on the aspect of demand but recorded its opinion that there is no provision to satisfy such demand in the form of recovery of cost recovery charges.

**21.** Thus, in light of the aforesaid observations, the instant appeals are allowed, accordingly the impugned orders dated 26.07.2019, passed by the learned CESTAT are quashed and set aside. Furthermore, while quashing and setting aside the orders of the Commissioner of Customs, which were under challenge in the appeals before the learned CESTAT, the matter is remanded back to the Commissioner of Customs for passing appropriate orders afresh, after giving adequate opportunity of hearing to all the parties concerned, while keeping into due consideration the law discussed by the learned CESTAT and this judgment and without being prejudiced by the earlier orders.

**21.1. After making due consideration as directed above, the Commissioner of Customs comes to the conclusion that the recovery in question is sustainable the aggrieved parties shall be at liberty to approach the learned CESTAT, and lead all their submissions regarding the provisions of law applicable like exemptions/waiver, demand, recovery, etc. who in turn shall be required to firstly ascertain the legality and the validity of recovery in question; thereafter if the demand of recovery in question is lawfully established then such recovery can be made.**

**22.** In terms of the above-said observations and directions the write petitions are disposed of, while directing the Commissioner to pass orders, strictly in accordance with law, while keeping into consideration this judgment.”

**(emphasis supplied)**

14. Pursuant to the aforesaid directions of the Rajasthan High Court, the Principal Commissioner examined the matter and passed an order dated 11.04.2025 that has been assailed in this appeal. The relevant paragraphs of the order are reproduced below:

**"32.** I find that the TDP, instead of complying with the Regulations *ibid*, is creating litigations even for the settled issue at different judicial forum to avoid the payment of legitimate Government dues for which the custodian itself undertook in condition (iii) of Public Notice No 27/2001-(CUSTOMS) dated 13.11.2001.

**33.** M/s TDP has contended that the demand of Cost recovery charges are misconceived as the sanction of waiver is pending approval of the CBEC, New Delhi. In this regard I find that provisions of Rule 6(1)(o) of Handling of Cargo in Customs Area Regulation, 2009 provides as under:

(1) The Customs Cargo Service provider shall-(0) shall bear the cost of the customs officers posted by the Commissioner of Customs on cost recovery basis and shall make payments at such rates and in the manner specified by the Government of India in the Ministry of Finance unless specifically exempted by an order of the said Ministry;

I also find the conditions from the exemption from the payment of Cost Recovery Charges as laid down at 8.5 (f) of Circular No. 02/2021- Customs dated 19.01.2021, which is reproduced as under:

8.5 f. the payment of Cost Recovery Charges would be up-to-date;

**From the above provisions of HCCAR, 2009, it is clear that till any specific order of the Ministry, exemption from the payment of Cost recovery Charges cannot be granted to M/s TDP.**

**34. In view of above discussion, I find that the TDP is liable to pay cost of recovery charges along with applicable interest and hence, I confirm the demand of cost recovery charges of Rs.1,66,35,585/- (Rupees One Crore Sixty Six Lakh Thirty Five Thousand Five Hundred and Eighty Five only) for the period 01.01.2018 to 30.11.2011 and Rs. 13,99,26,317/-(Thirteen Crore Ninety Nine Lakh Twenty Six Thousand Three Hundred Seventeen**

only) for the period 01.12.2018 to 31.12.2023 along with applicable interest. **I order for recovery of the same from M/s TDP, Jodhpur in terms of condition (iii) of Public Notice No. 27/2001-(CUSTOMS) dated 13.11.2001, CBEC's Circular No.128/95-Cus. IV dated 14.12.1995 read with Regulations 5(2) and 6(1)(o) the Handling of Cargo in Customs Areas Regulations, 2009.** Since, M/s TDP has already deposited Rs.2,70,81,431/- for the period December, 2018 to March, 2020 as Cost Recovery charges "Under Protest", which I hold is liable to be appropriated in the Govt. Account.

