

	<p style="text-align: center;">सीमाशुल्कआयुक्त का कार्यालय (सामान्य)/ OFFICE OF THE COMMISSIONER OF CUSTOMS, (GENERAL) सी सी एस पी विभाग/CCSP SECTION, जवाहरलालनेहरू सीमा शुल्क भवन / JAWAHARLAL NEHRU CUSTOM HOUSE, न्हावा-शेवा /NHAVA-SHEVA रायगढ़, महाराष्ट्र/, RAIGAD, MAHARASHTRA – 400707 ई-मेल:/E-mail Id: ccsp.jnch@gov.in</p>	 <p style="text-align: center;">सत्यमेव जयते</p>
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फा. क्रमांक/ F.No. : CUS/1304/2024-CCSP-O/O COMMR-CUS-GEN-NHAVA SHEVA

SCN No. : 326/2024-25/CCSP/CAC/JNCH dated 21.05.2024

DIN क्र. / DIN No. : **20260278NU000000FD3E**

आदेशक्र./Order No. : 379/2025-26/COMMR/CCSP CELL/NS-GEN/CAC/JNCH

आदेश की तारीख/
Date of Order : 06.02.2026

जारी करने की तारीख/
Date of Issue : 06.02.2026

आदेशकर्ता / Passed By : Smt. B. Sumidaa Devi,
Commissioner of Customs (General), JNCH

पार्टी का नाम/ Party name : M/s. JWR Logistics Pvt. Ltd.

ORDER-IN-ORIGINAL

मूलआदेश

1. A 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 मूलप्रति, 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 सीई एस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्टरी जनल बेंच), 34, पी.

डी'मेलोरोड, 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 मुख्य मुद्दे:

- **फार्म** – फार्मसीए 3, चार प्रतियों में तथा उस आदेशकी चार प्रतियाँ, जिसके खिलाफ अपील की गई 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 गए शुल्क एवं ब्याज तथा लगाई गई शास्तिकीर कम 5 लाख रुपये या उससे कम है।
 (ख) पाँच हजार रुपये – जहाँ माँगे गए शुल्क एवं ब्याज तथा लगाई गई शास्तिकीर कम 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 शास्तिकीर कम 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 यथा संदर्भित एवं अन्य संबंधित मामलों के लिए सीमा शुल्क अधिनियम, 1962, सीमाशुल्क(अपील) नियम, 1982, सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय 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, where duty or duty and penalty in dispute, or penalty where penalty is in dispute 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 शास्तिका 7.5% जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा। ऐसा

न किए जाने पर अपील सीमाशुल्क अधिनियम, 1962 की धारा 129E के उपबंधों की अनुपालनानकिए जाने के लिए ना मंजूर किए जाने की दायी होगी।

BRIEF FACTS OF THE CASE

The Container Freight Station of M/s. JWR Logistics Private Limited (hereafter referred as CCSP) located at 15-45, National Highway, 4B, Panvel- JNPT Highway, Village - Padeghar, Panvel - 410206, Maharashtra having area 76,654 Sq. Mtr. was declared as a Customs Area under Section 8 of the Customs Act, 1962 vide Notification No. 22/2013 dated 26.08.2013 and was appointed as Custodian vide Notification No. 01/2014 dated 04.02.2014 for two years. Further, an additional area of 37,235 Sq. Mtr. was notified as a 'Customs Area' under Section 8 of the Customs Act, 1962 vide Notification No. 28/2015 dated 07.07.2015. Vide Notification No. 01/2016 dated 22.03.2016, M/s. JWR Logistics Private Limited, in respect of its Notified area, had been appointed as Custodian and Customs Cargo Service Provider for the further period of five (5) years from 04.02.2016. An additional area of 19,451 Sq. Mtr. was notified as a 'Customs Area' under Section 8 of the Customs Act, 1962 vide Notification No. 09/2019 dated 01.07.2019. Vide Notification No. 90/2021 dated 21.10.2021, M/s. JWR Logistics Private Limited, in respect of its Notified area, had been appointed as Custodian and Customs Cargo Service Provider for the further period of ten (10) years from 04.02.2021 subject to the validity of AEO –LO status.

1.2. The activities of the CCSP are regulated in terms of 'Handling of Customs Cargo in Customs Areas Regulations 2009 (HCCAR, 2009), read with the relevant provisions of the Customs Act, 1962. M/s. JWR Logistics Private Limited CFS was appointed as a 'Customs Cargo Services Provider' subject to following conditions:

(a) *"The Customs Cargo Services Provider, M/s. JWR Logistics Pvt. Ltd. shall discharge all the responsibilities prescribed under regulation 6 of "Handling of Cargo in Customs Areas Regulations 2009".*

(b) *"The Custodian M/s. JWR Logistics Pvt. Ltd hereby approved as Customs Cargo Services Provider for the said CFS shall be responsible for fulfilment of the conditions of the regulations prescribed in "Handling of Cargo in Customs Areas Regulations 2009" in respect of Customs Cargo Services Provider working on their behalf or with their permission in the said CFS".*

1.3. A letter dated 28.11.2023 was received from M/s VNS Switchgear (I) Pvt. Ltd., wherein a complaint had been made by the exporter M/s VNS Switchgear (I) Pvt. Ltd. against the CCSP M/s. JWR Logistics Private Limited for damage of their cargo pertaining to the Shipping Bill No. 8284858 dated 06.03.2023. The exporter had claimed that their cargo pertaining to this Shipping Bill had got damaged by the Forklift Operator of the CCSP while loading/stuffing in the Container. Due to this damage, the exporter had to take the cargo "Back to Town" for repairing purpose. This process caused them huge financial loss as well as delay in shipment. The Exporter M/s. VNS Switchgear (I) Pvt. Ltd. had communicated to the CCSP through mail dated 24.03.2023 and had asked the CFS to bear the cost of:

- a) Back to Town-Customs procedure costs,
- b) Transportation cost of the said cargo to factory,
- c) Repair cost at factory,
- d) Transportation cost of the said cargo back to CFS,
- e) Export Customs procedures cost and
- f) Container detention cost.

In reply to the exporter, the CCSP vide mail dated 27.03.2023 had stated that the damage occurred because the representative of exporter had not properly guided the forklift operator and hence denied to bear the costs. Thereafter, the exporter had sent notices dated 14.08.2023, 25.09.2023 and 27.10.2023 to the CFS which were replied through the legal team of CCSP on 05.09.2023, 31.10.2023 and 31.10.2023 respectively. Through these notices, the exporter had stated that the CCSP was responsible for his loss and had asked for payment of Rs.20, 20,000. In reply, the CCSP had stated that it was not their mistake and refused to pay the compensation.

1.4. In view of the above letter of M/s. VNS Switchgear (I) Pvt. Ltd. dated 28.11.2023, M/s. JWR Logistics Pvt. Ltd. was asked to provide the factual report of the subject case, vide this office letter dated 04.12.2023. However, the CCSP did not respond for a long period. Upon being reminded, the CCSP sent its reply dated 31.01.2024 through email on 01.02.2024. The CCSP in their reply submitted that:

i) *The said cargo was unloaded at CFS using 10 Tons forklift as requested by the handling agent without sharing any drawing for lifting purpose, in terms of safe handling there has to be lifting markings on the cargo for everyone's understanding & to adhere precautions which were not available/visible on said package.*

ii) *The said cargo was to be handled using HYDRA with Nylon strap belts on side panel lifting point (Not Available) to avoid any such incident during operational handling.*

iii) *Despite unloading of cargo in appropriate manner, at the time lifting for stuffing cargo with 10 Tons forklift, the Lifting Fork got dashed with the connecting valve underneath which was not visible resulting in damage, Spillage of oil.*

iv) *The entire incident happened in presence of agent representative & later upon discussion with shipper, it was decided to take the cargo back to town for necessary repair purpose to avoid any issues with Buyer at destination. The subject claim issue was taken up by Exporter Advocate Mr. Anil Balani with CFS & same was replied by CFS Advocate Mr. Anil Jadhav.*

v) Further, the CFS informed that:

a) The first notice from VNS Switchgear Pvt.Ltd was received through their advocate on 14.8.2023 and the reply was given on 05.09.2023.

b) The second notice was received on 25.09.2023 for which the reply was sent on 31.10.2023.

c) The third notice was received on 27.10.2023 and the reply was given on 31.10.2023. All the replies were sent through their advocate. Thereafter there has been no communication.

d) The incident occurred on 23.03.2023. The CFS does not have any CCTV footage of the incident as it has taken place almost 10 months back.

e) The matter is not in any court.

1.5. Since the CCSP denied the claims made by the complainant M/s VNS Switchgear (I) Pvt. Ltd., the complainant was asked to submit sufficient evidence in favour of his claim. Accordingly, vide mail dated 14.02.2024, the complainant forwarded various photographs along with mail conversation with the CCSP. On scrutiny of these documents, it is found that vide mail dated 27.03.2023, Mr. George Mathew, manager of JWR CFS inter alia accepted that "The oil pipe of the switch gear was damaged while being lifted for loading onto a FR

container." Further, it is clearly mentioned in the Incident Report of CCSP that the subject cargo got damaged inside the CFS M/s JWR Logistics Private Limited.

1.6. As the subject cargo got damaged inside the CFS and CCSP had denied the damage claims made by the complainant M/s VNS Switchgear (1) Pvt. Ltd, it appeared that the CFS has violated the undertaking given under the Regulation 5.6 and has violated the Regulations 6(1)(i) and 6(1)(q) of Handling of Cargo in Customs Area Regulations (HCCAR), 2009. Therefore, a Show Cause Notice No.326/2024-25/CCSP/CAC/JNCH dated 21.05.2024 was issued to CCSP i.e. M/s. JWR Logistics Private Limited 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 said Notice, as to why:

- i. Action should not be initiated under regulation 11 of HCCAR, 2009 for suspension or revocation of their appointment as Customs Cargo Service Provider;
- ii. Penalty as per Regulation 12(8) of the Handling of Cargo in Customs Areas Regulations (HCCAR), 2009 read with 158(2) of the Customs Act, 1962 should not be imposed on the CCSP; and
- iii. Penalty under Section 117 of the Customs Act, 1962 should not be imposed on the CCSP.
- iv. The amount of loss occurred due to mishandling of the subject goods should not be recovered from the CCSP.

Also, the Assistant Commissioner of Customs, CCSP Cell, JNCH was nominated to hold inquiry in accordance with the HCCAR, 2009.

2. Relevant legal provisions applicable in the subject case:

The relevant legal provisions under the Customs Act 1962 and HCCAR-2009 applicable in subject case are summarized as under:

(i) As per Section 141(2) of Customs Act 1962,

"The imported or export goods may be received, stored, delivered, dispatched 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."

(ii) As per section 117 of Customs Act 1962,

'Any person who contravenes any provision of this act or abets any such contravention or who fails to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to penalty not exceeding four lakh rupees.'

(iii) As per section 158(2) of Customs Act 1962,

'Any rules or regulations which the Central Government or Board is empowered to make under this act may provide that any person who contravenes any provision of a rule or regulation or abet such contravention or who fails to comply with any provision of a rule or regulation with which it was his duty to comply, shall be liable to a penalty which may extend to two lakh rupees.'

(iv) Regulation 5.6 of HCCAR, 2009 states: *"The CCSP will undertake to indemnify the Commissioner of the Customs from any liability arising on account of damages caused or loss suffered on imported or export goods, due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, storage, delivery, dispatch or otherwise handling.'*

(v) Regulation 6(1)(i) of HCCAR, 2009 states: *"The Customs Cargo Service provider be responsible for the safety and security of imported and export goods under its custody."*

(vi) Regulation 6(1)(q) of HCCAR, 2009 states: *"The Customs Cargo Service Provider shall abide by all the provisions of the Act and the rules, regulations, notifications and order issued there under."*

(vii) Regulation 11 of HCCAR, 2009 states: *"The Commissioner of Customs may subject to the provisions of these regulations, suspend or revoke the approval granted to the Customs Cargo Service provider subject to the observance of procedure prescribed under regulation 12 and also order for forfeiture of security, if any, for failure to comply with any of the provisions of the Acts and the rules, regulations, notifications and orders made under there."*

(viii) Regulation 12 of HCCAR, 2009 prescribes procedure for suspension or revocation of approval and imposition of penalty.

3. REPLY TO THE SCN

(i) CCSP denied each and every allegation made in the said SCN as the same are vague, baseless and lack any corroborative evidence.

(ii) It was submitted that they have been incorporated in the year 2010, and around 69 acres of their land has been developed into a container freight station. Their entire facility is a notified Customs Area under security and surveillance. They have been in this line of business for 14 years and have never violated any rules and/or regulations and have conducted their business in accordance to the provisions of Customs Act. 1962.

(iii) that not all pivotal documents have been considered during the issuance of the said SCN. Therefore, they placed on record certain documents and/or information against the purported allegations in order to prove their bonafides. It was submitted that on 24th March 2023, they were in receipt of the email from the exporter wherein CCSP was asked to bear the costs mentioned therein. In reply to the aforesaid email, on 27th March 2023 it was stated that the damage occurred because the representative of the exporter had not guided the Forklift operator properly, thereby denying all the costs alleged in the email of the exporter. Thereafter, on 14th August 2023, 25th September 2023 and 27th October 2023, the exporter sent legal notices to CCSP which were replied by them on 05th September 202, 31st October 2023 and 31st October 2023 respectively. Further, a letter dated 09th December 2023 (which was received by CCSP on 31st January 2024) was sent by the Customs, wherein CCSP was asked to provide a factual report of the subject case to which CCSP had replied vide its letter dated 31st January 2024, denying all the allegations raised by the exporter and providing an explanation as to why CCSP cannot be held liable for the acts of the exporter.

- that even after holding CCSP liable, vide various notices as explained above, the exporter, not only facilitated its present exports from CCSP but also got its subsequent consignments exported with the help of CCSP. If the exporter was not been satisfied with the services provided by CCSP, it would have not have come back to CCSP for its goods to be exported. This fact proves that CCSP has fulfilled its duties in a diligent manner. Thus, CCSP ought not to be held liable and the proceedings of the captioned notice be dropped on this ground alone.

(iv) that vide their reply dated 31st January 2024 sent vide email dated 01st February, 2024, they had made it very clear that the said cargo was unloaded at the Container Freight Station ("CFS") using 10 Tons Forklift as requested by the handling

agent. Also, in this respect, no drawing for lifting purpose was shared by the exporter with CCSP, as in terms of safe handling of the cargo, there must be lifting markings on the cargo for everyone's understanding. CCSP would have adhered to the precautions in case the same was present on the cargo; however, it was not available/ visible on the said cargo. This contention had not been denied by the exporter thereby evidently placing on record that CCSP in respect to the said cargo had categorically executed its service as per the exporter's representative's request. Further, the cargo was to be handled using HYDRA with Nylon Strap belts on side panel lifting point in order to avoid any such incident during operational handling, which was again not instructed to CCSP by the exporter and at the time of lifting the cargo for stuffing with 10 Tons forklift, the lifting fork unintentionally touched the connecting valve underneath, which was not visible, resulting in damage. The entire incident happened in presence of the agent representative and later upon discussion with shipper, it was decided to take the cargo back to town for necessary repairs. The subject claim issue was taken up by the exporter's Advocate with CFS in various manners, and the same was replied to CCSP's advocate. Thus, the exporter should be solely held responsible for the damage as its agent chose a wrong equipment to load the cargo. Hence, the proceedings in the captioned notice shall be dropped on this ground alone as CCSP has not acted against the HCCAR in any manner.

(v) It was submitted that it had incurred additional expenditure for removing the oil from the surface to make the area operational. Further, it was exporter's responsibility to take insurance on the goods in order to meet the expenses of such untoward incidents which was not taken up in the present case by the exporter.

(vi) that Mr. George Mathew had neither acknowledged nor accepted the damages caused by the forklift operator and had further assured to support the exporter in all possible manner. Further, Mr. George Mathew had in fact informed that the forklift operators should have been guided by the exporter to lift the load from the proper side in order to avoid any damage. Also, Mr. Mathew had made it very clear that it would not be practical for the CCSP to bear the cost of the entire exercise. Mr. George Mathew had never accepted as to what has been alleged in the captioned notice and therefore, the amount of loss occurred shall not be recovered from the CCSP, as the mishandling of the subject goods is not attributable to CCSP.

(vii) Regulation 5(6) of HCCAR states that, the CCSP will undertake to indemnify the Commissioner of the Customs from any liability arising on account of damages caused or loss suffered on imported or export goods, due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, storage, delivery, dispatch or otherwise handling. However, in the present case, as explained above, the CCSP has always followed the instructions of the exporter and has loaded goods in an appropriate manner. Had the CCSP not loaded the goods in an appropriate manner, the exporter in the present case would have not come to CCSP for loading of their subsequent goods. Thus, the Regulation 5.6 of HCCAR will not get attracted in the present case.

(viii) It was submitted that as per Regulation 6 (1) (i) of HCCAR, the CCSP is responsible for the safety and security of imported and export goods under its custody. Further, as per Regulation 6 (1) (q), the CCSP shall abide by all the provisions of the Act and the rules, regulations, notifications and orders issued there under. However, in the instant case CCSP has taken care of the goods to be exported and have not acted in contravention to the instructions of the Exporter and has also followed all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder. Thus, there is total misapplication of the aforesaid regulations, as the same is not at all attracted in the present circumstances and thus, it cannot be said that CCSP failed to fulfil its responsibilities assigned by the Regulation 6 (1) (i) and (q) of HCCAR respectively.

(ix) In the light of the above, as CCSP has not rendered itself liable for suspension/revocation of the approval for appointment of a CCSP by following the provisions of HCCAR, Regulation 11 is not applicable to CCSP in the present case.

(x) Penalty has been imposed under regulation 12(8) of the HCCAR, 2009 read with Section 158 of the Customs Act, 1962 which states that any person who contravenes any provisions of a rule or regulation or abets such contravention or who fails to comply with any provision of a rule or regulation which it was his duty to comply, shall be liable to a penalty which may extend to fifty thousand rupees. It was submitted that neither have they neither contravened any provisions nor have they failed to comply with any provision and therefore, penalty under Section 158 of the Customs Act, 1962 should not be imposed upon the Noticee.

(xi) that as per sub-regulation (8) of Regulation 12, if any CCSP contravenes any of the provisions of these Regulations or abets such contravention or who fails to comply with the

provisions of the Regulations, with which it was his duty to comply, he shall be liable to a penalty to the extent of Rs. 50,000/-. Therefore, assuming without admitting the fact, maximum penalty that can be imposed for violation of the said regulation shall be Rs. 50,000/-. It was further submitted that imposition of penalty u/s 117 of the Act provides for imposition of penalty only when there is no any other penalty specified elsewhere. In as much as penalty is specified under Regulation 12 (8), the question of imposition of penalty u/s 117 would not arise at all. CCSP relied upon *Central Warehousing Corporation Vs. Commissioner of Customs (Export) Nhava Sheva, 2015 (2) TMI 956 — CESTAT MUMBAI*.

(xii) that the penalties proposed to be imposed upon CCSP under Section 12(8) of HCCAR read with 158(2) of the Act and u/s 117 of the Act, ought not to be imposed. Also, no action shall be initiated under Regulation 11 of HCCAR for suspension or revocation of their appointment as CCSP. Thus, the proceedings in the captioned notice are liable to be dropped in the present case.

4. **REPORT OF THE INQUIRY OFFICER:**

The Inquiry Officer submitted his report dated 24.11.2025. The findings of the Inquiry Officer are as follows:

- (i) The Inquiry Officer conclusively found that the export cargo belonging to M/s VNS Switchgear (I) Pvt. Ltd. sustained damage on 23.03.2023 inside the premises of the CFS of M/s JWR Logistics Pvt. Ltd., during handling operations undertaken for stuffing/loading into a container.
- (ii) Inquiry Officer found that the CCSP's email dated 27.03.2023 expressly states that "*the oil pipe of the switch gear was damaged while being lifted for loading onto a FR container.*" This admission, made contemporaneously and prior to initiation of any dispute, is a material piece of evidence and clearly confirms the time, place and manner in which the damage occurred.
- (iii) Inquiry Officer found that the CCSP assertions that the exporter's representative did not guide the forklift operator and the package lacked lifting drawings or visible lifting markings, indicate, at best, possible contributory negligence on the part of the exporter. However, they do not dilute the CCSP's statutory obligations under HCCAR, 2009, particularly:

- **Regulation 6(1)(i):** *“The Customs Cargo Service Provider shall be responsible for the safety and security of imported or export goods under its custody.”*
- **Regulation 5(6):** *“The CCSP will undertake to indemnify the Commissioner of Customs from any liability arising on account of damages caused or loss suffered on imported or export goods due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, storage, delivery, dispatch or otherwise handling.”*
- **Regulation 6(1)(q):** *“The Customs Cargo Service Provider shall abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.”*

Under these provisions, the duty to ensure safe handling of goods is absolute and non-delegable. Therefore, even if the exporter had not provided lifting drawings or markings, the CCSP was obligated to adopt safe procedures, seek clarification before lifting, or refuse handling until safety could be ensured. No evidence has been produced by the CCSP to demonstrate adherence to these precautionary practices. The legal position that a custodian/CCSP bears primary responsibility for the safety of goods under their charge is long settled. The following precedents directly support the inquiry’s findings:

(a) *Central Warehousing Corporation v. Commissioner of Customs, Nhava Sheva, (Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi) Customs Appeal No. 53193 of 2018 | 10-10-2023:*

The Hon’ble Tribunal in its judgement held the CFS responsible for safe custody of goods. The relevant extract of the said judgement is as below:

— we observe from above quoted specific section 45 of Customs Act, 1962, that custodian is a person who has been approved by the Commissioner of Customs. Admittedly such approval was given to the appellant/CONCOR. Admittedly, there is no such approval in favour of the CISF. All the allegations as fastened against the custodian are under Regulation 6 HCCAR,2009 and section 45 of Customs Act, 1962 i.e. against the approved by custodian, who is none but CONCOR, the appellant. As per section 45 (2) (b) of Customs Act, 1962, the custodian is

duty bound to not to permit such goods to be removed from the customs area, except under and in accordance with written permission of proper officer or otherwise dealt with. Admittedly, there was no such permission with CONCOR for removal of the goods. As per section 45, the custodian is burdened with the responsibility of safe custody of imported goods unless and until those goods cleared either for home consumption or for being warehoused.

The above case law reinforces that liability for damage rests primarily with the custodian, unless they demonstrate that the damage occurred due to an external cause beyond their control—which is not the case here.

(iv) The CCSP has further stated that CCTV footage of the incident date is not available due to the passage of time. As CCTV surveillance and reasonable retention are essential requirements for ensuring transparency and accountability in Customs Areas, the absence of footage reflects a procedural lapse amounting to inadequate compliance with Regulation 6(1)(q). This deficiency restricts the ability to independently reconstruct the incident and undermines the robustness of operational control systems.

(v) The exporter has claimed a monetary loss of ₹20,20,000 under various heads such as repair charges, transportation expenses, back-to-town customs procedures and container detention. While the fact of damage occurring within the CFS has been independently established, the precise quantum of loss is subject to verification of supporting documents such as repair invoices, transport receipts and detention records, to be examined separately by the competent authority.

(vi) In view of the totality of evidence, including the CCSP's own admission, absence of adequate precautionary measures, procedural shortcomings and established judicial principles, the Inquiry Officer found that the CCSP failed to exercise due care and caution in the handling of the subject export cargo, resulting in a clear violation of Regulation 6, Regulation 6(1)(i) and Regulation 6(1)(q) of HCCAR, 2009. The mitigating arguments presented by the CCSP do not negate or override their statutory responsibilities. Accordingly, Inquiry Officer held the charges levelled in the Show Cause Notice No. 326/2024-25/CSP/CAC/JNCH dated 21.05.2024 as proved.

5. SUBMISSIONS OF CCSP ON INQUIRY OFFICER'S REPORT

(i) The Inquiry Report alleged that the Noticee's email dated 27.03.2023, which records that "the oil pipe of the switch gear was damaged while being lifted for loading onto an FR container," amounts to a contemporaneous admission made prior to the initiation of any dispute and, therefore, constitutes material evidence confirming the time, place, and manner in which the damage occurred. In this regard, CCSP contended that the Inquiry Report has misrepresented the contents of the email dated 27.03.2023. According to them, the email merely conveyed that the oil pipe of the switch gear was damaged during the process of loading onto the FR container because the exporter's representative, who was responsible for guiding the forklift operator to lift the cargo from the correct side to prevent damage, failed to provide any guidance during the operation. The CCSP further stated that it is a general and customary practice for the CFS to act strictly in accordance with the client's instructions, and that, in the present case, the cargo was handled entirely as per the request and directions of the exporter's representative. Moreover, they had duly informed the exporter's representative that the cargo should be handled using HYDRA with nylon strap belts on the side panel lifting point. However, the exporter's representative chose the forklift for reasons best known to them. It was also customary that the exporters provide proper lifting markings on cargo for handling the same safely. However, in the present case, the absence of the same and the wrong choice of equipment cannot be attributed upon the CCSP. The CCSP had to comply with the requests of the exporter, as they will also be paying for the services as availed by them. Furthermore, it was the exporter's responsibility to take insurance on the good in order to meet the expenses towards such untoward incidents. Even after holding CCSP liable to the damages caused to their cargo, the Exporter, not only facilitated its present exports from the CCSP, but also got its subsequent consignments exported from them. Thus CCSP has been diligently providing their services and fulfilling their duties as mandated upon them vide Regulation 6 of the HCCAR.

(ii) Regarding penalty under Regulation 12(8) of the HCCAR, 2009 read with Section 158 of the Customs Act, 1962 which states that any person who contravenes any provisions of a Rule or Regulation or abets such contravention or who fails to comply with any provision of a Rule or Regulation which it was his duty to comply, shall be liable to a penalty which may extend to fifty thousand rupees, CCSP submitted that neither have they contravened any provisions nor have they failed to comply with any provision and therefore, penalty under Section 158 of the Customs Act, 1962 should not be imposed upon them. It was submitted that Regulation 12(8) providing for penalty does not say that penalty is imposable on each of the contraventions but it says that if the

CCSP contravenes any of the provisions of the Regulations, then they are liable to penalty to the extent of Rs. 50,000/-. If the intention of the legislature was to provide for imposition of penalty for each of the contravention, the legislature would have said so specifically. Therefore, imposition of penalty of more than Rs. 50,000/- is not permitted under the law. Moreover, Section 117 of the Customs Act, 1962, lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged with a penalty not exceeding four lakh rupees. That being the position, the question of imposition of penalty under Section 117 of the Customs Act, 1962 would not arise at and is clearly unsustainable in law. With regards to the above contention, the CCSP relied upon the decision of the Hon'ble Tribunal (Mumbai) in *Central Warehousing Corporation versus Commissioner of Customs (Export) Nhava Sheva* [Appeal No. C/86123/20141 wherein imposition of penalty under Section 117 of the Customs Act, 1962 was set aside as Penalty under Regulation 12(8) of HCCAR, 2009. The relevant paras were reproduced as under:

"As regards the penalty imposed under Section 117, the said provision would apply only if there is no other penalty provide for violations of the provisions of the Handling of Cargo in Customs Area Regulations. Penalty is specified under Regulation 12(8). That being the position, the question of imposition of penalty under Section 117 would not arise at all. Therefore, the penalty imposed under Section 117 is clearly unsustainable in law."

(iii) The CCSP submitted that they have not violated any provision of the Customs Act, and the Inquiry Report did not allege any violation of the same. They relied upon the decision of the Hon'ble Mumbai Tribunal in the matter of *M/s Ajanta Pharma Ltd. vs. Commissioner of Customs (Air Cargo Export)* [Customs Appeal No. 87540 of 20221 wherein the Hon'ble Tribunal has set aside penalty under Section 117 of the Act, as no provision of the Act had been violated or even alleged to have been violated.

(iv) The CCSP submitted that they have been diligent in discharging their duties and obligations under the prevailing customs laws and HCCAR, 2009. They submitted that the allegations did not stand any ground in the present circumstances and hence, the proceedings initiated should not be proceeded with. The action alleged to be initiated under regulation 11 of HCCAR, 2009 and Penalty alleged to be imposed upon them as per Regulation 12(8) of the HCCAR, 2009 read with 158(2) of the Customs Act, 1962 and Penalty under Section 117 of the Customs Act, 1962 ought not to be imposed and the proceedings so initiated ought to be dropped.

6. **RECORD OF PERSONAL HEARING**

A personal hearing was granted to CCSP on 19.01.2026. Ms. Alex Renita Ann, Advocate and authorized representative of CCSP, appeared for personal hearing virtually held on 19.01.2026 at Webex platform. She submitted that the cargo was unloaded at CFS using Forklift as requested by the exporter. On being asked whether there was written approval from the exporter, she stated that it was verbal. She submitted that the damage occurred because of the representative of the exporter who had not guided the forklift operator properly and that their forklift also got damaged while unloading. Further, she submitted that even after the incident, the exporter still exports his consignments from the CFS. She submitted that penalty proposed to be imposed under Regulation 12(8) of the HCCAR, 2009 and under Section 117 of the Customs Act, 1962 should not be imposed. She also reiterated her written submissions dated 14.06.2024 and 19.12.2025.

7. **DISCUSSIONS AND FINDINGS**

7.1 I have carefully considered the Show Cause Notice No. 326/2024-25/CCSP/CAC/JNCH dated 21.05.2024, the reply dated 14.06.2024 submitted by CCSP, Inquiry Officer's Report dated 24.11.2025, CCSP submissions dated 19.12.2025 and also record of personal hearing held on 19.01.2026.

7.2. The primary issues for consideration before me are:

- (i) Whether M/s. JWR Logistics Pvt. Ltd., as an approved Customs Cargo Service Provider (CCSP), failed to discharge its statutory obligations under the Handling of Cargo in Customs Area Regulations, 2009 (HCCAR, 2009) and contravened the provisions therein, as alleged in the Show Cause Notice, attracting penal provisions under Regulation 12(8) of HCCAR, 2009 read with Section 158(2) of the Customs Act, 1962 and Section 117 of the Customs Act, 1962, in relation to the damage caused to export cargo pertaining to Shipping Bill No. 8284858 dated 06.03.2023.
- (ii) Whether the approval granted to M/s JWR Logistics Pvt. Ltd. as Customs Cargo Service Provider is liable for suspension or revocation under Regulation 11 of HCCAR, 2009

- (iii) Whether the amount of loss occurred due to mishandling of the subject goods should be recovered from the CCSP.

7.3. The Inquiry Officer, after conducting proceedings under Regulation 12, has concluded that the CCSP failed to discharge the statutory obligation cast upon them under Regulation 6, Regulation 6(1)(i) and Regulation 6(1)(q) of HCCAR, 2009.

7.4. It is an admitted and undisputed fact that the damage to the subject export cargo occurred within the premises of the CFS of the CCSP. The email dated 27.03.2023 issued by the CCSP's Manager, Mr. George Mathew, acknowledged that "the oil pipe of the switch gear was damaged while being lifted for loading onto a FR container." Further, CCSP in their reply dated 31.12.2024 has stated that during stuffing operations, the lifting fork got dashed with the connecting valve of the cargo, causing oil leakage and consequent damage. These statements clearly establish the occurrence of damage within the CFS and during handling by equipment of the CCSP. The contention of the CCSP that the said email has been "misrepresented" is not acceptable. The email, read in its entirety, unequivocally acknowledges the occurrence of damage during handling. Any attempt to attribute fault to the exporter does not detract from the fact that the cargo was damaged while under the custody of the CCSP.

7.5. The CCSP has taken the plea that the damage occurred because the representative of the exporter did not provide proper guidance or lifting drawings, and that lifting markings were not visible on the cargo. However, this defense cannot dilute the statutory responsibilities imposed upon the CCSP under HCCAR, 2009.

- Regulation 6(1)(i) of HCCAR, 2009 mandates the CCSP to ensure safety and security of import or export goods under its custody.
- Regulation 6(1)(q) of HCCAR, 2009 obligates compliance with all provisions of the Act and rules/regulations issued thereunder.
- Regulation 5(6) of HCCAR, 2009 specifically requires the CCSP to indemnify the Commissioner of Customs for any loss or damage to goods arising during handling.

These responsibilities are absolute, statutory and non-delegable. Once goods enter the Customs Area and come under the custody of the CCSP, the obligation to ensure their safe handling squarely rests on the CCSP. The CCSP cannot shift its statutory liability onto the

exporter or its representative. Operational suggestions from an exporter's representative do not override the CCSP's obligation to ensure safe handling by employing appropriate machinery, qualified operators and prescribed precautions.

7.6. The CCSP has stated that the cargo ought to have been handled using a Hydra with nylon straps instead of a forklift. This argument in fact strengthens the case against the CCSP, as it clearly establishes that the CCSP was aware of the correct and safe method for handling such cargo. However, the CCSP proceeded with handling using a forklift and CCSP failed to insist upon, or implement on its own, the safer handling method. Thus, the CCSP failed to act with the level of care expected from a professional custodian, resulting in violation of Regulation 6(1)(i).

7.7. The CCSP further argued that absence of lifting markings on the cargo prevented proper handling. However, if lifting markings were not visible, the CCSP could have either declined to load the cargo using a forklift, or required the exporter to clearly mark lifting points, or adopted a safer alternate lifting method known to them (HYDRA + nylon straps). Proceeding with loading in the absence of proper lifting visibility reflects deficiency in due diligence on the part of the CCSP.

7.8. Regulation 6(1)(q) obligates the CCSP to strictly comply with the Customs Act, Rules, Regulations and Orders. Safe handling of cargo is an intrinsic component of such compliance.

7.9. Regulation 5(6) requires the CCSP to indemnify the Commissioner of Customs against liabilities arising due to damage or loss of goods during handling. This provision reinforces the principle that risk during handling lies with the custodian.

7.10. Even assuming, but not conceding, that there was some lapse on the exporter's part, such contributory negligence does not dilute the CCSP's statutory obligation under Regulation 6(1)(i). The law places primary responsibility on the custodian.

7.11. The question of whether the exporter insured the cargo has no bearing on the CCSP's compliance with HCCAR. Insurance governs civil recovery between parties and does not absolve regulatory breaches.

7.12. The CCSP has argued that as the exporter continued using their CFS for subsequent shipments, it implies satisfaction with their services. This argument is extraneous and irrelevant. Compliance with HCCAR is statutory and does not depend on exporter satisfaction.

7.13. In view of the above, I find that the export cargo was damaged inside the CFS during handling operations undertaken by the CCSP; that the CCSP failed to ensure safe handling of goods under its custody; that the statutory obligations under Regulation 6(1)(i) and Regulation 6(1)(q) of HCCAR, 2009 read with Section 141 of the Customs Act, 1962 have been violated; and also that in this case, the exporter M/s VNS Switchgear (I) Pvt. Ltd. had sought reimbursement of the cost of:

- a. Back to Town-Customs procedure,
- b. Transportation of the said cargo to factory
- c. repair at factory
- d. Transportation of the said cargo back to CFS
- e. Export Customs procedures and
- f. Container detention

consequently, Regulation 5.6 relating to indemnification stands attracted. Though the fact of damage occurring under the custody of the CCSP is established, the exact quantum of loss claimed by the exporter is the subject matter of litigation. Hence, to the extent of damages claimed, I find that the CCSP should indemnify the Commissioner in terms of Regulation 5(6) which states that:

“5. 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:-

...

(6) Undertake to indemnify the Commissioner of Customs from any liability arising on account of damages caused or loss suffered on imported or export goods, due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, storage, delivery, dispatch or otherwise handling.”

7.14. I find that in this case a claim for Rs. 20,20,000/- (Rupees twenty lakh twenty thousand only) has been raised by the exporter for damages and I find that the same amount should be kept as a security with the Commissioner till the dispute is settled.

7.15. With regard to the proposal for suspension or revocation of the approval as CCSP under Regulation 11(1), I find that the CCSP's approach to his responsibilities as custodian is casual. They had also been issued another Show Cause Notice for mixing of hazardous cargo with general cargo, insufficient amount of bond required to be executed under Regulations 5(3) and 5(4) of the HCCAR, 2009. Also, ensuring the safety and security of cargo under its custody is the primary responsibility of the custodian and having failed in this primary responsibility, I find that strict action including suspension of their approval as custodian is warranted.

7.14. I find that beyond violation of regulations under the HCCAR, 2009, no other violation under the Customs Act, 1962 has been alleged, hence I refrain from imposing any penalty under Section 117 of the Customs Act, 1962 as proposed in the SCN.

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

ORDER

8.1. I suspend the approval granted as Customs Cargo Service Provider to M/s. JWR Logistics Pvt. Ltd. under Regulation 11 of the Handling of Cargo in Customs Areas Regulations, 2009 for 48 hours from 9.2.2026.

8.2. I impose a penalty of Rs. 50,000/- (Rupees Fifty thousand only) under Regulation 12(8) of the Handling of Cargo in Customs Areas Regulations, 2009 read with Section 158(2) of the Customs Act, 1962 for violation of Regulations 6(1)(i) and 6(1)(q) of HCCAR, 2009.

8.3. I do not impose any penalty under Section 117 of the Customs Act, 1962 on M/s. JWR Logistics Pvt. Ltd.

8.4. I order that a Bank Guarantee for Rs. 20,20,000/- (Rupees twenty lakh twenty thousand only) favouring the Commissioner of Customs, Nhava Sheva be submitted to this

office by M/s JWR Logistics Pvt. Ltd. within 10 days of receipt of this order. The same may be kept renewed till the dispute between M/s JWR Logistics Pvt. Ltd. and M/s VNS Switchgear (I) Pvt. Ltd. is resolved. Upon non-production of such Bank Guarantee by the end of the aforesaid 10 days, I order that the approval of M/s JWR Logistics as Customs Cargo Service Provider shall be suspended till the production of such Bank Guarantee.

This order is issued without prejudice to any other action that may be initiated against the CCSP 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. JWR Logistics Pvt. Ltd.
15-45, National Highway,
4 B Panvel-JNPT Highway,
Village Padeghar, Panvel – 410 206.

Copy to:

1. The Chief Commissioner of Customs, Mumbai Customs Zone-II, JNCH
2. DC/AC, M/s. JWR Logistics Pvt. Ltd.
3. DC/AC, CAC, JNCH
4. DC/AC, CRRC, JNCH
5. DC/AC, AEO Section, NS-III, JNCH
6. The Superintendent (P), CHS Section – for display on JNCH Notice Board.
7. Office Copy

