CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 86290 of 2025

[Arising out of Order-in-Original DIN No. 20250279NZ0000777C46 dated 31.01.2025 passed by the Commissioner of Customs, Airport Special Cargo Commissionerate, Mumbai.]

Hari Krishna Exports Private Limited …. **Appellant**
Unit No.1701, The Capital, 17th Floor,
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051.

Versus

Commissioner of Customs …. **Respondent**
Airport Special Cargo (APSC) Commissionerate
Avas Corporate Point
Andheri Kurla Road
Mumbai – 400 059.

<u>Appearance:</u>

Shri Mayank Jain, along with Ms. Akshita Shetty, Advocates for the Appellant

Shri Bipin Jadhav, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86175/2026

Date of Hearing: 01.09.2026
Date of Decision: 22.09.2026

Per: M.M. PARTHIBAN

This appeal has been filed by the M/s Hari Krishna Exports Private Limited, Mumbai (herein after, referred to as "the appellant", for short) assailing the Order-in-Original DIN No. 20250279NZ0000777C46 dated 31.01.2025 (herein after, referred to as "the impugned order") passed by the Commissioner of Customs, Airport Special Cargo Commissionerate, Mumbai.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellant herein is engaged *inter alia*, in manufacture and sale of cut and polished diamonds through both exports and local sales within India. The appellant operates through its manufacturing facilities in Surat, Gujarat and maintains its marketing and sales office in Mumbai. The appellant being one of the leading exporters of cut and polished diamonds, with a global customer base spanning over 50 countries and annual turnover exceeding ₹4000 crores, have duly registered as a member of Gem and Jewellery Export Promotion Council and recognized as a 5 star Export house by the Director General of Foreign Trade (DGFT). The appellant had applied for obtaining a license under Section 58 of the Customs Act, 1962 for establishment of a private bonded warehouse at its Mumbai sales office. The proposed private bonded warehouse was intended to function as the appellant's global marketing and sales hub for polished diamonds imported from its affiliated entities located outside India.

2.3 The appellant had submitted an application before the Proper officer of customs, i.e., the Deputy Commissioner of Customs, for grant of license for setting up of private bonded warehouse for gems and jewellery, vide letter dated 27.05.2022 along with requisite application form and supporting documents. In dealing with the application, the learned Commissioner of Customs had found that the appellant had committed certain offences under the Customs Act, 1962, dealing with undervaluation of imported machinery, non-establishment of identity in re-import of diamonds, valuation dispute in export of rough diamonds, short supply in re-import under Notification No. 45/2017-Customs. Accordingly, he has rejected the application filed by the appellant for grant of private bonded warehouse license under Section 58 ibid on the above grounds in the impugned order. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. Learned Counsel appearing for the appellant submitted that on the very same identical issue, the denial of issuance of private bonded warehouse license on similar grounds have been examined by the Co-ordinate Benches of the Tribunal in the following cases and the issue has been decided in favour of appellants therein.

(i) *Kundan Care Products Limited Vs. Commissioner of Customs, New Delhi* – 2024 (8) TMI 271 – CESTAT New Delhi

(ii) *Mumbai Travel Retail Private Limited Vs. The Commissioner of Customs (Preventive), Chennai* – 2025 (5) TMI 778 – CESTAT Chennai

Therefore, they pleaded that the impugned order is not legally sustainable and consequently the appeal filed by the appellant be allowed. The list of cases

4. Learned Authorised Representative (AR) for Revenue reiterated the findings in the impugned order.

5. Heard both sides and perused the records of the case. We have also examined the submissions advanced by learned Counsel appearing for the appellant and the learned Authorized Representative of the Department.

6. The issue involved in this appeal is to examine whether the impugned order rejecting the application for issue of private bonded warehouse under Section 58 of the Customs Act, 1962, on the conclusions arrived at by the learned Commissioner of Customs in the factual matrix of the present case before us, is legally sustainable.

7. In order to address the issue, we would like to refer to the relevant legal provisions in the Customs Act, 1962 which are relevant for deciding the disputed issue herein. These are extracted and given below:

The Customs Act, 1962

"Section 58. Licensing of private warehouses.
The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

Section 58A. Licensing of special warehouses.
(1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

(2) The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1)."

