
 सत्यमेव जयते	OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-G) आयुक्त सीमाशुल्क (एनएस- सामान्य) का कार्यालय Jawaharlal Nehru Custom House, Nhava Sheva जवाहरलाल नेहरू सीमाशुल्क भवन, न्हावाशेवा DISTRICT - RAIGAD, MAHARASHTRA-400707 तालुका - उरण, जिला - रायगढ़, महाराष्ट्र-400707	 आज़ादी का अमृत महोत्सव
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SCN dated 24.03.2025 vide F.No.GEN/2347/2024-CCSP-O/O COMMR-CUS-GEN-NHAVA SHEVA

OIO No.: 152 /2025-26/Commr./CCSP/NS-G/CAC/JNCH

Date of Order: 04.08.2025

Date of Issue: 04.08.2025

DIN – 20250878NU0000111261

Order passed by: Smt. B. Sumidaa Devi,
Commissioner of Customs (NS-Gen),
JNCH, Nhava Sheva

Name of the Party: M/s Navkar Corporation Ltd.

ORDER-IN-ORIGINAL

मूल आदेश

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 की प्रतिलिपि 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 सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सीईएसटीएटी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), 34, पीडीमे लो 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 more

than Rs. 50 Lakh.

3. अपील दाखिल करने संबंधी मुख्यमुद्दे:

फार्म सी ए3, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए) (समयसीमा - इस आदेश की सूचना की तारीख से 3 महीने के भीतर)

फीस (क) एक हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये या उससे कम है।

(ख) पाँच हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।

(ग) दस हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी 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 राष्ट्रीय कृत 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 यथा संदर्भित एवं अन्य संबंधित मामलों के लिए सीमाशुल्क अधिनियम, 1962, सीमाशुल्क (अपील) नियम, 1982, सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपील अधिकरण (प्रक्रिया) नियम, 1982 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 गये शुल्क अथवा उद्गृहीत शास्तिका 7.5 % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न कि ये जाने पर अपील सीमाशुल्क अधिनियम, 1962 की धारा 129E के उपबंधों की अनुपालना किये जाने के लिए नामंजूर किये जाने की दायी होगी।

This order arises out of SCN dated 24.03.2025 issued to M/s Navkar Corporation Ltd. vide F.No.GEN/2347/2024-CCSP-O/O COMMR-CUS-GEN-NHAVA SHEVA

BRIEF FACTS OF THE CASE

1.1 M/s Navkar Corporation Ltd. (hereinafter referred to as the Noticee), Admin office at Survey No. 89/93/95/97 at Somathane Village, Kon-Savala road, Village-Khairane, Taluka-Panvel Distt.- Raigad, Maharashtra was appointed as Custodian under Section 45(1) and 141(2) of the Customs Act, 1962 for imported goods landed in and export goods brought into area notified as Customs Area under Section 8 of the Customs Act, 1962 and was also approved as Customs Cargo Service Provider (CCSP) under the provisions of Handling of Cargo in Customs Areas Regulations 2009. In terms of the HCCAR Regulations, 2009, as amended from time to time. M/s Navkar Corporation Ltd., was approved as a 'Customs Cargo Services Provider' subject to condition that they shall abide by all the provisions of the Customs Act, 1962 and the rules of the Handling of Cargo in Customs Areas Regulations, 2009, other regulations, notifications, orders issued there under.

1.2 M/s Navkar Corporation Ltd, CFS vide their letter dated 10.07.2024 had submitted Intimation / Approval for 'change of control' in CFS-I, CFS-II and CFS-III of Navkar Corporation Limited and vide their letter dated 30.07.2024 had submitted the copy of Share Purchase Agreement for proposed transfer of shareholding between current promoters and JSW Port Logistics Pvt Limited.

1.3 M/s Navkar Corporation Limited intimated that they have signed a Share Purchase Agreement with JSW Port Logistics Private Limited, a Wholly Owned Subsidiary Company of JSW Infrastructure Limited on 27th June 2024. In accordance with this Share Purchase Agreement, JSW Port Logistics Private Limited intends to acquire 70.37% of the share capital in Navkar Corporation Limited.

1.4 M/s Navkar Corporation Limited had informed that:

- The Board meeting, wherein the decision to sell controlling shares was taken, occurred on 27th June 2024.
- The Memorandum of the previous Board of Directors, accepting the appointment of new Directors, was executed on 11th October 2024.
- The new Directors actually joined the Board of Directors on 11th October 2024.
- The company informed the Registrar of Companies (ROC) about the appointment of new Directors on two separate dates as mentioned in below table:

Sr.No.	Name of Director	Date of ROC Filling
1.	Mr. Rinkesh Roy	25.11.2024
2.	Mr. Lalit Singhvi	08.11.2024
	Mr. Karun Kant Dave	

	Mr. Manish Gupta	
	Mr. Lalit Singhvi	

1.5 The company, Navkar Corporation Limited vide their letter dated 30.07.2024 submitted that the all the three CFSs namely Navkar CFS I, CFS-II and CFS-III will operate under the earlier name and style with same GST, PAN, IEC and AEO-LO status. There would be only change in shareholding pattern of the company.

1.6 The licensee is an artificial legal entity meaning it can only act through human representatives within the boundaries of the law and it cannot act on its own it acts through its directors. The Board of Directors of a company is central to its decision making and governance process. Its liability to ensure compliance with the law underpins the corporate governance structure in a company which get articulated through the actions of the Board. Hence, it is an obligation on the part of a Company to constitute and maintain a Board of Directors as per the provisions of the law and to disclose particulars of the Directors so appointed in the public domain through statutory filing of information. The directors control the company's internal affairs and management, including the completion of various tax, regulatory, and legal compliances. The Licensee has changed its ownership through sale of controlling shares and has changed its directors without taking prior approval of the Commissioner (Gen).

1.7 The Public Warehouse Licensing Regulations, 2016 notified vide Notification No. 70/2016-Customs (N.T.) dated 14th May, 2016 in its Rule 3 (2) mandates that:

3. (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;

1.8 A plain reading of the aforesaid rule clearly suggests that if the Applicant is an artificial person, then antecedents of the human representatives who run the legal entity need to be verified. Hence, it appears that by handing over the control of Licensee company whose antecedents had not been verified the Licensee company has deliberately put the interest of revenue at jeopardy.

1.9 Even though the Licensee is Artificial legal juristic person, it can be held responsible for the violation of the law committed by its promoters/Directors. The Apex Court in the case of *Iridium India Telecom Limited ("Appellant") –Vs- Motorola Incorporated ("Respondent no.1") & Others* held that criminal liability of corporations would arise when the offence is committed in relation to the business by a person or body of persons in control of its affairs and when the degree of control is such that a body or body of persons can be said to be its 'directing mind and will'. The Court also held that such men rea would be attributable to the corporation on the principle of 'alter ego' of the

corporation i.e. the persons or the group of the persons that guide the business of the corporation, would be imputed to the corporation. It has further been held that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring *mens rea*. Accordingly, it appears that the action of the Licensee to hand over the control of the Licensee company to Directors whose antecedents has not been verified, without approval from the jurisdictional Commissioner of Customs is a deliberate violation of the stipulated conditions under which the Licensee had been granted permission to operate the Container Freight Station.

1.10 In the instant case, since the CCSP had not adhered to the responsibilities of CCSP as mentioned in HCCAR 2009, which have to be necessarily complied with by every CFSs and CCSP had signed a Share Purchase Agreement with JSW Port Logistics Private Limited, a Wholly Owned Subsidiary Company of JSW infrastructure Limited on 27th June 2024 without the prior permission from the Jurisdictional Commissioner of Customs, CCSP M/s Navkar Corporation Ltd. appeared to have violated Regulation 6(2) of the Handling of Cargo in Customs Areas Regulations, 2009:

“The Customs Cargo Service provider approved for custody of imported or export goods and for handling of such goods shall not lease, gift, sell or sublet or in any other manner transfer any of the premises in a customs area; or sub contract or outsource functions permitted or required to be carried out by him in terms of these regulations to any other person, without the written permission of the Commissioner of Customs”.

Para 5.2.2 of CBIC Circular 50/2020 states:-

“Change in Ownership Jurisdictional Commissioner of Customs can approve the change of custodian of existing facilities under section 45 of the Customs Act, 1962 and the change may be informed to the Commissioner (RI&I) There will be no need to approach IMC for change in ownership provided the residual entity meets turnover and other requirements established within the framework of this policy. However, any pre- condition prescribed in this policy which the original developer is required to fulfill, shall be met by the new owner as well. The new owner shall ensure and confirm that all the liabilities under the Customs Act, 1962 and regulations thereof, payable by the existing operator are duly discharged before such change of ownership.”

1.11 Other Relevant provisions of Laws and Regulations:

(A) Section 117 of the Customs Act, 1962,

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 four lakh rupees”.

(B) Regulation 12(8) of the Handling of Cargo in Customs Area Regulations, 2009;

“If any Customs Cargo Service provider contravenes any of the provisions of these regulations, or abets such contravention or who fails to comply with any provision 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.”

1.12 It appeared that M/s Navkar Corporation Ltd. was responsible for the commission of wrongful act committed and has failed to fulfil their responsibilities of the Custodian and also contravened Regulations 6(2) of the Handling of Cargo in Customs Areas Regulations, 2009 and has therefore made themselves liable for penal action under the provisions of Customs Act, 1962 and Regulation 12 of the Handling of Cargo in Customs Area Regulations, 2009 and therefore, was called upon to Show Cause to the Commissioner of Customs (General) through the Assistant/Deputy Commissioner of Customs, CCSP Cell, Jawaharlal Nehru Customs House, Nhava Sheva, Maharashtra, within 30 days of receipt of the Notice, as to why:

- (i) Their License should not be revoked for blatant disregard of law,
- (ii) Penalty under Section 158 (2) (ii) and Section 117 of the Customs Act, 1962 should not be imposed.
- (iii) Penalty as per Regulation 12(8) of the Handling of Cargo in Customs Areas Regulations (HCCAR), 2009 should not be imposed on the CCSP.

1.13 The Assistant/Deputy Commissioner of Customs, CCSP Cell (JNCH) was to inquire into such of the grounds which were not admitted by the Customs Cargo Service Provider.

Written Submissions of the Noticee to Inquiry officer:

2.1 Navkar Corporation Ltd., in their written reply to the Inquiry Officer dated 17.4.2025 stated that they operate three Container Freight Stations all in the vicinity of Jawaharlal Nehru Customs House, Nhava Sheva, which are licensed as public warehouses under Section 57 of the Customs Act, 1962 and that they had been appointed as custodians and Customs Cargo Service Providers for the purpose of handling of import and export cargo in accordance with Section 45(1) and Section 141(2) of the Customs Act, 1962.

2.2 That the gravamen of the case made out against them is that before signing the Share Purchase Agreement between their promoters and JSW Port Logistics Pvt. Ltd. (JSW) whereunder the promoters agreed to transfer the their shares to JSW, the Company was obliged to take the approval of the jurisdictional Commissioner of Customs. The SCN also alleges that prior permission ought to have been taken prior to the change in Directors of the Noticee Company.

2.3 They denied that they have contravened any of the provisions of the Customs Act, HCCAR, Public Warehousing Regulations or any other provisions or regulations.

2.4 That under Regulation 2 of the Public Warehouse Licensing Regulations, 2016, an "applicant" is defined as a person who applies for a license as a public warehouse under Section 57 of the Act and a "public warehouse" to be a *site or building that is licensed as such by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under section 57, wherein dutiable goods may be deposited*. The license is granted under Regulation 3, sub-Regulation (2) of which stipulates the circumstances in which the Principal Commissioner/Commissioner shall not issue a license to an applicant, these circumstances include the applicant being declared insolvent, convicted of an offence, etc.

2.5 That the CBIC has issued Circular No. 50/2020-Customs, dated 05.11.2020 laying down the policy and guidelines for setting up of Inland Container Depots ("ICD") and CFSs as also Air Freight Stations. In terms of Para 5 of the said circular, the procedure for application and approval is given. Para 5.2.2 stipulates that in case of change of custodian of existing facilities under Section 45 of the Customs Act, 1962, there is no requirement to refer the matter to the Inter-Ministerial Committee or "IMC", but the jurisdictional Commissioner himself can approve the said change.

2.6 That the Noticee Company, i.e. Navkar Corporation Ltd. is not only a public limited Company, but has been listed on major stock exchanges, viz., NSE and BSE since 2015 itself. The Noticee Company's promoters (as identified in the annual report filed with the Ministry of Corporate Affairs) were certain individuals (Shri Shantilal Mehta, Shri Nemichand Mehta, etc.) as also a body corporate, viz., Siddhartha Corporation Pvt. Ltd. and some trusts. These promoters negotiated with JSW, which is a wholly owned subsidiary of JSW Infrastructure Ltd., part of the JSW Infrastructure Group of Companies for sale of shares of the Noticee Company owned by the said promoters. Pursuant to such negotiations, the SPA was signed on 27.06.2024. That the SPA was only an agreement to sell shares by the promoters to JSW. The same was subject to several conditions precedents and it was only on fulfilment of these conditions that the sale of shares was to be actually affected. These conditions were actually met in October 2024 and accordingly, the actual transfer of shares took place on 11.10.2024 when JSW Infrastructure Ltd. duly made a stock exchange filing informing the stock exchanges about this fact.

2.7 That the Noticee Company has been listed from 2015 itself, and that there has been a regular change in the shareholding pattern since then since the shares are bought and sold on the stock market (BSE and NSE). In fact, sometime in 2017-2018, there was a Qualified Institutional Placement or QIP wherein shares *were* allotted to institutional investors. Further, even the Board of Directors has been changing since 2008 when the Noticee Company first set up the CFS. Although the actual sale of shares was effected only in October 2024, the Noticee Company, vide its letter dated 10.07.2024 informed the Commissioner of Customs (General), JNCH regarding the signing of the SPA. The said letter dated 10.07.2024, out of abundant caution, made reference to Para 5.2.2 of the aforesaid CBIC Circular, although the said circular was actually not applicable to this case.

2.8 That the Noticee Company also furnished a copy of the SPA vide its letter dated

30.07.2024. The Noticee Company, vide the same letter, also informed the Commissioner that the Noticee Company continued to operate under the same name and style with the same PAN, 1st registration no., MC and AEO status and that all that had changed was the shareholding pattern of the Noticee Company. Subsequently, vide letter dated 14.10.2024, the Noticee intimated the Commissioner of Customs, JNCH about the filings with the stock exchange mentioned above. The Noticee also informed the Commissioner of Customs, JNCH about the change in the Board of Directors of the Noticee Company.

2.9 That there is no requirement whatsoever in Regulation 6(2) of the HCCR to file even an intimation, let alone take prior permission in case of change in shareholding pattern/composition of Board of Directors of the CCSP. The relevant provisions are reproduced below:

The Customs Cargo Service provider approved for custody of imported or export goods and for handling of such goods shall not lease, gift, sell or sublet or in any other manner transfer any of the premises in a customs area; or sub contract or outsource functions permitted or required to be carried out by him in terms of these regulations to any other person, without the written permission of the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

From a plain reading of the above provisions, it is evident that this provision only applies in case of (i) lease/gift/sale/sublet/other transfer of any of the premises in a customs area; or (ii) sub-contracting or outsourcing functions permitted or required to be carried out by the CCSP. The present case admittedly is one of mere change in shareholding pattern/change in composition of Board of Directors and not one of either (i) or (ii) mentioned above. Consequently, the provisions of Regulation 6(2) of the HCCAR, 2009 do not apply at all and the SCN is not sustainable on this count alone.

2.10 That there is no requirement whatsoever in Regulation 3(2) of the Public Warehouse Licensing Regulations, 2016 either to file intimation or take prior approval in case of change in shareholding pattern/composition of Board of Directors of the CCSP. The relevant provisions are reproduced below:

The Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall not issue a license 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 penalized 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 license.*

That it is evident that the same applies only at the time of grant of the license. In any event, the same applies *qua* an "applicant". "Applicant" is defined in Regulation 2(1)(b) of the same Regulations to mean a person who applies for the license. That the person who applied for the license was the Noticee Company which is a separate legal entity which continues even today, irrespective of the SPA. By way of the SPA, only the shareholding pattern and the composition of Board of Directors has changed, but the Noticee Company continues to operate as a separate legal entity. Hence, the provisions of Regulation 3(2) as cited in the SCN are not applicable *in* this case. 'that the Commissioner was satisfied at the time of issue of the license that the Noticee Company was not falling under any of the clauses mentioned therein (i.e. was not bankrupt, penalized or convicted of an offence). Hence, the stipulations of Regulation 3(2) (even if assumed to be applicable), stood fulfilled in this case.

2.11 That even the CBIC Circular cited in the SCN is not applicable at all to the facts of the present case. The relevant portion of the circular is reproduced below:

5. Application and Approval Procedures

5.1. Setting up of new ICD/CFS/AFS

5.1.1. The application for setting up of new ICD/CFS/AFS shall be submitted to the Member (Customs), CBIC, Office of the Commissioner (RI I), 5th floor...New Delhi 110066...

5.2. Applications for other purposes

5.2.1. Change of CFS to 'CD and vice versa and notification of AFS in Existing ICD - When a CFS operator wants to upgrade the facility to ICD or convert the ICD to CFS, he shall approach the IMC for approval for such a change. Such applications shall be processed in the similar manner as that of a new facility.

5.2.2 Change in Ownership – Jurisdictional Commissioner of Customs can approve the change of custodian of existing facilities under section 45 of the Customs Act, 1962 and the change may be informed to the Commissioner (R & I). There will be no need to approach IMC for change in ownership provided the residual entity meets turnover and other requirements established within the framework of this policy. However, any pre-condition prescribed in this policy which the original developer is required to fulfill, shall be met by the new owner as well. The new owner shall ensure and confirm that all the liabilities under the Customs Act, 1962 and regulations thereof payable by the existing operator are duly discharged before such change of ownership.

That from a holistic reading of the circular, it is evident that the same pertains to setting up of CFS/ICD/AFS and change in status thereof. The present case is neither that of setting up or CFS, nor

of change in status thereof. Hence, the circular will not apply at all. In any event, Para 5.2.2 which is sought to be relied upon cannot be read in isolation, but has to be read in conjunction with Para 5.2.1 vault pertains to change froth CFS to ICD and vice versa and notification of AFS within an ICD and Para 5.2.2 is to be read in this context. Clearly, Para 5.2.2 would not apply in the present circumstances at all.

2.12 It was submitted that Para 5.2.2 deals with change of the custodian itself whereas the present case is one where only the shareholding pattern and composition of Board of Directors has changed and not the identity of the custodian itself. The Noticee Company was and remains the custodian and hence, the provisions of Para 5.2.2 would not apply. That even otherwise, the Noticee Company had filed intimation on 27.06.2024, i.e. much prior to the actual transfer of shares and appointment of Directors which happened only in October 2024. Hence, even assuming that there was any obligation upon the Noticee Company, the same duly stood discharged and that not only does the Noticee Company continue to fulfil the requirements to be appointed as a custodian/licensee of public warehouse, but even the new Directors appointed fulfil the requisite criteria, viz., none of them are declared insolvents or have been convicted of any offence. In fact, in terms of Section 152(4), read with Section 164 of Companies Act, 2013, a person convicted of any offence under any law, person of unsound mind or an insolvent are not allowed to be appointed as Directors of a Company. Hence, by default, any new Director appointed would fulfill the requisite criteria.

2.13 That in the case of an artificial juristic person like a Company, the issue as to whether sale of majority shareholding would amount to transfer of business/undertaking has been examined by Courts and it has been consistently held that transfer of control by way of sale of majority shares does not amount to transfer of business/undertaking. Reliance in this regard is placed on the following judgments: *LITV Software Communications Ltd. [2019 SCC On Line Born 2225]* and *Brooke Bond India Ltd. [1992 (2) BO M CR 4291]*. In view of settled legal position, it is submitted that transfer of majority shareholding does not amount to transfer of undertaking/business and therefore in the present case also as the ownership of the CFS has not been changed and no obligations arise on the Noticee Company.

2.14 That it is settled law [Ref: *Life Insurance Corporation of India v Escorts Ltd. & Ors.* reported at (1986) SCC 264] that permission may be granted *ex-post facto* basis. In the present case, there being no other shortcoming or impediment in the Noticee Company's operations, it is submitted that the change, in shareholding/Directors be approved on an *ex-post facto* basis (assuming such an approval is warranted in the first place). That the SCN appears to proceed on an erroneous premise that the SPA affected any change in the shareholding/ Directors. It is submitted that the SPA is more akin to an agreement to sale rather than a sale deed itself. The actual sale of shares and appointment of new Directors took place in October 2024, by when the Noticee had already intimated the Customs Department regarding the same. Accordingly, no allegation of wrongdoing can be imputed to the Noticee Company and that when there has been no contravention of the regulations as is elaborated above, there is no question of imposition of any penalty under Regulation 12(8) and section 117 of the Customs Act as is proposed in the SCN.

2.15 In view of the above, the Noticee requested the AC to kindly recommend dropping of the proceedings as proposed and requested to grant an opportunity of being heard in person in this matter before issuance of the Inquiry Report.

3 A personal hearing was held on 19.05.2025 before the Assistant Commissioner of Customs, 5th Floor, JNCH, to inquire the Show cause notice issued to M/s Navkar Corporation Ltd.

Findings of the Inquiry Officer

4.1 The Inquiry Officer found that the CCSP has not adhered to their responsibilities of CCSP as mentioned in HCCAR 2009, which have to be necessarily complied with by every CCSP and the CCSP have signed a Share Purchase Agreement with JSW Port Logistics Private Limited, a wholly owned Subsidiary Company of JSW infrastructure Limited on 27th June 2024 without the prior permission from the competent authority i.e. the Jurisdictional Commissioner of Customs and therefore, violated Regulation 6(2) of the Handling of Cargo in Customs Areas Regulations, 2009.

4.2 The Inquiry Officer found that by their aforesaid acts of omission and commission, M/s Navkar Corporation Ltd, CFS has violated the regulation 6 (2) of the HCCAR, 2009 read with Para 5.2.2 of CBIC Circular 50/2020 as alleged under the instant SCN and have made themselves liable for punitive action under the provisions of Regulation 12(8) of HCCAR,2009, Section 117 of the Customs Act, 1962.

4.3 The Inquiry Officer has concluded that the charges levelled under the instant Show Cause Notice that the CCSP has failed to discharge their obligations cast upon them are conclusively proved and Noticee is liable for action under the the provisions of Handling of Cargo in Customs Area Regulations, 2009 as well as under the provisions of the Customs Act, 1962 as proposed under the instant Show Cause Notice.

Personal Hearing before Adjudicating Authority

5. Personal Hearing in this matter was fixed initially on 17.07.2025, later advanced and fixed on 16.07.2025 at 11:00 am, on request of the noticee. Miss Deepa Gehani, Company Secretary and Shri Mahesh Adapa, Chief Operating Officer, attended the personal hearing on 16.07.2025. They represented that CCSP, M/s Navkar Corporation Ltd. is a listed entity and that the transfer of the shares took place in October,2024 much after the intimation to Customs and in view of the same, requested to drop all the proceedings in the subject SCN by taking a lenient view.

DISCUSSION AND FINDINGS

6.1 I have gone through the records of the case, the Show Cause Notice, written reply submitted by the noticee to the Show Cause Notice, the inquiry report and the oral submissions made by the Noticee at the time of personal hearing. I find that the requisite procedure as set out in Regulation 12 of the HCCAR, 2009, has been followed before the Personal Hearing.

6.2 I find that M/s Navkar Corporation Ltd. (the noticee), was issued with a Show Cause Notice

dated 24.3.2025 for having failed to fulfill their responsibilities as custodian and also for contravening Regulation 6(2) of the provisions of the Handling of Cargo in Customs Area Regulations, 2009 as

- (i) they had signed a Share Purchase Agreement with JSW Port Logistics Private Limited, a wholly owned Subsidiary Company of JSW infrastructure Limited on 27th June 2024 without prior permission from the jurisdictional Commissioner of Customs; and also
- (ii) that the licensee had changed its ownership through sale of controlling shares and its Directors without taking prior approval of the Commissioner(General).

6.3 I find that in terms of the Handling of Cargo in Customs Areas Regulations, 2009, M/s Navkar Corporation Ltd., was approved as a Customs Cargo Services Provider (CCSP) subject to the condition that they shall abide by all the provisions of the Customs Act, 1962 and HCCAR, 2009, other regulations, notifications, orders issued thereunder.

6.4 The issue therefore, before me is whether signing of a Share Purchase Agreement requires the prior permission of the Jurisdictional Commissioner of Customs. I find that there was a Share Purchase Agreement dated 27.6.2024 for sale of promoter seller shares the fact of which was intimated by M/s Navkar Corporation Ltd. vide their letter dated 10.07.2024 with the subject "Intimation / Approval for 'change of control' in CFS-I, CFS-II and CFS-III of Navkar Corporation Limited" and vide their letter dated 30.07.2024 had submitted the copy of Share Purchase Agreement for proposed transfer of shareholding between current promoters and JSW Port Logistics Pvt Limited.

6.5 I have gone through the Share Purchase Agreement (SPA) dated 27.6.2024, which states the Promoter Sellers of the company, Navkar Corporation Ltd. are desirous of selling the promoter seller Sale Shares aggregating to 70.37% of the share capital of the company. I find that upon execution of the said Agreement, the purchaser (JSW Port Logistics Private Limited) was required to make an open offer for equity shares representing a minimum of 26% of the share capital in accordance with the Takeover Regulations.

"Completion" of the sale of the Promoter Seller Sale Shares to the Purchaser as per the SPA would be on the "Completion Date" which would be :

"(a) the earlier of:

(i) the date of completion of the Open Offer; or

(ii) the date falling within, but no later than, 30 (thirty days after the Purchaser's CP Confirmation Certificate is issued or deemed to be issued; or

(b) any other date as may be mutually agreed between the Purchaser, and the Promoter Sellers in writing.

Provided, however, in any event under (a) or (b), the Completion Date shall not be prior to the expiry of 21(twenty-one) Working Days from the date of the publication of the detailed public statement in connection with the Open Offer."

6.6 I find that Navkar Corporation Ltd. on 10.7.2024 (received in this office on 11.7.2024) had addressed a letter to the Commissioner of Customs (General), before 21 days had elapsed from the execution of the Sale Purchase Agreement. I also find that in the aforesaid letter dated 10.7.2024, they had not only intimated that the subject SPA had been signed, but also sought approval under para 5.2.2 of CBIC Circular 50/2020 for grant of approval for this proposed change of control in Navkar Corporation Ltd.

6.7 Para 5.2.2 of CBIC Circular 50/2020 is reproduced below (emphasis added) :-

*“Change in Ownership - Jurisdictional Commissioner of Customs **can approve the change of custodian of existing facilities** under section 45 of the Customs Act, 1962 and the change may be informed to the Commissioner (RI&I) There will be no need to approach IMC for change in ownership provided the residual entity meets turnover and other requirements established within the framework of this policy. However, any pre- condition prescribed in this policy which the original developer is required to fulfill, shall be met by the new owner as well. The new owner shall ensure and confirm that all the liabilities under the Customs Act, 1962 and regulations thereof, payable by the existing operator are duly discharged before such change of ownership.”*

6.8 Now, on the question of whether as a consequence of the subject SPA the custodian of existing facility had changed, I find that there was no change in custodian of existing facilities as Navkar Corporation Ltd. continued to function as the same entity, with only the control agreed to be passed on to the purchaser as per the SPA. It is a well settled law that a company is a legal person on its own, different from who owns/controls it, as borne by section 9 of the Companies Act, 2013 as reproduced below (emphasis added):

*“From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and **all other persons, as may, from time to time, become members of the company**, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.”*

The judgement of the Hon'ble Supreme Court in the case of L.D Industries v Commissioner of Central Excise, Pune wherein it has been held that limited companies whether public or private are to be treated as separate entities distinct from shareholders, also bears out the same.

6.9 The allegation in the SCN was that the noticee by signing a SPA without the prior permission of Commissioner of Customs had contravened Regulation 6(2) of the Handling of Cargo in Customs Area Regulations, 2009 which states

“The Customs Cargo Service provider approved for custody of imported or export goods and for handling of such goods shall not lease, gift, sell or sublet or in any other manner transfer any of the premises in a customs area; or sub contract or outsource functions permitted or required to be carried out by him in terms of these regulations to any other person, without the written permission of the Commissioner of Customs”.

6.10 I find that the allegations in the subject Show Cause Notice with respect to the noticee contravening the Handling of Cargo in Customs Areas Regulations, 2009 are not sustainable as the CCSP had not leased, gifted, sold or sublet or in any other manner transferred any of the **premises** in a customs area nor does the selling of a controlling stake in the company tantamount to sub-contracting or outsourcing functions permitted or required to be carried out by the noticee.

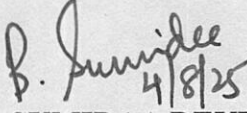
6.11 With regard to the allegation that the Licencee had changed its ownership through sale of controlling shares and had changed its Directors without taking prior approval of the Commissioner(General) as set out in the Show Cause Notice, I find that Constitution of the Board of Directors (including brief bios of each director, the roles envisaged for each of them) had to be submitted for initial setting up of CFS (Annexure-II to CBIC Circular 50/2020 dated 5.11.2020). Para 5.2.2 of the aforesaid circular states that *“any pre- condition prescribed in this policy which the original developer is required to fulfill, shall be met by the new owner as well.”* I find that therefore, the new Constitution of the Board of Directors had to be informed to the jurisdictional Commissioner of Customs. I find from records that a copy of the resolution passed by the Board of Directors on 11.10.2024 was submitted to the jurisdictional Commissioner on 17.10.2024. I find that nowhere in the SCN, any provision under the Customs Act, 1962, regulations, notifications, circulars has been quoted wherein it is mandated that prior approval of the Commissioner of Customs has to be taken before appointment of the Directors of a company approved as CCSP. A reference has been made to Rule 3(2) of the Public Warehousing Regulations, 2016 which states that the Principal Commissioner or Commissioner of Customs shall not issue a licence to an applicant if he has been declared an insolvent or bankrupt, convicted for any offence under any law for the time being in force, etc. I find that under this Rule too, no prior permission of the Commissioner of Customs is required for change of Directors of any company. Even under the Companies Act, 2013, only the consent of the Director has to be filed with the Registrar within 30 days of his appointment as Director (Section 152 of the Companies Act, 2013 refers) and no approval is required. I therefore, find that the allegation that prior approval of the Commissioner of Customs is required for change of Directors of a company approved as CCSP to be without legal basis. As none of the violations as alleged in the SCN stand proved, I drop the proposal to revoke the noticee’s licence and the proposal to impose penalties under section 117 of the Customs Act, 1962 and Regulation 12(8) of the HCCAR, 2009.

6.12 As discussed above, I find that the allegations in the SCN dt 24.3.2025 issued to M/s Navkar Corporation Limited are not sustained and that the proceedings initiated vide the subject SCN are liable to dropped.

I, therefore, pass the following order:

ORDER:

I drop the proceedings against M/s Navkar Corporation Ltd. instituted vide SCN dated 24.3.2025 issued from F.No. GEN/2347/2024-CCSP-O/o COMMR-CUS-GEN-NHAVA SHEVA.


(B. SUMIDAA DEVI)

Commissioner of Customs
NS-General, JNCH.

To,

M/s. Navkar Corporation Ltd.
Survey No. 89/93/95/97
Somathane Village
Kon-Savala Road
Taluka-Panvel, Dist. Raigad
Maharashtra.

Copy to:

1. The Chief Commissioner of Customs, Mumbai Customs, Zone-II, JNCH.
2. The DC/AC, M/s. Navkar Corporation Ltd.
3. The DC/AC, CRAC, Mumbai-II, JNCH.
4. The DC/AC, CRRC, JNCH.
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. Office Copy