CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87296 OF 2025
WITH
CUSTOMS APPLICATION (MISC) NO: 86784 OF 2025
(on behalf of appellant)

[Arising out of Order-in-Original No: 177/2025-26/CC/CCSP/NS-G/CAC /JNCH dated 25th August 2025 passed by the Commissioner of Customs (General), Nhava Sheva.]

Vaishno Logistics Yard
N-48, Near Charlie Village, Jasai, Taluka Uran
Distt: Raigad – 410206 … ***Appellant***

versus

Commissioner of Customs (NS-Gen)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri ND George, Advocate for the appellant

Shri JK Jain, Joint Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85096/2026

DATE OF HEARING: 09/09/2025
DATE OF DECISION: 22/01/2026

PER: C J MATHEW

M/s Vaishno Logistics Yard is a notified 'customs cargo service provider' operating at Nhava Sheva with effect from 6th October 2010 on the approval of the competent authority empowered under regulation 10 of Handling of Cargo in Customs Areas Regulation (HCCAR), 2009. The approval, renewed from time to time till the last on 10th November 2022, is presently valid till 4th October 2032. Additional permission authorizing 'hazardous cargo' to be handled was issued on 14th July 2023 and valid for two years subject to consent from Maharashtra Pollution Control Board which is, on record, as up to 30th September 2032.

2. The genesis of the present dispute, over suspension of operations for a period of 15 days under regulation 11 of Handling of Cargo in Customs Areas Regulation (HCCAR), 2009 besides imposition of penalty of ₹ 50,000 under regulation 12 therein besides penalty of ₹ 4,00,000 under section 117 of Customs Act, 1962 *vide* order[1] of Commissioner of Customs (General), Nhava Sheva, is a fire that is said to have broken out in the hazardous cargo area leading to damage to consignments of chemicals and hydraulic excavator. Consequent upon the preliminaries preceding initiation of proceedings under Handling of Cargo in Customs Areas Regulation (HCCAR), 2009, enquiry was ordered for reporting on alleged breach of regulation 5(i), 5(ii), 6(1)(i) and 6(1)(q) of Handling of Cargo in Customs Areas Regulation (HCCAR), 2009 and resort to section 117 of Customs Act,

[1] [order-in-original no. 177/2025-26/CC/CCSP/NS-G/CAC /JNCH dated 25th August 2025]

1962 for

> *'3.2 It appeared that CCSP M/s. Vaishno Logistics Yard had not adhered to the guidelines for safety and security of premises storing and handling hazardous goods, which was mandated as per Circular No. 04/2011-Cus dated 10.01.2021 & JNCH Public Notice No. 129/2020 dated 07.10.2020, which have to be necessarily complied with by every CCSPs storing and handling hazardous chemicals. It was confirmed from the statements of the CCSP Manager and Safety Officer that the CCSP has not handled a hazardous cargo in proper manner. Therefore, it appeared that CCSP has failed to properly handle and maintain the storage of Hazardous Cargo and the provisions under section 141(2) of the Customs Act, 1962 had been violated by the CCSP. Hence, by violating section 141(2) of the Customs Act, 1962, the CCSP have made themselves liable for penal action under Section 117 of Customs Act, 1962.'*

3. It is seen from the impugned order that the enquiry authority held that

> *'5.13 In view of the above, the IMPUGNED ORDER found that charges against CCSP under clauses (i) and (q) OF Regulation 6(1) of HCCAR, 2009, read with Section 141(2) of Customs Act, 1962 is conclusively proved against CCSP M/s Vaishno Logistics Yard (a Division of M/s Kestrel Aviation Pvt Ltd).'*

4. Notwithstanding the limited finding of the enquiry authority, the adjudicating authority was not inclined to discharge them from consequence of contravention of regulation 5 and proceeded to render

its own finding which, one would presume, enabled recourse to the detriments. The impugned order has also imposed penalty under section 117 of Customs Act, 1962 on the premise that recourse could be had thereto for alleged breach of terms and conditions in public notice[2].

5. We have heard Learned Counsel and Learned Authorized Representative at length.

6. The proceedings had its genesis in the fire that, with the assistance of fire services, was contained. The appellant undoubtedly is responsible for operations in the storage area and is bound to take all steps as prescribed by the authorities permitting such operations as also in complying with the obligations under the said Regulations. Fire outbreak is not unusual in storage areas and, in the absence of any allegation that these were deliberate, remedial action taken immediately is not in any way detracted by having had to call upon the fire service. As an operator of commercial enterprises, the appellant was bound to intimate the fire service authorities immediately and that such authorities acted with alacrity is no reflection on paucity in deployment of firefighting equipment or utilization of deployed equipment by the appellant. In the absence of any documentation to the contrary, the impugned order has erred in speculating that the appellant had demonstrated 'sub par'

[2] [no. 29/2020 dated 7th October 2020]

effectiveness.

7. It is also seen that the Commissioner of Customs, while differing with the enquiry authority, did not place the appellant on notice of intent to disagree and, to that extent, the findings in relation to alleged breach of regulation 5 of the said Regulations cannot be held to be in conformity with the principles of natural justice.

8. The appellant had taken all diligent steps to defuse the fire and there is no allegation of involvement of the appellant either in the outbreak for damages thereon. The facts on record and the evidence available do not point to the appellant having breached any of their obligations to be responsible for the safety and security of the imported and export goods. In any case, as a ‘cargo service provider’, any loss attributable to the storage facility, insofar as goods is concerned would have to be borne by the appellant. Nor can we conclude that the appellant had not abided by the provisions of Customs Act, 1962 and rules framed thereto.

9. The findings, based on speculation and unattributable conclusions, do not stand the test of law. The facts on record do not substantiate breach of regulation 6(1)(i) and6(1)(q) of the said Regulations. Invoking of section 117 of Customs Act, 1962, intended for penalization in the absence of express provisions, cannot be allowed in the light of penalties prescribed in the Regulations.

Invoking of section 117 of Customs Act, 1962 is without foundation or any basis.

10. In the facts and circumstances of the case, the findings above lead to the conclusion that the impugned order needs to be set aside. Accordingly, the appeal is allowed.

(Order pronounced in the open court on 22/01/2026)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*