सीमाशुल्कआयुक्त (सामान्य) का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS (GEN)
सीमाशुल्क कार्गो सेवा प्रदाता सेल,
Customs Cargo Service Provider(CCSP) Cell
जवाहरलाल नेहरू सीमाशुल्क भवन,
Jawaharlal Nehru Custom House
पो: शेवा, ता: उरण, नवी मुंबई-४००७०७
PO: Sheva, Tal Uran, Navi Mumbai-400707

सत्यमेव जयते

फा. क्रमांक File no : GEN/2011/2024-CCSP-O/O COMMR-CUS-GEN-NHAVA SHEVA

SCN no. :868/2024-25/CC/CCSP/NS-Gen/CAC/JNCH dated 02.08.2024.

DIN no. DIN क्रमांक : 20251078NU0000222F8F

आदेश क्रमांक Order no. : 242/2025-26/COMMR/CCSP/NS-G/CAC/JNCH

आदेश की तारीख **Date of Order : 28.10.2025**

जारी करने की तारीख Date of Issue : **28.10.2025**

आदेशकर्ता Passed by : Smt. B. Sumidaa Devi. Commissioner of Customs (G), JNCH

पार्टी का नाम Name of Party : M/ s Gateway Distriparks Limited

ORDER-IN-ORIGINAL

मूलआदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूल प्रति, जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D'Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, 1962 की धारा 129 (एके तहत इस आदेश के विरुद्ध सीईएसटीएटी (, पश्चिमी प्रादेशिक न्यायपीठ

34 ,(वेस्ट रीजनल बेंच), पीडी .'मेलो रोड, मस्जिद (पूर्व), मुंबई 400009 - को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal: Form -Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy). Time Limit - Within 3 months from the date of communication of this order. Fee: (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less. (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh. (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is morethan Rs. 50 Lakh.

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:

- **फार्म** - फार्म सीए 3, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गई है इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए)।)
- **समय सीमा** - इस आदेश की सूचना की तारीख से 3 महीने के भीतर।
- **फीस** -

(क एक हजार रुपये (- जहाँ माँगे गए शुल्क एवं ब्याज तथा लगाई गई शास्ति की रकम 5 लाख रुपये या उससे कम है।

(ख पाँच हजार रुपये (- जहाँ माँगे गए शुल्क एवं ब्याज तथा लगाई गई शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।

(ग दस हजार रुपये (- जहाँ माँगे गए शुल्क एवं ब्याज तथा लगाई गई शास्ति की रकम 50 लाख रुपये से अधिक है।

Mode of Payment : A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

 भुगतान की रीति - क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार,सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

 General For the provisions of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथासंदर्भित एवं अन्य संबंधित मामलों के लिए सीमा शुल्क अधिनियम, 1962, सीमा शुल्क ,अपील) नियम) 1982, सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण प्रक्रिया)) 1982 ,नियम का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129E of the Customs Act 1962.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति, अपील अनिर्णीत रहने तक उसमें माँगे गए शुल्क अथवा उद्गृहीत शास्ति का 7.5% जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा। ऐसा न किए जाने पर अपील सीमा शुल्क अधिनियम, 1962 की धारा 129E के उपबंधों की अनुपालना न किए जाने के लिए नामंजूर किए जाने की दायी होगी।

Brief Facts of the Case:

The Container Freight Station (CFS) i.e. M/ s Gateway Distriparks Limited (GDL), located at Sector-6, Dronagiri, Taluka-Uran District-Raigad, Maharashtra-400707 got renewal of the appointment to be the 'Custodian' vide Public Notice No. 43/2022 dated 12.07.2022 under Sections 45(1) and 141(2) of the Customs Act, 1962 for an area admeasuring 1,39,359 SQM to receive the imported goods at their Container Freight Station until these are cleared for home consumption or are warehoused or transhipped in accordance with the provisions of Chapter VIll of the Customs Act, 1962. Similarly, to be the Custodian of the export goods brought into said Container Freight Station for examination and stuffing till theirexportation through Jawaharlal Nehru Port. Further, M/s Gateway Distriparks Limited got renewal of approval as a 'Customs Cargo Service Provider' for their Container Freight Station subject to the conditions mentioned in the said Public Notice. Further, the duration of appointment as 'Custodian' and approval as 'Customs Cargo Service Provider' shall remain valid for a period of 10 years w.e.f. 15.03.2020 provided that the validity of the AEO-LO status of the CFS extended.

1.2. As per approved plan, an inspection/ audit for the year 2022-23 was conducted by the CCSP Cell, JNCH on 22.11.2023 and 24.11.2023. During the said inspection/ audit, mainly following discrepancies were observed-

i) The CCSP has not submitted Bank Guarantee under regulation 5(3) ofthe HCCAR, 2009 in spite of the expiry of their AEO-LO Certificate No.INAADCR3J32N0F180 which was valid up to 26.04.2023.

ii) The CCSP has constructed one more iron gate (near garage area) in the Western boundary wall of the CFS which has not been shown in their map. Also, they had one additional small iron gate in Northern boundary wall. The said constructions are against the regulation 6(1)(n) of the Handling of Cargo in Customs Area Regulations, 2009 (HCCAR, 2009).

iii) The CFS has 'IN GATE' (not written but claimed by CCSP) in North side whereas 'OUT GATE' (as written) in South side and both the gates are, actually, having two iron sheeted gates. However, out of two gates of North side, one gate found locked without wall/barbed wiring. Further, out of two gates of South side, one gate is used for gate in process of export cargo etc. and other one is for taking import delivery etc. Thus, both activities (in/out) are being done through the gates at south side.