Private Warehouse Licensing Regulations, 2016

"Licensing of private warehouse.
3. *(1) Upon an application being made to license a private warehouse, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may issue a licence to the applicant who, –*

(a) is a citizen of India or is an entity incorporated or registered under any law for the time being in force;

(b) submits an undertaking to comply with such terms and conditions as may be specified by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be;

(c) furnishes a solvency certificate from a scheduled bank for an amount to be specified by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be:

***Provided** that the condition of furnishing a solvency certificate shall not be applicable to an undertaking of the Central Government or State Government or Union territory.*

(2) The Principal Commissioner of Customs or the Commissioner of Customs, as the case maybe, shall not issue a licence to an applicant if,-

(a) he has been declared an insolvent or bankrupt by a Court or Tribunal;

(b) he has been convicted for an offence under any law for the time being in force;

(c) he has been penalised for an offence under the Act, the Central Excise Act, 1944 (1of 1944) or Chapter V of the Finance Act, 1994 (32 of 1994);

(d) he is of unsound mind and stands so declared by a competent Court; or

(e) the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, is satisfied that-

(i) the site or building of the proposed private warehouse is not suitable for secure storage of dutiable goods;
(ii) the site or building of the proposed private warehouse is not suitable for general supervision by officers of customs
(iii) bankruptcy proceedings are pending against the applicant; or
(iv) criminal proceedings are pending against the applicant and the offences involved are of such nature that he is not a fit person for grant of licence."

8. 0In the impugned order, learned Commissioner of Customs has given a finding for rejection of application submitted by the appellant as follows:

"10…….*The regulation uses the word **penalised** with Customs Act and other two Acts, whereas, it uses **Convicted** along with other laws (wherever applicable). Conviction cannot be awarded by the quasi-judicial proceedings of Customs, but penalization can obviously happen under these proceedings, well under (Sections) 112, 114, 114 A, 114 AA & 117. If the Customs want someone committing very same offenses to be prosecuted also, can go on to follow the procedure and accord sanction u/s 137. In the process, the offenses do not change; the proposed sections, of course, are changed to chapter XVI sections (132 to 140) by also adding sometime 120B of IPC.*

> *11. I find that offenses committed by the applicant are NOT merely technical and NOT beyond human control and, well covered under Regulation 3(2)(c) and hence merits disqualification for a license u/s 58."*

9.1 On perusal of the case records, we note that the appellant had submitted the application form for grant of private bonded warehouse license for gems and jewellery, in order to undertake certain activities in respect of cut and polished diamonds. In submitting such form, the appellant had followed the prescribed forms by duly filling the details to make it complete, and also submitted documents that are required to be enclosed, bond to be executed etc., as prescribed vide CBIC Circular No.26/2016-Customs dated 09.06.2016. Further, at paragraph 7.1 in the impugned order it is stated that the legal consultant of the appellant had presented the list of four cases against them in which Order-in-Originals have been issued confirming differential duty, imposing redemption fine and penalties on them; further, in all such cases it is also indicted that they had also filed appeals before the Tribunal. Therefore, it transpires that the appellant had provided complete and full disclosure of the details required for submitting the application for grant of private bonded warehouse license to them.

9.2 We find that Central Board of Excise & Customs (CBEC) had issued necessary instructions to the field formations in the form of Circular No.26/2016-Customs dated 09.06.2016 about the manner in which the application for grant of public/private bonded warehouse license is to be received, verified etc., by undertaking the process of document verification, Physical inspection of the premises for safety of revenue, suitability, etc., obtaining necessary documents and verification of the antecedents by way of Centralised System and upon subjective satisfaction, the appropriate authority to issue such license in terms of Regulation 4 of the relevant Regulations of 2016. The extract of the said circular is given below:

Circular No. 26/ 2016 - Customs
[As amended vide Board's approval dated 31.07.2020]

F. No. 484 / 30 / 2016- LC
Govt. of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
****

New Delhi, dated 9th June 2016

To,
All Principal Chief Commissioners Customs,
All Principal Chief Commissioners of Customs & Central Excise,
All Chief Commissioners of Customs,
All Chief Commissioners of Customs & Central Excise,
All Directors General, Chief Departmental Representative,
All Principal Commissioners of Customs,
All Principal Commissioners of Customs & Central Excise,
All Commissioners of Customs,

All Commissioners of Customs & Central Excise.