**37. Now, I take up the issue of imposition of penalty of Regulation 12(8) of the HCCAR, 2009 for discussion\*\*\*\***

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**As I have already discussed and held that the TDP has failed to comply with the obligation to pay Cost Recovery Charges in terms of Regulations 5(2) and 6(1)(o) of the HCCAR, 2009 and undertaken to pay under condition (iii) of Public Notice No. 27/2001-(Customs) dated 13.11.2001.** Therefore, I find that M/s TDP, is liable to pay penalty under Rule 12(8) of HCCAR, 2009."

**(emphasis supplied)**

15. It is this order of the Commissioner that has been assailed before the Tribunal. The main contention advanced by Shri Anil Kumar Makhija, learned counsel for the appellant submitted:

- (i) The 2009 Regulations are ultravires the Customs Act and so recovery charges cannot be claimed under the said Regulations. In support of this contention, learned counsel relied upon the decision of the Telangana High Court in **Central Board of Excise and Customs vs. M/s. GMR Hyderabad International Airport Limited<sup>4</sup>**;

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4. **Writ Appeal No. 1321 of 2012 decided on 27.03.2024**

- (ii)** As per Circular No. 2 of 2021 dated 19.01.2021, the appellant was not required to pay Cost Recovery Charges as it had been notified before 28.06.2002;
- (iii)** The appellant was entitled to exemption/waiver from Cost Recovery Charges as it has achieved the performance benchmark on 15.01.2011 and was entitled to exemption from Cost Recovery Charges;
- (iv)** As per Para 8.4 of Circular No. 2/2021, the staff had been regularized due to cadre restructuring as on 11.12.2013 and thus, no demand for Cost Recovery Charges could have been raised for a period post 18.12.2013;
- (v)** The calculation of Cost Recovery Charges was incorrectly made. 1.85 times had to be taken only of the basic salary and not the allowances. In fact, the Custodian had placed on record the demands being raised at Ahmedabad Commissionerate to support his claim;
- (vi)** The Cost Recovery Charges were required to be apportioned wherever the officers were posted at the ICD and the Commissionerate;
- (vii)** No transport allowance could have been added to the Cost Recovery Charges as the officers had been provided with transportation services by the appellant; and
- (viii)** No recovery can be made under 2009 Regulations as there is no provision for recovery of arrears of Cost Recovery Charges. In other words, there is no power to make recovery of arrears of Cost Recovery Charges.

16. Shri Nikhil Mohan Goyal, learned authorized representative appearing for the department submitted that against the order of the

Telangana High Court in **GMR**, the department has filed an appeal before the Supreme Court and notice has been issued. Learned authorized representative appearing for the department also submitted that there is no error in the order dated 11.04.2025 passed by the Principal Commissioner which may call for interference in this appeal.

17. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

18. The Telangana High Court in **GMR** specifically examined whether the 2009 Regulations are ultravires the provisions of the Customs Act and the relevant portion of the judgment is reproduced below:

**10.** On the other hand, learned Senior Counsel for the Company submitted that neither Section 141 nor Section 157 of the Customs Act, 1962 contemplates framing Regulations with regard to cost recovery charges. Therefore, the impugned 2009 Regulations are ultra vires the Customs Act, 1962. It is pointed out that after submitting the application seeking appointment of Custodian under Section 45(1) of the Customs Act, 1962, the Company had submitted applications on 16.05.2007 and 22.11.2007 seeking to waive condition Nos. 10 to 13 of Circular No. 34/2002, dated 26.06.2002. Therefore, the plea of estoppel does not apply in the facts and circumstances of the case. It is further submitted that the Officers of the Customs Department perform the statutory duties and therefore, there is no justification for levy of cost recovery charges. It is contended that under Concession Agreement, the Company is not liable to pay any cost recovery charges for the salaries of the staff of the Customs Department posted at the Air Cargo Complex.

**12.** We have considered the submissions made on rival sides and have perused the record. **The singular issue which arises for consideration in this intra Court**

**Appeal is whether the impugned 2009 Regulations are ultra vires the Customs Act, 1962.**

**20. Thus, from a perusal of Section 157 of the Customs Act, it is evident that Section 157 does not enumerate any specific provision under which cost recovery charges i.e., the amount of salary payable to the officials of the Customs Department, who are deployed at the Airport who perform their statutory duties, can be recovered.** The 2009 Regulations have been framed in exercise of the powers conferred under Section 141 and Section 157 of the Customs Act. From a close scrutiny of the aforesaid provisions of Sections 141 and 157, it is evident that there is no express statutory provision conferring authority on the appellants to levy cost recovery charges. **In the absence of any special authorization to levy cost recovery charges, appellants have no authority to impose cost recovery by means of a Regulation. The inevitable conclusion is that the 2009 Regulations are ultra vires the Customs Act, 1962.**

**25. For the aforementioned reasons, we agree with the conclusion of the learned Single Judge that the impugned 2009 Regulations are ultra vires the Customs Act."**

**(emphasis supplied)**

19. A Division Bench of this Tribunal in **CMA CGM Logistics Park Dadri- Private Limited vs. Commissioner of Customs, Noida<sup>5</sup>** also examined this issue of cost recovery charges and in view of the decision of the Telangana High Court in **GMR** held:

**"11. \*\*\*\* However, we find that the Andhra Pradesh High Court in GMR International has completely overruled the levy of cost recovery charges by the department by holding the Regulations as ultra vires the provisions of the Customs Act under section 141 and 157.** The High Court has categorically observed that there is no express statutory provision conferring authority on the appellant to levy CRC and in the absence of any special authorization to recover charges, the department have no authority to impose CRC by means of

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**5. Customs Appeal No. 70764 of 2025 decided on 11.11.2025**

Regulations. **Once the Regulations have been held to be ultravires, the impugned order passed by the Commissioner is unsustainable.** The entire controversy in the present case gets settled and in view thereof it is not even necessary for us to examine whether the conditions required for availing the exemption have been satisfied. \*\*\*\*\*

**We note that before the notification of the 2009 Regulations, collection of cost recovery charges was only based on circulars and administrative instructions and there was no provision in the Customs Act to recover cost recovery charges even during that period. In other words, cost recovery charges ever collected from the appellant or from any other custodian by the department was without any authority of law.** As judicial proprietary demands, the decision of the Division Bench of the High Court is binding on us.”

**(emphasis supplied)**

20. The decision of the Telangana High Court in GMR and the decision of this Tribunal in CMA CGM Logistics Park was considered by a Division Bench of this Tribunal in **M/s Container Corporation of India Limited vs. Commissioner of Customs, (Preventive), Jodhpur<sup>6</sup>**. While deciding the two appeals that had been filed to assail the orders passed by the Commissioner directing the appellant to pay cost recovery charges in terms of regulations 5 (2) of the 2009 Regulations, the Division Bench held:

**“5. In view of the judgment of the Telangan High Court in GMR that has declared regulation 5 (2) of the 2009 Regulations ultravires the Customs Act, recovery of cost charges from the appellant cannot be upheld.**

6. Following the judgment of the Telangana High Court, a Division Bench of the Tribunal in CMA CGM Logistics Park Dadri Private Limited vs. Commissioner of Customs, Noida has also set aside the order directing recovery of cost charges.

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**6. Customs Appeal No. 53194 of 2018 decided on 12.11.2025**

7. The impugned orders dated 18.06.2018 and 14.12.2018 passed by the Commissioner, which have been assailed in these two appeals, therefore, deserve to be set aside and are set aside. The two appeals are, accordingly, allowed.”

**(emphasis supplied)**

21. Thus, it has to be held that the direction to pay the cost recovery charges in the impugned order cannot be sustained nor can imposition of penalty be sustained.

22. It would, therefore, not be necessary to examine the other contentions that have been raised by the learned counsel by the appellant.

23. The order dated 11.04.2025 passed by the Principal Commissioner is, accordingly, set aside and the appeal is allowed.

(Order pronounced on **04.12.2025**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER (TECHNICAL)**

Kritika