1.3. The CCSP M/ s Gateway Distriparks Limited was asked vide CCSP Cell letter F. No. S/5-Gen-35/2015 CFS M Cell (Pt). dated 12.02.2024 to submit an explanation about the discrepancies observed during the said inspection/ audit.

1.4. In response to the letter dated 12.02.2024 of CCSP Cell, vide their letter dated 22.02.2024, M/ s Gateway Distriparks Limited, replied as under-

i. The area measuring 2325 SQM (60 mtr x 38.76 mtr) is a non-notified area and earlier, it was used as an empty container repair yard. After closing container repair activity, the said area is used as MNR garage (maintenance and repair) for Reach Stacker and Fork Lift. MNR garage has a separate entry/ exit from the outside and the Reach Stacker and Fork Lifts are taken from that gate only which is guarded by security guards all the time and they are keeping extra security measures. One small iron gate is constructed for access by mechanics and spares only to handle small repairs and running breakdowns in CFS premises; the same is always kept closed and locked other than mechanical entry and exit. As the maintenance area is separate due to safety and security reason there is no intention of using the gate for entry or exit of personnel other than MNR staff.

ii. GDL CFS is having two gates situated on the North side (In Gate) and South side (Out Gate) of the facility. However, they use only South gate for the movement of the export carting and another gate situated on South side for dispatching import-cleared consignments, Import loaded deliveries and movement of Export loaded containers. The gate is already secured and manned by security personnel around the clock and it is also equipped with CCTV camera system. Further, the additional gates situated on the North side are needed to handle any enforceable case of emergencies that can happen whilst handling hazardous goods or handling force majeure situations. To wall them would amount to forgo the right to address safety issues that could involve life and limb. These gates presently always remain closed and locked and if ever required, then prior approval of Gate PO is taken. Mostly, they use this gate for accepting import ODC containers and import loaded containers that are coming directly from the port when the Export Carting and Import deliveries on larger numbers so that there is hassle free traffic at south gate.

1.5. M/ s Gateway Distriparks Limited vide their letter dated 05.04.2024, submitted the AEO Certificate No. INAADCR3132N dated 22.02.2024 having validity 21.02.2029.

1.6. The officers of CCSP Cell visited the CFS on 29.12.2023, wherein the additional gates were locked and sealed. During the visit, some unauthorized access of some persons was noticed for which they have apologized. Further, they have informed that they have made arrangement at their gate office to issue photo ID passes which is capturing their Aadhar Card number. Also, these temporary passes are issued with validity of one day only.

1.7. In view of the above, it appeared that M/ s Gateway Distriparks Limited has violated the provisions of regulation 5(1)(m) & 6(1)(n) of the HCCAR, 2009 respectively by not controlling unauthorized access in the CFS premises and constructing additional gates by alteration in the~ existing boundary wall without proper permission of competent relevant Authority. Also, they appeared to have violated the provisions of Section 141 of the Customs Act, 1962. By these acts, they made themselves liable for penal action.

2. Relevant provisions of Laws and Regulations:-

(a) Clause (n) of sub-rule (1) of regulation 6 of the Handling of cargo in Customs Area, Regulation, 2009:

Responsibilities of Customs Cargo Service Provider:

The Customs cargo Service Provider Shall-

“not make any alteration in the entry or exit points or boundary wall without the permission of the Commissioner of Customs”

(b) Clause (q) of sub-rule (1) of regulation 6 of the Handling of cargo in Customs Area, Regulation, 2009:

The Customs cargo Service Provider Shall-

“shall abide by all provisions of the Act and rules, regulations, notifications and orders issued thereunder”

(c) **Section 141 of the Customs Act, 1962:** Conveyances and goods in a Customs area subject to control of officers of Customs-

Section 141(1) and 141(2) of the Customs Act, 1962 provides that-

Section 141(1)-

"All conveyances and goods in a Customs area shall, for the purpose of enforcing the provisions of this Act, be subject to the control of officers of Customs."

Section 141(2)-

" The imported or export goods may be received, stored, delivered, dispatched or otherwise handled in a Customs area in such manner as may prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed."

3. Hence, the CCSP i.e. M/s Gateway Distriparks Limited was called upon to Show Cause vide Notice No. 868/2024-25/COMMR/CCSP/NS-G/CAC/JNCH dated 02.08.2024 to the Commissioner of Customs (General) as to why:

i. Action should not be initiated under regulation 11 of the Handling of Cargoin Customs Areas Regulations, 2009 (HCCAR, 2009) for suspension of the approval granted as Customs Cargo Service Provider to them;
ii. Penalty should not be imposed on them under Regulation 12(8) of the Handling of Cargo in Customs Areas Regulations, 2009;
iii. Penalty under section 117 of the Customs Act, 1962 should not be imposed on them.
Also, the Assistant Commissioner of Customs, CCSP Cell JNCH was nominated to hold inquiry in accordance with the HCCAR, 2009.

4.1 The noticee appeared for a personal hearing before the Inquiry Officer on 07.07.2025 and the Personal Hearing was attended by Shri Ramkinker. N, DGM(Operations), GDL wherein he submitted a written submission dated 07.07.2025. He denied all the allegations made under the instant SCN dated 02.08.2024. He submitted that the North side gate is being used in emergency situation and that has been intimated by us on 16.10.2001 to the department but the approval of the same from the competent authority has not been received and another gate in western boundary was operated and same has not been intimated to the department till the inspection. He requested to incorporate their written submissions in the investigation report.

4.2. M/s GDL vide their submission dated 07.07.2025 through their advocate Shri Anil Balani made a written submission of defence wherein they submitted that:-

i. M/s Gateway Distriparks Limited, a public limited company incorporated in India, are an integrated inter-modal logistics service provider. This Indo-Singaporean joint venture began its Container Freight Station (CFS) operations in December 1998, following approval from the Commissioner of Customs, Jawaharlal Nehru Custom House. The approval was granted through Notification No.1/1998 dated 20.11.1998, issued under Section 8 of the Customs Act, 1962.

ii. The M/s Gateway Distriparks Limited has provided exceptional service to importers and exporters, becoming a valuable asset to the Customs Department. Within just three years of commencing operations, and with the co-operation of Customs officers, the company experienced substantial growth. Its handling capacity increased significantly, and the CFS area expanded from 3,882 square meters to 138,359 square meters.

iii. The rapid growth, coupled with anticipated further expansion, necessitated operational changes within the CFS to accommodate the increased volume and improve efficiency.

iv. To address the increased operational demands resulting from rapid growth, Gateway Distriparks Limited, in consultation with Customs officers, decided to establish an additional gate facility. This new gate would improve the flow of incoming and outgoing export and import goods. The company took the following steps to implement this change:

a. Obtained necessary permission from CIDCO (City and Industrial Development Corporation of Maharashtra Limited) via letter C/DCO/EE(BR)/ATRO dated 11.04.2001.

b. Submitted an application to the Commissioner of Customs, Jawahar Custom House, Mumbai, on 26.06.2001. This application included a blueprint and the CIDCO permission letter.

c. Received approval from the Commissioner of Customs to construct a new gate on the north side of the CFS, as per letter ref No. S/16-Gen-311/96-97(B) JCH dated 16/10/2001.

d. Constructed the gate as permitted and sent a completion report to the Deputy Commissioner of Customs (PG), JNCH, Mumbai on 20.04.2002.

e. In the same letter, permission was sought for to begin operations through the new gate.

Additionally, due to the expansion of the operational area, existing gates were incorporated into the CFS infrastructure.

v. With regard to the the third gate, it is important to note that during an inspection of the Container Freight Station (CFS) conducted on September 20, 2013, Customs officers identified an issue with this gate. They subsequently instructed that it be closed. For reference, the relevant portion of this instruction can be found in paragraph 8(v) of the Inspection Report dated January 13, 2014, which documents the findings from the September 20, 2013 inspection.

> *"v. Entry Gate: The CCSP has three gates, one in gate, one out gate. During the inspection the inspection team found the third gate meant for ODC (Over dimensional Container) cargo. However, on inspection it was noticed that the gate is being used for bringing in import containers. However, the CCSP could not produce any permission from the competent authority for operating this gate.*
>
> *Recommendation: The CCSP may be asked to close this gate and deposit the key with the Gate Office.*

vi. As directed, the gate was closed and the keys were handed over to the Gate Officer. It was intimated to the CCSP Cell also. Only in an emergency the gate was opened with the permission of the Gate Officer.

vii. The CFS license was renewed periodically by the Commissioner of Customs and the license was last renewed vide Public Notice No.43/2022 dated 12.07.2022 for ten years with effect from 15.03.2020 subject to AEO Certificate to be obtained before 26.04.2023. The AEO Certificate was obtained subsequently and hence the license is now valid up to 14.03.2030.

viii. The shortcomings found out during the inspection on 22.11.2023 and 24.11.2023 for 2022-23, are as follows.

a. The CCSP has not submitted bank Guarantee under regulation 5(3) of the HCCAR, 2009 despite the expiry of their AEO-LO Certificate No. INAADCR3130N0F180 which was valid upto 26.04.2023.
   (The AEO status retained and hence bank guarantee need not be furnished)

b. The CCSP has constructed one more iron gate (near garage area) in the Western boundary wall of the CFS which has not been shown in the map. Also, they have one additional small iron gate against the regulation 6(1)(n) of the Handling of Cargo in

Customs Areas Regulations, 2009 (HCCAR,2009)

c. The CFS has 'IN GATE' (not written but claimed by CCSP) in North side whereas 'OUT GATE' (as written) in south side and both the gates are having two iron sheeted gates. However, out of two gates of North side, one gate found locked without wall/barbed wiring. Further, out of the two gates of South side, new gate is used for gate in process of export cargo etc. and other one is for taking import delivery etc. Thus, both activities (In/OUT) are being done through the gates of South side.

ix. Even though a suitable reply dated 22.02.2024 was submitted covering the above points as highlighted in para 4 of the show cause notice, the show cause notice dated 02.08.2024 was proposing action under Handling of Cargo in Customs Areas Regulations, 2009 and penalties under regulation 12(8) of the Handling of Cargo in Customs Areas Regulations, 2009 and section 117 of the Customs Act, 1962 should not be imposed on them.

x. The alleged violations are as provided under regulation 5(1)(m) and 6(1)(n) of the HCCAR, 2009 and Section 141 of the Customs Act, 1962 the same are reproduced below: Conditions to be fulfilled by Customs Cargo Service provider : The Customs Cargo Service provider for custody of imported goods or export goods and for handling of such goods in a customs area shall fulfill the following conditions, namely:-

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

(m) facilities for installation of scanning equipment;

6. Responsibilities of Customs Cargo Service provider:

(1) The Customs Cargo Service provider shall –

(n) not make any alteration in the entry or exit points or boundary wall without the permission of the Commissioner of Customs;

(q) abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.

<u>Section 141 of the Customs Act, 1962.</u>

141. Conveyances and goods in a customs area subject to control of officers of customs.—

(1) All conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of this Act, be subject to the control of officers of

customs.

(2) The imported or export goods may be received, stored, delivered, despatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed.]

The Handling of Cargo in Customs Areas Regulations, 2009 (HCCAR, 2009) serves a crucial purpose in safeguarding the revenue interests of the Customs Department. Container Freight Stations (CFS) plays a vital role in facilitating smooth export and import clearances for the Customs Department. To ensure the effective functioning of these CFSs, the Customs Department has implemented several control mechanisms:

a. When granting or renewing CFS licenses, the department verifies the presence of necessary infrastructure. Provisions exist to condone minor deficiencies if required.
b. The HCCAR, 2009 mandates compulsory yearly inspections and regular periodic checks by CFS officers to maintain operational standards.
c. CFS activities are under constant supervision by on-duty Customs officers.
d. Deficiencies identified during inspections are communicated to the Custodian of the Customs Cargo Service Provider (CCSP) for rectification.
e. In cases of serious offenses, such as unauthorized entry or exit of import/export cargo resulting in revenue loss, the department initiates penal action.

These measures collectively ensure that CFSs operate efficiently and in compliance with Customs regulations, thereby protecting revenue interests and facilitating trade.

xii. Under para 2.3 of Chapter 28 of the Customs Manual 2023 the aim of responsibility under Regulation 6 of HCCAR, 2009 is explained below.

> "2.3 Responsibilities prescribed in Regulation 6 of the HCCAR, 2009 apply to both custodians and persons who provide various services, though certain responsibilities specifically apply to one or the other category. For example, <u>the responsibility for safety and security, pilferage of goods under their custody, disposal of uncleared, unclaimed or abandoned goods within the prescribed time limit, payment of cost recovery charges of the Customs officers posted in the facility are applicable to an approved custodian who handles imported or export goods</u>. On the other hand, responsibilities for publishing or display of the schedule of charges for the activities undertaken

in respect of imported/ export goods shall apply to both categories of persons. These responsibilities are aimed at expeditious clearance of goods, reduction of dwell time, transaction cost and safeguarding revenue."

Para 2.20 of the Customs Manual 2013 reads as below:

In case of violations of the conditions or obligations prescribed under the regulations, necessary action may be taken against the erring CCSP including imposition of penalty. Further, action would need be initiated against the CCSP, wherever lack of infrastructure facilities is noticed leading to deterioration in services or damage of imported or export goods, loss of value and loss of revenue etc.

Para 2.25 of the Customs Manual, 2013 reads as below:

2.25 The HCCAR, 2009 provide for levy of penalty in case the CCSP contravenes any of the provisions of the regulations or fails to comply with the regulations. However, these provisions do not impact the past proceedings against the custodian, if any, where necessary action has been initiated against erring custodians

Thus, the purpose of the inspection is to consider only corrective measures.

xiii. The corrective measure regarding the presence of unauthorized persons (Customs Broker staff), indicated in Para 6 of the show cause notice, is not pursued in the show cause notice, since a general circular dated 12.01.2024 was issued to all Port Terminals and CFSs in this regard.

xiv. The deficiencies indicated regarding construction of the gate have already been explained in the reply to the inspection report. Further, additional gates will ensure enhanced security and safety of the premises, valuable goods and hundreds of inmates of this CFS covering 138359 square meter area. In case of emergency, exit of inmates and free entry of fire brigade and fire extinguishers from all directions is a must. Moreover, the error was made good by closing the said additional gates. The said disputed gates will be kept closed till permission is granted by the Commissioner of Customs. Because of the additional gate facility provided, there were no instances of any illegal act which resulted in revenue loss to the department. There were no instances of any illegal entry or exit of prohibited goods through these gates. As explained in the reply dated 22.02.2024, the gates indicated were intended to be used only for emergency purposes and not for regular cargo movement.

xv. Regarding the applicability of penalties under section 117 of the Act, it is submitted as below:

Section 117 of the Customs Act:

This section allows for a penalty of up to Rs. 1lakh on a person who:

a) Contravenes provisions of the Customs Act, or

b) Abets such contravention, or

c) Fails to comply with any provision of the Act they were duty-bound to follow.

Penalty under section 117 applies where no express penalty is provided elsewhere in the Act for such contravention.

The show cause notice does not involve any offence regarding unauthorized goods or vehicles within the Container Freight Station (CFS) area. Therefore, a violation of Section 141 of the Customs Act, 1962, cannot be attributed in this case. As there is no apparent contravention of the Customs Act in the present circumstances, the imposition of a penalty under Section 117 is not warranted.

xvi. It is further submitted that Section 117 of the Customs Act provides for imposition of penalty not exceeding Rs.1 lakh on a person, who has contravened the provisions of Customs Act or on a party in such contravention or fails to comply any provisions of the Act, which it was duty bound, and where no express penalty is elsewhere provided for such contravention. In this show cause notice, no offence regarding unauthorized entry/exit of goods or vehicles within the CFS area is involved and hence the violation of the provisions of Section 141 Customs Act, 1962 cannot be attributed. There being no contravention of the Customs Act, penalty u/s 117 is not warranted.

Section 117 reads as follows:

117. Penalties for contravention, etc., not expressly mentioned.—Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to **comply,** where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding 3[one lakh rupees].

As seen from catena of judgments and decisions, this penal provision was invoked in respect of cases of pilferage of import or export goods and seized goods deposited with CFS.

Hon'ble Supreme Court in the case of Hindustan Steel Ltd Vs State of Orissa reported in 1978 ELT 159, wherein it was held that:-

"Penalty will not ordinarily be imposed unless the party obliged either acted

deliberately in defiance of law and was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation."

xvii. The proposal for penal provisions may have bearing on the AEO certificate. To avoid such hurdles to the CCSPs, CBIC has directed its officers to initiate penal action only in case of any loss to the department. The additional gates have not alleged to have been used for illegal movement of cargo. The CFS, with the cooperation of CFS Customs Officers, is being run to the satisfaction of the Customs department. Hence it is not correct to contend that the provisions of Section 141 of the Customs Act, 1962, were violated by us. Custom House and CFS are interrelated in achieving the goal of speedy disposal of import and export goods and hence initiating penal action instead of corrective measures will bring down the morale of CFS.

xviii. In so far as the proposal for imposition of penalty under Regulation 12(8) is concerned, Regulation 12(8) of the 2009 Regulation mandates that if the Custom Cargo Service Provider (noticee in the present case) contravenes any of the provisions of the said Regulations or abets such contravention or fails to comply with any provisions of the regulation with which it was his duty to comply, then he shall be liable to a penalty which may extend to fifty thousand rupees. In the present case, there is no contravention of Regulation 5 and Regulation 6, hence, the penalty proposed under Regulation 12(8) is not warranted.

xix. Hence by considering the instructions in para 2.20 of the Customs Manual 2023, the error of not intimating the additional gates to the Commissioner of Customs, may please be condoned. A revised blueprint of CFS boundary wall with additional gates is submitted. The penal action initiated in this regard may please be dropped and thus render justice.

5.1 The Inquiry was conducted by the Asstt. Commissioner of Customs, CCSP accordance with the Regulation 12 of HCCAR, 2009 and the Inquiry proceedings were attended by the authorized person of the CCSP. The salient points of the Inquiry Report dated 07.09.2025 of the Inquiry officer are as follows: -

5.2 The IO found that as per the regulation 6 (1)(n) of the Handling of Cargo in Customs Area Regulations, 2009 (HCCAR, 2009), it is the responsibility of Customs Cargo Service Provider that he will not make any alteration in the entry or exit points or boundary wall without the permission of the Commissioner of Customs. However, in the present case the CCSP has constructed one more iron gate (near garage area) in the Western boundary wall of the CFS which has not been shown in their map. Also, they had one additional small iron gate in Northern boundary wall. Hence, the IO found that CCSP has made alterations without obtaining the permission from the Commissioner of Customs and hence they have violated provisions of regulation 6 (1)(n) of the Handling of Cargo in Customs Area Regulations,2009.

5.3 As per regulation 5(1)(m) of the Handling of Cargo in Customs Area Regulations, 2009 it is the responsibility of Customs Cargo Service Provider to provide security and access control to prohibit unauthorized access into the premises. During the visit of CCSP Cell Officer on 29.12.2023 some unauthorized access was noticed. Hence, the IO found that Customs Cargo Service Provider has violated provisions of regulation 5(1)(m) of the Handling of Cargo in Customs Area Regulations, 2009.

5.4 The IO found that by their aforesaid acts of omission and commission, M/s Gateway Distriparks Limited(GDL) has violated the Regulation 5(1)(i)(m) & Regulation (6)(1)(n) of HCCAR,2009 read with provision of Section 141 of the Customs Act, 1962 and have made themselves liable for punitive action under Section 12(8) of HCCAR,2009, Section 117 of the Customs Act, 1962.

5.5 In view of above, the IO concluded that the charges levelled in the show Cause Notice that the CCSP has failed to discharge the obligations cast upon them are conclusively proved and Noticee is liable for action under the Handling of Cargo in Customs Area Regulation, 2009 and other provisions of the Customs Act, 1962 as mentioned in the Show Cause Notice.

RECORD OF PERSONAL HEARING

6. Personal Hearing in this matter was fixed on 22.10.2025, on request of the noticee before me. It was attended by Shri Ramkinker M (DGM operations) and Mr. Anil L. Balani, Advocate High Court. Advocate Balani and Shri Ramkinker stated that no prior permission had been obtained to construct and use the gate as stated in the SCN. They stated that a letter had been given earlier, seeking permission for notifying the area for access of which the gate had been constructed. They have undertaken to produce the same. They submitted a letter dated 22.02.2024 wherein they have stated that a small iron gate has been constructed for access by mechanic and spares, and the same is always kept closed. They have also submitted a detailed written representation dated 20.10.2025 for consideration. They requested to take a lenient and considerate view in the matter.

6. The detailed written representation dated 20.10.2025 is as follows:

1. That Gateway Distriparks Limited (GDL) is a leading integrated logistics service provider in India, offering state-of-the-art facilities and services to the trade whose primary businesses include:

- *Inland Container Depots (ICDs), Public Bonded Warehouses, and Container Freight Stations (CFSs).*
- *Container Train Operations (CTO) through their rail-linked CDs.*

- *Cold Chain Logistics Solutions through their subsidiary Snowman Logistics Limited.*

They operate ICDs and CFSs across Navi Mumbai, Chennai, Kochi, and Visakhapatnam with a combined capacity of over 600,000 TEUs. Their rail-linked ICDs at Garhi-Harsaru (Gurugram), Sahnewal (Ludhiana), Piyala (Faridabad), and Viramgam (Ahmedabad) are supported by a fleet of 34 container trains and 550+ trailers, ensuring smooth connectivity to major maritime ports like Nhava Sheva, Mundra, and Pipavav.

Through Snowman Logistics Limited, they also operate 43 cold chain warehouses pan-India, providing specialized supply chain solutions in warehousing, distribution, and transportation.

GDL has been serving the trade for over 31 years with a spotless track record of compliance with Customs and allied authorities. They are accredited as Authorized Economic Operator - LO (AEO-LO) and are also C-TPAT compliant, reflecting their commitment to global supply

chain security standards. Their operations contribute significantly to the exchequer, with approximately 12000 crores of Customs duty collected annually from their locations, apart from 750 crores GST in their rail vertical.

They have consistently partnered with Indian Customs in implementing new initiatives, often pioneering digital solutions that were later adopted across the industry:

2015 - e-Delivery Order at ICD Garhi Harsaru: First custodian in India to introduce digital delivery orders, which was later mandated by CBIC for all custodians.

2019-20 -SCMTR Project: Actively participated in pilot testing of the Sea Cargo Manifest & Transshipment Regulations (SCMTR) system before nationwide rollout.

2023 - e-Forwarding Note: Introduced a digital solution eliminating physical forwarding notes for LEO export consignments, streamlining container movement from CDs to gateway ports.

Project NIGAH: Joint initiative with Customs to provide real-time visibility of the clearance process and container status to Customs officials posted at ICDs, this module has been successfully rolled out by Office of the Customs Commissionerate of ICD Patparganj & Others (Delhi) at ICD Gar hi Harsau and ICD Piyala.

These initiatives underline their role not only as a logistics operator but as a trusted partner of Indian Customs in promoting efficiency, transparency, and ease of doing business.

They remain fully committed to:

- *Ensuring 100% compliance with all Customs regulations,*
- *Maintaining transparency and accountability in operations,*
- *Extending full cooperation with Customs authorities,*
- *Supporting the Government's objectives of trade facilitation, revenue*

assurance, and digital transformation.

2. That M/s. Gateway Distriparks Limited, a Public Limited Company incorporated in India, is an integrated inter-modal logistics service provider. This Indo- Singaporean joint venture began its Container Freight Station (CFS) operations in December 1998, following approval from the Commissioner of Customs, Jawahar Custom House. The approval was granted through Notification No. 1/1998 dated 20.11.1998, issued under Section 8 of the Customs Act, 1962.

3. Since its inception, Gateway Distriparks Limited has provided exceptional service to importers and exporters, becoming a valuable asset to the Customs Department. Within just three years of commencing operations, and with the co-operation of Customs officers, the company experienced substantial growth. Its handling capacity increased significantly, and the CFS area expanded from 3,882 square meters to 138,359 square meters.

4. Further, the CFS license was renewed periodically by the Commissioner of Customs and the license was last renewed vide Public Notice No.43/2022 dated 12.07.2022 for ten years with effect from 15.03.2020 subject to AEO Certificate to be obtained before 26.04.2023. The AEO Certificate was obtained subsequently and hence the license is now valid up to 14.03.2030.

Inquiry Report:

5. In the "discussions and findings", the Inquiry Officer has held that "the CCSP constructed one more iron gate near garage area in the western boundary wall of the CFS, which has not been shown in their map submitted for approval. Also, they had one additional small iron gate in northern, hence he has held that violation of boundary wall" Regulation 6(1)(n) of the Handling of Cargo and Custom Area Regulation 2009 (HCCAR) is established.

6. Further, he has held that "on 29.12.2023 some unauthorised access was noticed". Accordingly, he has held that Regulation 5(1)(m) is also violated. The following submissions were made:

A. In their letter dated 22.02.2024 addressed to the Commissioner, they had stated as under:-

i. Area measuring 2325 sq. mtr is a non-notified area and earlier it was used as an empty container repair yard. Copy of the said letter dated 22.02.2024 was enclosed.

ii. After closing container repair activity, the said area is used as MNR garage maintenance and repair for Reach Stacker and Fork Lift.

iii. MNR garage has a separate entry exit from the outside and the Reach Stacker and Fork Lifts are taken from that gate only but it is guarded by security guard all the time and we are keeping extra security measures, one small iron gate is constructed for access by mechanics and spares only to handle small repairs and running breakdowns in CFS premises, the same is always kept locked and closed other than mechanical entry and exit.

iv. As the maintenance area is separate due to safety and security reason, there is no *intention of using the gate for entry or exit of personnel other than MNR staff. In fact for better control and easy access to the maintenance job works of Reach Stacker and Fork Lifts, we have already applied our request letter to the CCSP cell to notify the non-notified area in addition to the existing custom notified area.*

7. In paragraph 4 of the Inquiry Report, however the Inquiry Officer has not dealt with the above submissions and there is no rebuttal. In the circumstances, it is to be appreciated that there is no violation of Regulation 6(1) (n).

8. In paragraph 6 of the Inquiry Report, in response to allegation of unauthorised access of some persons it was submitted that we have made arrangements at the gate office to issue photo ID pass which is capturing the Aadhar Card number. These temporary passes are issued with validity of one day only. Unconditional apology was also extended for the alleged unauthorized access. Unfortunately, the Inquiry Officer has not dealt with these submissions also. In the circumstances, violation of Regulation 5(1) (n) is also not established.

10. It is important to note that we admittedly have not caused any loss or prejudice to the Revenue. The alleged offences are technical in nature. We undertake that such aberrations will never be repeated.

11. In the circumstances it is prayed that the proceedings against us kindly be dropped as there is no violation of Regulations 6(1)(n) and 5(1)(n).

DISCUSSION AND FINDINGS

7.1. I have gone through the brief facts of the case, show cause notice served to M/s Gateway Distriparks Limited (GDL) (hereinafter referred to as the noticee/CCSP), reply to the SCN, oral and written submissions of the Noticee in the personal hearings granted to them and the Inquiry report.

7.2. The primary issues for consideration before me are:

i. Whether the noticee has contravened the provisions of the Handling of Cargo in Customs Areas Regulations, 2009 and the Customs Act, 1962 as alleged in the SCN attracting penal provisions under Regulation 12(8) of HCCAR, 2009 and Section 117 of the Customs Act, 1962; and

iii. Whether the approval granted to the noticee as Customs Cargo Service Provider (CCSP) is liable for suspension under Regulation 11 of HCCAR, 2009.

7.3. It is an admitted fact that the noticee has constructed an additional iron gate on the western boundary wall of the CFS near the maintenance and repair (MNR) garage area and also has another small gate on the northern boundary wall, both of which were not reflected in the approved layout plan submitted to Customs. The existence of these additional gates was confirmed during the inspection conducted on 22.11.2023 and 24.11.2023. No documentary evidence of prior approval from the Commissioner of Customs for the said alterations has been produced by the noticee. Regulation 6(1)(n) of the HCCAR, 2009 clearly stipulates that a Customs Cargo Service Provider “shall not make any alteration in the entry or exit points or boundary wall without the permission of the Commissioner of Customs.” The construction of new gates without such permission constitutes a direct contravention of this provision.

7.4. The Inquiry Officer, after conducting proceedings under Regulation 12, has concluded that the noticee failed to discharge the statutory obligation cast upon them under Regulation 6(1)(n) of HCCAR, 2009 read with Section 141 of the Customs Act, 1962.

7.5. During the personal hearing and in their written submissions dated 20.10.2025, the noticee admitted that no prior or written permission was obtained from the competent Customs Authority before constructing or operating the gates. They, however, stated that an application had been made in 2001 in respect of the northern gate. It is, therefore, pertinent to note that the noticee has themselves acknowledged the absence of requisite permission from the Customs Authority for the said construction and operation.

7.6. They have also contended that the western gate was meant exclusively for internal maintenance purposes and has since been sealed. They have sought leniency on the grounds that the said gates were not used for cargo movement and that there has been no loss of revenue or compromise of Customs control.

7.7. The provisions of Regulation 6(1)(n) are explicit — any alteration in entry/exit points or boundary walls of a customs area can only be made with prior written permission of the Commissioner of Customs. This regulatory control is central to ensuring the physical security of the Customs area and preventing unauthorized movement of cargo, conveyances, or persons. Any deviation from the approved layout constitutes a serious breach of the regulation. I, therefore, find the noticee to be in violation of Regulation 6(1)(n) of the HCCAR, 2009.

7.8. I now deal with the allegation of presence of unauthorized persons in the premises of the CFS. Under Regulation 5(1)(i)(n), the CCSP is obligated to maintain stringent access control measures to prevent unauthorized entry or exit within the customs area. During the visit by officers of the CCSP Cell on 29.12.2023, instances of unauthorized access of persons within the CFS premises were observed. Although the noticee subsequently instituted a system of issuing photo ID passes with Aadhaar verification, the fact remains that unauthorized entry was allowed within the notified area, in violation of Regulation 5(1)(i)(n) of HCCAR, 2009, which mandates that the CCSP must provide adequate security and access control to prohibit unauthorized access into the premises. The presence of unauthorized persons during inspection indicates a lapse in compliance, irrespective of whether such access resulted in any material loss or revenue leakage.

7.9. I find that the SCN alleges violation of Regulation 5(1)(m) although issue pertains to unauthorized persons accessing the CFS premises. I find that mere mention of an incorrect provision of law in the SCN is not sufficient to invalidate the same when the power exercised is available even though under a different provision as held by the Hon‘ble Supreme Court in Collector of Central Excise Vs. Pradyumna Steel Ltd. dated 19 Jan 1996.

7.10. Section 141 of the Customs Act, 1962 provides that all goods and conveyances in a Customs area shall be subject to the control of officers of Customs. The construction of gates and entry points without approval, and the occurrence of unauthorized access, undermine this statutory control and therefore amount to contravention of the Act.

7.11. In their written submission, the noticee has placed reliance on para 2.3 of Chapter 28 of the Customs Manual 2023 reproduced below:
"*2.3 Responsibilities prescribed in Regulation 6 of the HCCAR, 2009 apply to both custodians and persons who provide various services, though certain responsibilities specifically apply to one or the other category. For example, <u>the responsibility for safety and security, pilferage of goods under their custody, disposal of uncleared, unclaimed or abandoned goods within the prescribed time limit, payment of cost recovery charges of the Customs officers posted in the facility are applicable to an approved custodian who handles imported or export goods</u>.*"

7.12 . I find that this is to the detriment of the noticee, as the responsibility for safety and security of goods have been made applicable to the approved custodian.
7.13 Similarly, their reliance on Hon'ble Supreme Court in the case of Hindustan Steel Ltd Vs State of Orissa reported in 1978 ELT 159, wherein it was held that :-
"Penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law and was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation." appears to be misplaced as I find that the noticee has acted in conscious disregard of their obligations under HCCAR, 2009 and hence liable to penalty.
7.14 I take cognizance of the fact that the unauthorized gates have since been locked and sealed, as verified by the visiting officers; and no evidence has been brought on record suggesting any illicit movement of cargo or loss of government revenue.
7.15 In view of these factors, while the violations under Regulation 5(1)(i)(n) and 6(1)(n) of HCCAR, 2009 read with Section 141 of the Customs Act, 1962 stand

established, I am inclined to take a lenient view in respect of the proposed suspension of the CCSP under Regulation 11(1), since no loss to government revenue has been alleged.

7.16 Accordingly, I hold that:

i. M/s Gateway Distriparks Limited has violated Regulation 5(1)(i)(n) and Regulation 6(1)(n) of the Handling of Cargo in Customs Areas Regulations, 2009 read with Section 141 of the Customs Act, 1962;

ii. The said contraventions attract penalty under Regulation 12(8) of the HCCAR, 2009 and Section 117 of the Customs Act, 1962;

iii. However, considering the absence of any revenue loss, and the corrective action already taken by the noticee, I deem it appropriate not to invoke Regulation 11(1) for suspension of their approval as a Customs Cargo Service Provider.

ORDER

8. In view of the foregoing discussion and findings, I hereby pass the following order:

8.1. I refrain from taking any action under regulation 11 of the Handling of Cargo in Customs Areas Regulations, 2009 for suspension of approval granted as Customs Cargo Service Provider to M/s Gateway Distriparks Limited.

8.2 I impose a penalty of **Rs. 50,000/-(Rs. Fifty thousand only) under Regulation 12(8) of the Handling of Cargo in Customs Areas Regulations, 2009 and Rs.4,00,000/-(Rs. Four Lakhs only) under Section 117 of the Customs Act, 1962** on M/s Gateway Distriparks Limited (GDL) for constructing and maintaining additional gates in the western and northern boundary walls of the CFS without prior approval of the Commissioner of Customs and failing to exercise proper access control resulting in unauthorized entry of persons within the customs area.

8.3 This order is issued without prejudice to any other action that may be initiated against the notice or any other person under the provisions of the Customs Act, 1962 or any other law for the time being in force in the Republic of India.

(B. Sumidaa Devi)
Commissioner of Customs
NS(General), JNCH

To,

M/s Gateway Distriparks Limited(GDL),

Sector 6, Dronagiri, Taluka- Uran,

Dist Raigarh,

Maharashtra- 400707.

Copy to: 1. The Chief Commissioner of Customs, Mumbai Customs, Zone-II, JNCH.

2. The DC/AC, M/s. Gateway Distriparks Limited(GDL).

3. The DC/AC, CRAC, Mumbai-II, JNCH.

4. The DC/AC, CRRC, JNCH.

5. The DC/AC, AEO section, NS III, JNCH.

6. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.

7. Office Copy