Sub: - Form of application for a Licence under Public Warehousing Licensing Regulations, 2016 / Private Warehousing Regulations, 2016 / Special Warehousing Regulations, 2016.

Sir / Madam,

Upon the notification of Public Warehousing Licensing Regulations, 2016 / Private Warehouse Licensing Regulations, 2016 / Special Warehouse Licensing Regulations, 2016, a need has been felt to review the process of application for a warehouse licence and the form used for the same. For the purpose of certainty in providing information by applicants and transparency in procedure regarding processing of applications, the Board has prescribed the Form (annexed) to be used by an applicant seeking a licence for a bonded warehouse.

2. This application form has been prescribed for use by applicants for new warehouses to be licensed and is not required to be filed by existing licensees covered under the transitional provisions provided in the Regulations for licensing of warehouses or the Warehouse (Custody & Handling) Regulations, 2016.
3. The form has been designed in a manner so as to also serve as a check list for obtaining information relevant for evaluation of the applicant at one go and ascertaining the facilities for security of goods available at the proposed site (serial no. 7 & 8 of Part II of the form refers). This information is expected to enable a comprehensive assessment of the applicant and of the premises by the licensing authority. However, it may be borne in mind that warehouses vary widely in characteristics and type of goods stored. Absence of certain features (for example, absence of CCTVs or burglar alarms in case of certain types of sites) shall be acceptable in some situations. It is, therefore, expected that the Licensing authorities shall exercise their good judgement viz. a viz. the security features installed by the licensee by keeping in mind the type of site and nature of goods proposed to be stored.

3.1 The prescribed application form should be made available on the website of the Commissionerates for the ease of reference by trade.

4. The Board has desired that all Commissionerates shall undertake to examine and complete the process of granting a licence within 30 days of the receipt of the application. The Bond officer must complete the process of examining the application, visiting the premises to be licensed and submitting his report to the Principal Commissioner / Commissioner within 15 days of the receipt of the application. The approval or rejection of the application by the Licensing Authority (Principal Commissioner / Commissioner) should be completed within the next 15 days.

4.1 The Board has taken cognizance of the fact that in the absence of standard operating procedures for antecedent verification of the applicant, varied practices have been followed by Commissionerates. In some Commissionerates, verification is conducted by limiting inquiries to their jurisdiction, while in others, references are made across jurisdictions. The delays in receiving responses from formations to whom references are made for verification often leads to applications being kept pending for long periods. In view of the Government's emphasis on a trust based tax administration, it has been decided to incorporate relevant declarations required from the applicant, in the form itself, on the basis of which the application for a license can be processed. With specific regard to serial number 5 of the "Declaration" in the application form, a system of post verification can be followed. It is also proposed that a centralized system of verification be followed by referring the name of the applicant and Directors/ Partners/ Proprietor to DRI (HQ) and DGCEI (HQ) for checking antecedents and the existence of any past cases, instead of referring to all formations. This system will ensure that adhering to time limits in processing of applications becomes feasible.

5. After completion of the process envisaged under the first Para of regulation 4 of the Licensing Regulations, the applicant should be intimated regarding a decision to grant him a license or not. Upon being intimated that it is proposed to license the warehouse, the applicant shall provide the documents and complete the process under Regulation 4(a) to (d). Thereafter, the Principal Commissioner / Commissioner shall grant the license for the warehouse.

6. The License granted under the regulations shall remain valid till its surrender / cancellation. Henceforth, there shall be no requirement for renewal of warehousing license on annual basis.

7. In case of licenses issued earlier to the notification of Licensing Regulations on 14thMay 2016, the requirement of annual renewal is dispensed. All warehouses appointed under the erstwhile section 57 or licensed under erstwhile section 58 shall be deemed to remain valid till their surrender / cancellation, once the conditions under the new regulations have been complied.

8. Since the licensee is required to renew the insurance policy annually and continue to comply with solvency conditions (as applicable), the same shall be required to be submitted annually.

9. Difficulties, if any, in implementation of this procedure may be brought to the notice of the Board."

9.3 Further, we also find that attention of CBEC was brought about cases of such antecedent verification are facing unreasonable delays at certain field formations and in order to ensure that this task is completed in a time bound manner, CBEC as amended the aforesaid Circular No. 26/2016-Customs by inserting the following sentence at the end of Para 4.1:

> *"The antecedent verification must be completed within 45 days of receipt of the application."*

On plain reading of the aforesaid circular, it transpires that antecedent verification of the applicant to bonded warehouse has to be done in a manner specified therein. It is not forthcoming from the impugned order, whether such action was undertaken and the Commissioner had got the list of alleged offences having been committed by the appellant in any case, as it has been mentioned in the impugned order that the appellant's legal consultant have given the list of four cases. Further, all such cases are relating to Air Cargo Customs Commissionerate, Airport Special Cargo Commissionerate. Therefore, we are of the *prima facie* view that the learned Commissioner of Customs had not followed the procedure prescribed in the Circular No. 26/2016-Customs in order to decide about the verification of antecedents of the appellant-applicant before him. Therefore, to this extent the conclusion arrived by him in the impugned order is not in consonance with the instructions issued by CBEC.

10.1 We find that the Co-ordinate Bench of the Tribunal upon examination of similar factual matrix of the appeal before us, in the case of *Kundan Care Products Limited* (supra), has held that orders passed by the customs authorities confirming the offences under the Customs Act, 1962 as a basis for cancelling the bonded warehouse license is not sustainable. The relevant paragraph of the said Final order No. 56198/2024 dated 31.07.2014 are extracted below:

> *"4. In this context, it is informed that as per offence database of this Directorate, the Zonal Units of DRI and field formations have booked case against the following firms/companies under the provisions of Customs Act, 1962, the details of which are as follows:*
>
> *xxx xxx xxx xxx*
>
> *9. The appellant filed a detailed reply dated 15.05.2023 to the aforesaid show cause notice dated 17.04.2023. The appellant pointed out that in terms of regulation (3)(2)(c) of the Public Warehouse Licensing Regulations, 2016 [the 2016 Regulations**]**, the License of the appellant could be cancelled if the appellant had been penalized for an offence under the Customs Act, the Central Excise, 1944 or Chapter V of the Finance Act 1994 [the Finance Act**]**, but as 'offence' and 'contravention/violation of the provisions' are different*

and the appellant had not been penalized for an offence either under the Customs Act or the Central Excise or Chapter V of the Finance Act, the License cannot be cancelled. The appellant also pointed out the order dated 24.01.2022, only imposes a penalty of Rs. 1.5 lacs on the appellant under section 112 of the Customs Act for contravention of the provisions of section 46 of the Customs Act read with rule 11 of the 1993 Foreign Trade Rules.

10. The reply submitted by the appellant did not find favour of the Commissioner, who by order dated 17.08.2023 cancelled the License issued to the appellant……

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18. Regulation 3(2)(c) of the 2016 Regulations provides that the Principal Commissioner of Customs or the Commissioner of Customs shall not issue a License to an applicant if he has been penalised for an offence under the Customs Act, the Central Excise Act or Chapter V of the Finance Act. This regulation 3(2)(c) of the 2016 Regulations is reproduced below:

"(2) ***The Principal Commissioner of Customs*** *or Commissioner of Customs, as the case may be,* ***shall not issue a licence to an applicant if****, -*

(a) he has been declared an insolvent or bankrupt by a Court or Tribunal;

(b) he has been convicted for an offence under any law for the time being in force;

(c) ***he has been penalised for an offence under the Act, the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act, 1994 (32 of 1994)****; (d) he is of unsound mind and stands so declared by a competent Court; or*

(e) the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, is satisfied that-

(i) the site or building of the proposed public warehouse is not suitable for secure storage of dutiable goods;

(ii) the site or building of the proposed public warehouse is not suitable for general supervision by officers of customs;

(iii) bankruptcy proceedings are pending against the applicant ; or

(iv) criminal proceedings are pending against the applicant and the offences involved are of such nature that he is not a fit person for grant of licence."

(emphasis supplied)

19. The issue that arises for consideration in this appeal is as to whether the 'undertaking' and the 'declaration' given by the appellant that he had not been ***penalised for an offence*** *under the Customs Act or the Central Excise Act or Chapter V of the Finance Act is correct or not. This is for the reason that the order dated 17.08.2023 cancels the License issued to the appellant only for the reason that the appellant had been penalised for an offence under the Customs Act as penalty had been imposed on the appellant under section 112 of the Customs Act.*

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> *33. Section 112 of the Customs Act, under which the penalty of Rs. 1.5 lacs was imposed upon the appellant by order dated 24.01.2022, is contained in Chapter XIV of the Customs Act. The order dated 24.01.2021 records a finding that the appellant had violated/ contravened the provisions of section 46 of the Customs Act.*
>
> *34. There is a marked difference between a penalty imposed for 'contravention' of the provisions of the Customs Act and punishment imposed for committing an 'offence'. Chapter XVI of the Customs Act deals with 'offences' and 'prosecutions'. Section 132 provides that a person who makes a false declaration or files a false document shall be punishable with imprisonment for a term which may extend to two years or with fine or with both. Section 133 also provides that any person intentionally obstructs any officer of customs in exercise of any powers conferred under Customs Act shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both. Likewise, other sections like section 134 and 135 also deal with punishment of imprisonment or with fine or both. Section 104 of the Customs Act deals with power to arrest. It provides that if an officer of customs has reason to believe that any person has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and every person arrested shall without unnecessary delay, be taken to a magistrate. On the other hand, provisions for 'contravention' of the provisions of the Customs Act generally impose a penalty in terms of money. It cannot, therefore, generally be said that any 'contravention' would amount to an 'offence' under the Customs Act.*
>
> *35. Regulation 3(2)(c) of the 2016 Regulations provides that the Principal Commissioner of Customs shall not issue a licence to an applicant if he has been penalised for an offence under the Customs Act. The declaration that was given by the appellant with the application for seeking a licence stated that the appellant has not been penalised for an offence under the Customs Act. Regulation 3(2)(c) does not state that the license shall not be issued if penalty has been imposed for 'contravention' of the provisions of the Customs Act."*

10.2 We further find that the Co-ordinate Bench of the Tribunal at Chennai in the case of *Mumbai Travel Retail Private Limited* (supra), upon examination of the maintainability of the appeal and the substantive issue of the refusal of the warehouse license being given to the appellant, has held that such rejection is legally untenable and decided the issue in favour of the appellant therein. The relevant paragraphs of the said Final order No. 40531/2025 dated 09.05.2025 are extracted below:

> *"3. The background to the above dispute as we could gather from the documents on record, is that the appellant was subjected to a Customs adjudication, resulting in an Order-in-Original dated 27.06.2023, passed by the Deputy Commissioner of Customs, Mumbai. In the said order, exemption claimed on certain imported samples goods which were imported for its duty, free retail outlets at Mumbai International Airport under a Bill of Entry was denied and the differential duty with interest was confirmed, which was demanded and the goods were ordered to be confiscated. Consequently, a penalty of Rs.2,50,000/- was imposed on the appellant under Section 112 (a) supra. It appears that the appellant paid the duty, fine and penalty under protest, but however, no appeal seems to have been filed.*

4. In so far as the appellant's application for warehouse license is concerned, which is the subject matter of present appeal, the Principal Commissioner has rejected the same on the grounds that the appellant was had suffered an order of penalty, the imposition of the penalty vide above Order-in Original was clearly against Regulation 3(2)(c) of the Special Warehouse Licensing Regulations, 2016. The rejection order/communication, according to the applicant was affected vide internal file noting dated 06.07.2024, which was approved by the Principal Commissioner, which was communicated to the apparent by the Assistant Commissioner of Customs through a letter dated 08.07.2024. In the said communication, the appellant was apparently informed that its application for a Special Bonded Warehouse License stood rejected, and the original application documents were returned. It is against this rejection of its license application that the present appeal has been filed before us, under Section 129A of the Customs Act.

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27. Coming to the substantive merits of the Appeal, the short question is whether the Principal Commissioner was justified in refusing the Appellant a special warehouse license solely on the ground that the Appellant had been penalized under Section 112(a) of the Customs Act in the past. Considering the facts and the law, it is the case of the appellant that the impugned order cannot be sustained. The denial of the license in the present circumstances is legally untenable and improper.

28. Section 58A of the Customs Act provides for licensing of special warehouses wherein certain classes of imported goods (as notified by the Board) may be deposited without payment of duty. The power to grant the license is vested in the Principal Commissioner/ Commissioner of Customs. The section itself lays down no specific criteria or disqualifications except that the grant is "subject to such conditions as may be prescribed." The conditions and procedural requirements are prescribed in the Special Warehousing Licensing Regulations, 2016 (issued under the authority of Section 157 read with Section 58A of the Customs Act). Regulation 3 of the 2016 Regulations deals with eligibility. Regulation 3(2) enumerates certain conditions under which the license shall| not be issued to an applicant. Among "the these, (c) reads: the Principal Commissioner or Commissioner shall not issue a license if the applicant has been penalized for an offence under the Customs Act, 1962, the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994".

29. This clause is central to the dispute - the Principal Commissioner invoked it, taking the view that the Appellant, having been penalized under Section 112(a) of the Customs Act, fell foul of this condition. On a plain reading, Regulation 3(2)(c) indeed appears to bar grant of license to anyone who has been penalized for an offence under the Act. However, the crux of the matter lies in the interpretation of the phrase "penalized for an offence under the Customs Act."

30. The above phrase cannot be read in isolation or given an unduly literal meaning divorced from the context of the scheme of the parent Act, i.e. Customs Act. A holistic reading of the Customs Act reveals a clear distinction between contraventions that attract civil penalties and offences that attract criminal prosecution. This distinction has both textual and jurisprudential support.

31. The Act itself segregates the topics: Chapter XIV (Sections 111-127) is titled "Confiscation of goods and conveyances and imposition of penalties"-

violations dealt with here (like improper importation, misdeclaration, etc.) result in confiscation of goods and monetary penalties on persons (e.g. Section 112, 114). In contrast, Chapter XVI (Sections 132-140A) is titled "Offences and prosecutions"- which covers criminal offences like false declarations (Section 132), fraudulent evasion of duty (Section 135), obstruction of officers (Section 136), etc., which can result in prosecution and possible imprisonment. The use of the word "offence" in Chapter XVI strongly indicates a context of crime and prosecution. Indeed, Section 135 is the principal penal provision creating offences that are cognizable and non-bailable.

32. When Regulation 3(2)(c) disqualifies an applicant who "has been penalized for an offence under the Customs Act," a reasonable construction is that it targets those applicants who have been found guilty of offenses of a kind that denote serious wrongdoing – essentially those entailing mens rea and prosecuted as crimes or subject to Compounding in lieu of prosecution. If, on the other hand, every customs infraction leading to a penalty was meant to be included, the legislation could have simply said "penalized under the Act" (omitting "for an offence"). The added words "for an offence" must be given meaning. We interpret them as referring to offences in the sense of Chapter XVI offences or similarly grave violations.

33. This interpretation is buttressed by the decision in Kundan Care Products Ltd. (supra), which is directly on point. In that case, this Tribunal (Principal Bench, New Delhi) was confronted with the identical Regulation 3(2)(c) when a license was cancelled on the premise that a prior Section 112(a) penalty constituted an "offence" that the licensee had failed to disclose. The Tribunal disagreed with the Revenue's broad brush approach, and made an important delineation: it held that a penalty under Section 112, which arises from a contravention of the Customs Act, is not the same as being "penalized for an offence" under the Customs Act. The Tribunal noted that the appellant in that case had not been prosecuted or convicted for any offence under the Act, and therefore the declaration it made that it had not been penalized for an offence was essentially true in the intended legal sense. Consequently, the cancellation of the license was set aside. The salient point from Kundan Care (supra) is that the mere fact of a monetary penalty under Section 112 does not automatically trigger the disqualification in Regulation 3(2)(c), because that regulation's scope is confined to penalties for "'offences", which was understood to mean something other than every contravention. We find ourselves in full agreement with the rationale and are in fact bound to follow this decision. It aligns with the scheme of the Customs Act and avoids an overbroad result that Would treat minor/transgressions and serious crimes identically.

34. Applying that reasoning here, the Appellant's case is if anything more compelling than Kundan Care (supra). There is no allegation that the Appellant misled the authorities or suppressed information in its application. It simply became ineligible in the eyes of the Principal Commissioner because of Regulation 3(2)(c). Now, if we interpret Regulation 3(2)(c) in the restrictive sense as discussed above, the Appellant was not, in truth, penalized for an "offence" under the Customs Act: the penalty under Section 112(a) was for a wrong claim of exemption (a civil contravention) and not for an offence under Chapter XVI. No court convicted the Appellant of any offense; no compounding of an offense (under Section 137) was involved either.

Therefore, disqualifying the Appellant on this ground was based on a misapplication/misinterpretation of the law.

35. Even if one were to accept the Department's view that any penalty under the Customs Act counts as an "offence" for Regulation 3(2)(C), the license rejection is to be held to arbitrary and unsustainable. The language "shall not issue a license if..." in Regulation 3(2) may seem mandatory, but in context it should guide the discretion of the Commissioner, not eliminate it. If every penalty, however trivial the underlying contravention could lead to automatic rejection, the result would be draconian. If one were to label this penalty as an "offence", it would mean that thousands of importers who routinely face minor penalties (for classification disputes, short payments, procedural lapses, etc.) are all "offenders" under the Customs Act, a proposition that the Customs law itself does not subscribe to.

36. In this instant case, the Principal Commissioner failed to consider the nature and gravity of the Appellant's past violation. The Appellant's transgression was essentially an over-claim of an exemption for samples, which was not outright smuggling or fraud, but an interpretational issue (as evidenced by the fact that the goods were allowed conversion to warehousing in the very OIO and no Section 114A penalty for fraud was imposed).

37. Admittedly, beyond the bear fact of penalty, the Principal Commissioner in the order has not pointed out to any other factor which would impugn the appellant’s ability/suitability to operate a Special Bonded Warehouse. There is also no whisper or doubt about insolvency or any pending criminal investigation; nor is there any finding with regard to technical shortcomings in the proposed facility. In fact, the appellant’s prior conduct insofar as complaint is concerned, was limited to a one-of incident, for which it was penalized. That incident, as discussed, was certainly not in the nature that would point to dishonesty, rather it was relating to a disputed exemption on imported goods. Hence, denying the license on this single criteria is not justified.

38. In view of the above discussions, the impugned order, in our view, is not sustainable, since it is based on an erroneous interpretation of Regulation 3(2)(c) and Section 58A of the Customs Act. Accordingly, the impugned order deserves to be set aside, which we hereby do and since there are no other grounds forthcoming from the impugned order pointing out towards the disqualification of the appellant for the license, the appellant is entitled for the consequential benefit.”

10.3 In view of the settled legal position as held in the above referred cases of *Mumbai Travel Retail Private Limited* (supra) and *Kundan Care Products Limited* (supra), we find that the issue arising out of the present dispute is no more *res integra.* Accordingly, we do not find any merits in the impugned order passed by the learned Commissioner, in not granting the private bonded warehouse license by rejecting the application filed by the appellant and consequently set aside the same.

10. In the result, the impugned order 31.01.2015 passed by the learned Commissioner is set aside and the appeal filed by the appellant is allowed in their favour.

(Order pronounced in open court on 22.09.2026)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha