CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Customs Appeal No. 85943 of 2026

(Arising out of Order-in-Original F. No. GEN/1374/2026-CCSP-O/O COMMR-CUS-GEN-NHAVA SHEVA dated 05.05.2026 passed by the Commissioner of Customs, NS-GEN, JNCH, Nhava Sheva)

International Cargo Terminal Pvt. Ltd. .....**Appellant**
Village Koproli, Tal. Uran,
Dist. Raigad

VERSUS

Commissioner of Customs (Import & General), Mumbai .....**Respondent**
CCSP Section, JNCH, Nhava Sheva

APPEARANCE:

Shri Sujay Kantawala, Advocate with Shri Manoj Das, Consultant, Ms Aishwarya Kantawala & Ms. Ayushi Jha, Advocate for the appellant
Shri P R V Ramanan, Special Counsel for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE MR. A K JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No: 85999/2026

DATE OF HEARING : 08.07.2026
DATE OF DECISION : 10.08.2026

Per: AJAY SHARMA

This appeal has been filed by M/s. International Cargo Terminal Private Limited *(hereinafter referred to as "the Appellant")* against the impugned order dated 5.5.2026 passed by the Commissioner of Customs, NS-General, JNCH, in exercise of the power conferred by Regulation 11(2) of the Handling of Cargo in Customs Areas Regulations, 2009 *(hereinafter referred to as "HCCAR, 2009")*, whereby the suspension of the Appellant's approval as a Customs Cargo Service Provider *(hereinafter referred to as "CCSP")* was directed to continue until further orders.

2. The Appellant operates a Container Freight Station *(hereinafter referred to as "CFS")* at Nhava Sheva, known as M/s. ICTPL/Globicon CFS, and functions as a CCSP. Its approval was initially suspended by vide dated 13.4.2026. A post-decisional hearing was granted on 16.4.2026 and thereafter again on 4.5.2026, at the conclusion of which the impugned order dated 5.5.2026 was passed, continuing the suspension without indicating any outer time-limit. It is this open-ended continuation of suspension that is under challenge before us.

3. This appeal was earlier decided by this Tribunal vide order dated 8.6.2026. That order was challenged before the Hon'ble High Court of Judicature at Bombay in Customs Appeal (L) No. 20420 of 2026 and the Hon'ble High Court vide order dated 18.6.2026 set aside the order of the Tribunal and remanded the matter back for fresh decision, with the following observations:

> *"6. On the other hand Mr. Nankani, the learned Senior Counsel appearing on behalf of the CFS, submitted that Regulation 11(2) can be invoked only as a preventive measure and not as a punitive action. According to Mr. Nankani, in the facts of the present case, all the material that was required from*

the CFS had already been supplied to the investigating authorities, including the DRI, and therefore, there was no further need for the suspension order to continue. According to him, by continuing the suspension order, it is not a preventive action, but a punitive one, which, according to Mr. Nankani is impermissible in law.

7. After we heard the parties for some time, we find that the argument canvassed by Mr. Nankani and as formulated by him before us in the preceding paragraph is not the argument that was canvassed before the Tribunal. Therefore, naturally, the Tribunal has given no findings on this aspect since the aforesaid proposition was never canvassed before the Tribunal. When we noticed this and put it to the parties, the parties agreed that the impugned order can be set aside, and the matter be remanded back to the Tribunal to examine the proposition as canvassed by Mr. Nankani before us.

8. Accordingly, the impugned order passed by the Tribunal is hereby set aside, and the matter is remanded back to the Tribunal for deciding the question of suspension of CFS afresh. In other words, the Appeal filed by the CFS before the Tribunal stands restored. The effect of this will be that the suspension order dated 5th May, 2026 shall stand revived pending the hearing of the Appeal.

9. Since the Bench of the Tribunal had taken a prima facie view on the merits of the matter, we suggested to the parties that if they were agreeable, a different Bench of CESTAT hear the Appeal of the CFS (the Respondent herein). Both parties agreed that the Appeal of the CFS now pending before the CESTAT can be heard by a different Bench.

10. In these peculiar circumstances, we direct that the Appeal of the CFS shall be heard by a different Bench than the Bench that heard the Appeal and passed the impugned order.

11. We may hasten to clarify that this direction in no way casts any aspersions on the Bench that passed the impugned order, this being done only in the peculiar facts of the case.

Xxx xxx xxx”

4. It is in these circumstances that the appeal is before us for fresh consideration.

5. The issue that falls for our determination is whether the order dated 5.5.2026 under Regulation 11(2) of Handling of Cargo in Customs Areas Regulation, 2009 continuing the suspension of the Appellant's Customs Cargo Service Provider (CCSP) approval, *"until further orders"*, is legally sustainable?

6. The facts leading to the filing of the instant Appeal are stated in brief as follows. The Appellant was appointed "custodian" of ICTPL/Globicon CFS under Sections 45 (1) and 141 (2) of the Customs Act, 1962, and was approved as a CCSP by the Commissioner of Customs (General), JNCH, Nhava Sheva, under Regulation 10 of HCCAR, 2009, by notification dated 23.12.2016. The approval was renewed from time to time, the last renewal being on 8.8.2023.

7. By letter dated 12.4.2026 addressed to the jurisdictional Commissioner of Customs, DRI, MZU informed that two consignments of fireworks/firecrackers in Container Nos. INKU2208675 (declared as "CMS Granules") and ONEU6262323 (declared as "Gypsum Plaster") had been seized at the Appellant's CFS on 11.4.2026. The letter further stated that another container, No.TGHU6099161, covered by Bill of Lading No. JSSONSA2603010 dated 18.3.2026 and imported in the name of M/s. CK International (IEC: CSNPD7021D), had been declared to contain "Household Items", had reached the

Appellant's premises on 9.4.2026, and that its contents were being unauthorisedly removed from the customs area by persons operating as a smuggling syndicate. It further stated that the DRI officers further stated that they had sent an e-mail at 19:44 hrs. on 11.4.2026 to the Appellant, followed by a telephonic intimation at 19:45 hrs., directing that the said container be kept on hold as they were on their way to secure the cargo. While DRI officers were en route, they received a call at 20:14 hrs. from an official of the Appellant informing them that the goods in container No. TGHU6099161 were being removed from within the CFS. DRI officers rushed to the spot and secured the container and the goods, by which time approximately 90% of the cargo had already been offloaded and was being transferred, without a Bill of Entry or customs permission, to another truck, the container seal having been illegally broken. Examination whereof revealed that the consignment, declared as "Household Items", actually comprised Chinese-origin fireworks/firecrackers, the import of which is restricted.

8. On the basis of these allegations namely, failure to prevent unauthorised access to the premises, failure to maintain records of the movement and handling of imported goods, failure to prevent clandestine removal of goods, failure to ensure the safety and security of premises and cargo, and failure to ensure that a container marked for scanning was in fact scanned, the Commissioner formed the view that immediate action was necessary pending inquiry, and that continuance of the

Appellant's CCSP approval was no longer in the public interest, the Appellant having failed to discharge its obligations under Regulations 6(1)(b), 6(1)(f), 6(1)(g), 6(1)(i) and 6(1)(q), read with the violation of Regulation 5(1)(n), of HCCAR, 2009. Accordingly, the Appellant's CCSP approval was suspended with immediate effect, without a prior hearing, by order dated 13.4.2026 (at 12:13 hrs.), though goods already held by the CCSP on that date were permitted to be cleared for export and import.

9. A post-decisional hearing was granted on 16.4.2026 and 4.5.2026 respectively, following which the impugned order dated 5.5.2026 was passed, continuing the suspension "*until further orders*".

10. Learned counsel for the Appellant submitted that suspension under Regulation 11(2) is a preventive measure intended only for emergency situations, and cannot be resorted to as a substitute for the procedure mandatorily prescribed for suspension under Regulation 11(1). Regulation 11(2), it was submitted, does not contemplate the indefinite continuation of suspension without even a show cause notice being issued to commence inquiry under Regulation 12.

11. It was further submitted that there was no independent application of mind by the Commissioner, either while passing the initial suspension order dated 13.4.2026 or the impugned order dated 5.5.2026, both of which were founded entirely on

DRI's investigation. The initial order rested solely on DRI's letter dated 12.4.2026, without any indication of independent evaluation by the Commissioner of the material said to justify "immediate action"; the impugned order, likewise, was substantially founded on phrases such as "as informed by DRI", "as per the findings of DRI", "the facts brought on record by DRI", and "the investigation conducted by DRI clearly reveals".

12. Learned counsel submitted that the Appellant extended full and unequivocal cooperation to the DRI investigation: its personnel were produced before the investigating agency as and when required; assistance was rendered in identifying persons suspected to be involved; the seal-cutter who allegedly issued unauthorised instructions to cut the container's seal was arrested by DRI; certain labour supervisors identified during the investigation were produced by the Appellant and were also arrested; and CCTV footage was furnished to DRI in a timely manner.

13. As to remedial measures, learned counsel submitted that the Appellant had promptly acted to plug the procedural gaps identified, including: mandating authorisation letters from Customs House Agents (CHAs) for personnel visiting the CFS; deploying additional security personnel for real-time monitoring of container scanning; instituting enhanced gate-level verification, introducing additional layers of security to prevent any container from bypassing the scanning process; fortifying

the seal-cutting procedure through dedicated supervisory personnel and photographic documentation; and revising its Standard Operating Procedures (SOPs). These steps were brought to the Commissioner's notice, but while taken on record, they were not verified and were deferred for consideration "before subsequent action is contemplated" while observing that that such corrective measures did not erase the past violations concerning the integrity and security of the customs area.

14. Per contra, learned Special Counsel for the Revenue reiterated the findings recorded in the impugned order. He submitted that serious irregularities had been detected in the Appellant's functioning, including: cutting of the container seal in the absence of a Customs officer; offloading of cargo without filing a Bill of Entry or obtaining customs permission; bypassing of scanning, even of containers marked for scanning, through substitution, so as to facilitate smuggling of high-value and prohibited goods; and entry of vehicles and labourers without adequate checks. He submitted that the involvement of prohibited and potentially hazardous Chinese-origin fireworks elevated the matter from a simple revenue issue to a security breach, and that the laxity displayed by the Appellant was evident and glaring. He relied upon CCTV photographs showing that the truck meant to carry away the fireworks was kept ready within the CFS, which, he submitted, demonstrated a planned operation. He further submitted that only the timely intervention of DRI averted serious damage to revenue and security, and that

the episode raised the further question of the extent to which such practices may have been occurring, undetected, in the past. He submitted that Regulation 11(2) is fundamentally preventive and regulatory, invoked where the conduct of a CCSP discloses lapses so serious and systemic as to pose an ongoing risk to revenue and to the security of the customs area.

15. Learned Special Counsel submitted that the initial and impugned orders demonstrate that the Commissioner did not merely adopt DRI's opinion but independently evaluated the factual matrix, arriving at her subjective satisfaction after considering DRI's findings and the Appellant's submissions within the statutory framework of HCCAR, 2009. He submitted that the SOPs relied upon by the Appellant do not instantaneously cure a compromised operational environment, and that the Commissioner was accordingly right to hold that they would be verified before any subsequent action was contemplated. He further submitted that the investigation into the offences and lapses remains actively pending, which itself furnishes sufficient reason not to lift the suspension. Learned Special Counsel placed strong reliance on the decision of the Hon'ble Madras High Court in *Chandra CFS and Terminal Operators Pvt. Ltd. v. Commissioner of Customs, Chennai*; *2015 (326) ELT 122 (Mad.)*, in support of the continuation of suspension.

16. We have considered the rival submissions, perused the case records and the written and additional written submissions

placed before us by both sides, together with the relevant provisions of HCCAR, 2009, the circulars and instructions issued thereunder, and the decisions cited at the Bar. We have to see whether continuation of the suspension of the Appellant's CCSP approval is warranted on the facts of the case and the formation of the opinion underlying such continuation is arbitrary, capricious or whimsical.

17. While the exercise of the power of suspension under Regulation 11(2) lies within the discretion of the Commissioner, it is well settled that the discretion of a public authority cannot be absolute, unqualified, unfettered or uncanalised.

18. The Appellant is alleged to have contravened the following:

(i) Regulation 5(1)(n) concerning the safety and security of cargo, and access control for prohibiting unauthorised access into the licensed CFS premises;

(ii) Regulation 6(1)(b) by falsely recording the status of a container carrying hazardous cargo as "scanned", without actually subjecting the goods to the scanning process;

(iii) Regulation 6(1)(f) by allowing imported goods to be offloaded and removed from the customs area without filing the Bill of Entry or obtaining necessary permission from customs officials;

(iv) Regulation 6(1)(g) by allowing export goods to enter the CFS premises without a Shipping Bill having been filed with the proper officer of Customs;

(v) Regulation 6(1)(i) failure to ensure overall safety and security of the imported goods and cargo, by allowing unauthorised persons and vehicles to enter the licensed premises, and its employees colluding with miscreants through the use of Kalmar forklifts to shift the containers, cutting the seal of the container having imported goods without any authority, unloading the goods through unauthorised persons and methods, and misusing cameras so as not to record the illegal activity and an attempt to remove the imported goods from CFS before the investigating agencies arrive at CFS for taking necessary action to prevent illegal activities;

(vi) Regulation 6(1)(q) failure to abide by the provisions of the Customs Act and the rules, regulations, notifications and orders issued thereunder.

19. The impugned order of suspension was passed under Regulation 11(2) of HCCAR, 2009. The relevant Regulations are extracted below for ready reference:

"Regulation 5. 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 2[Principal Commissioner of Customs or Commissioner of Customs, as the case may be], namely :

(i) Infrastructure, equipment and adequate manpower for loading, unloading, stacking, handling, stuffing and de-stuffing of containers, storage, dispatch and delivery of containers and cargo etc., including :-

xxx xxx xxx

(n) security and access control to prohibit unauthorized access into the premises, and

xxx xxx xxx

Regulation 6. Responsibilities of Customs Cargo Service provider:

(1) The Customs Cargo Service provider shall –

> (a) keep a record of imported goods, goods brought for export or transshipment, as the case may be, and produce the same to the Inspector of Customs or Preventive Officer or Examining officer as and when required;
>
> (b) keep a record of each activity or action taken in relation to the movement or handling of imported or export goods and goods brought for transhipment;
>
> xxx xxx xxx
>
> (f) not permit goods to be removed from the customs area, or otherwise dealt with, except under and in accordance with the permission in writing of the Superintendent of Customs or Appraiser;
>
> (g) not permit any export cargo to enter the customs area without a shipping bill or a bill of export having been filed with the Deputy Commissioner or Assistant Commissioner of Customs;
>
> xxx xxx xxx
>
> (i) be responsible for the safety and security of imported and export goods under its custody;
>
> xxx xxx xxx
>
> (q) abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.

xxx xxx xxx

Regulation 11. Suspension or revocation of approval for appointment of a Customs Cargo Service Provider:

(1) The Principal Commissioner of Customs or Commissioner of Customs, as the case may be, 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 the 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 Act and the rules, regulations, notifications and orders made thereunder;

(2) Notwithstanding anything contained in sub-regulation (1), the Principal Commissioner of Customs or Commissioner of Customs as the case may be, <u>may, in appropriate cases where immediate action is necessary</u>, suspend the approval granted to a Customs Cargo Service provider where an enquiry against such Customs Cargo Service provider is pending or contemplated." [emphasis supplied]

Regulation 12. Procedure for suspension or revocation of approval and imposition of penalty:-

(1) The Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall issue a notice in writing to the Customs Cargo Service provider stating the grounds on which it is proposed to suspend or revoke the approval, and requiring the said Customs Cargo Service provider to submit, within such time as may be specified in the notice, not being less than thirty days, to the Assistant Commissioner or Deputy Commissioner of Customs nominated by him, a written statement of defence, and also to specify in the said statement whether the Customs Cargo Service provider desires to be heard in person by the said Assistant Commissioner or Deputy Commissioner of Customs.
(2) On receipt of the written statement from the Customs Cargo Service provider, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), the Assistant Commissioner or Deputy Commissioner of Customs may inquire into such of the grounds as are not admitted by the Customs Cargo Service provider.
(3) The Assistant Commissioner or Deputy Commissioner of Customs shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence, for or against the Customs Cargo Service

provider, for the purpose of ascertaining the correct position.
(4) The Customs Cargo Service provider shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Assistant Commissioner or Deputy Commissioner of Customs declines to examine any person on the ground that his evidence is not relevant or material, he shall record his reasons in writing for so doing.
(5) At the conclusion of the aforesaid inquiry, the Assistant Commissioner or Deputy Commissioner of Customs shall prepare a report of the inquiry recording his findings.
(6) The Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall furnish to the Customs Cargo Service provider a copy of the report of the Assistant Commissioner or Deputy Commissioner of Customs, and shall require the Customs Cargo Service provider to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the findings of the Assistant Commissioner or Deputy Commissioner of Customs.
(7) The Principal Commissioner or Commissioner shall, after considering the report of the inquiry, and the representation thereon, if any, made by the Customs Cargo Service provider, pass such orders as he deems fit.
(8) If any Customs Cargo Service provider contravenes any of the provisions of these regulations, or abets such contravention, or 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.
(9) Any Customs Cargo Service provider aggrieved by any decision or order passed under this regulation may appeal, under section 129A of the Act, to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act."

20. A careful reading of the above provisions shows that the Commissioner of Customs is empowered to suspend the approval

granted to a CCSP in appropriate cases where immediate action is necessary, pending or in contemplation of an inquiry. Action under Regulation 11(2) may therefore be taken only in an emergent situation, where the Commissioner forms the view that immediate action is necessary, a consideration that must be explicitly reflected in the order of suspension itself. An order under Regulation 11(2), is a preventive measure taken pending a final determination that may or may not culminate in punishment.

21. Regulation 11(2) can be invoked only where the Commissioner concludes, on an application of mind, that immediate action is necessary. Material that would justify initiating and sustaining action under Regulation 11(1) cannot, without more, constitute the sole basis for action under Regulation 11(2). There must exist independent reasons before the Commissioner to the effect that, unless immediate suspension is ordered, the damage already caused would continue or would be likely to continue. In other words, a suspension under Regulation 11(2) must rest on the principle that prevention is better than cure. It is not enough for the authority to state an intention to prevent the continuance of illegality, there must, in fact, exist circumstances demonstrating a real threat of such continuance, stated in clear and categorical terms, together with the reasons underlying the authority's apprehension.

22. It is also relevant that Regulation 11(1) empowers the Commissioner to suspend or revoke a licence, but only after following the elaborate procedure under Regulation 12 - notice, an opportunity of hearing, and an inquiry culminating in a reasoned order. Regulation 11(1) is thus the rule, and Regulation 11(2) is the exception. Being an exception, it is to be invoked only in exceptional cases, and not as a matter of routine.

23. There is, accordingly, a clear and material distinction between action under Regulation 11(1) and action under Regulation 11(2). The former is punitive and the latter preventive. The power to suspend under Regulation 11(2) is to be exercised only where immediate action is inevitable to prevent the continuity of illegal activity causing revenue loss or a security threat. The requirement of immediate action is a *sine qua non* for suspension under this provision, precisely because such suspension is not punitive but is meant to address a situation genuinely warranting urgent intervention — the object being to bring ongoing offending activity to an immediate halt.

24. Till date more than 100 days have elapsed since the initial order of suspension dated 13.4.2026. We are conscious that HCCAR, 2009 prescribes no outer limit for such suspension, unlike the Customs Broker Licensing Regulations. Nonetheless, there must be some reasonableness to it, failing which it inevitably assumes a punitive character. We have been informed

by learned counsel for the Appellant, and this has not been controverted, that no verification has been initiated, no inspection of the CFS premises has been conducted, no assessment of the Appellant's remedial measures has been undertaken, and no communication has been made to the Appellant regarding the status of any verification; nor has any show cause notice been issued to commence inquiry under the Regulations. The impugned order continues the suspension "*until further orders*", but in our view a suspension, meant only for immediate preventive action, cannot continue indefinitely. There must be some outer time-limit. If the authorities are unable to conclude their investigation within a reasonable time, it remains open to them to invoke Regulation 11(1) and proceed under the procedure prescribed by Regulation 12. Nothing prevents them from doing so. A prolonged suspension causes hardship to any licensee, and in the present case we have been informed that around 800 regular and contractual employees of the Appellant are being adversely affected, their livelihoods placed at stake on account of a suspension purportedly imposed as an "immediate" measure.

25. To permit the suspension to continue, on the sole ground that DRI's investigation remains incomplete, would amount to rewriting Regulation 11(2) by substituting the words "an enquiry" with "DRI investigation", which is impermissible. This brings us to what we consider the crux of the controversy: the point at which a suspension that begins as a preventive measure

under Regulation 11(2) transforms, by reason of its indefinite continuance, into something indistinguishable from a punitive order under Regulation 11(1), without the licensee ever having had the benefit of the safeguards Regulation 12 mandates before such a consequence may lawfully follow. The distinction between the two sub-regulations is not merely procedural but one of substance and duration. Regulation 11(2) draws its legitimacy entirely from the urgency of the situation it addresses; it dispenses with prior notice and hearing precisely because the mischief it seeks to prevent is ongoing and cannot await the elaborate inquiry contemplated under Regulation 12. That dispensation is a narrow, time-bound concession to necessity and not an independent or standing power of suspension in its own right.

26. Once the immediate threat justifying suspension has been neutralised, or once a reasonable period has elapsed without the Department taking any step to verify the position, conclude the inquiry, or place fresh material on record to show that the apprehended continuance of illegality still subsists, the factual and legal foundation for continuing suspension under Regulation 11(2) ceases to exist. What remains, in substance, is no longer a preventive freeze pending inquiry, but a prolonged deprivation of the licensee's right to carry on its approved business — an outcome materially indistinguishable from the punitive consequence that Regulation 11(1) reserves for cases where guilt has been established, or is under active and diligent

examination, after notice, inquiry and hearing under Regulation 12.

27. To permit a Regulation 11(2) suspension to continue indefinitely would allow the exception to swallow the rule. It would enable the Department to achieve, through an ex parte and summary route, the same practical effect as a revocation or suspension under Regulation 11(1), while circumventing every procedural safeguard viz. notice, written statement of defence, inquiry, cross-examination, a reasoned report, and an opportunity to represent against adverse findings, that Regulation 12 was designed to secure for the licensee. The moment a Regulation 11(2) suspension outlives the immediate necessity that alone justifies it — whether because the Department has failed to act with reasonable despatch, has made no genuine attempt to verify whether the alleged deficiencies persist, or has simply allowed the suspension to continue "*until further orders*" without indicating when or how it proposes to conclude the matter — it ceases, in substance, to be preventive. It becomes, for all practical purposes, a *de facto* punitive suspension, imposed and continued without the due process that Regulation 12 was designed to secure.

28. The Hon'ble Supreme Court, albeit in the different context of indefinite suspension under service law, addressed an analogous principle in *Ajay Kumar Choudhary v. Union of India*; 2015 (7) SCC 291. Referring to Section 167(2) of the Code of

Criminal Procedure, the Hon'ble Supreme Court has held that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even when accused of the most heinous crimes, a fortiori a suspension ought not to continue beyond a similar period where a memorandum of charges or charge-sheet has not been served on the person suspended. The relevant paragraph of the said decision is extracted as under:

> *"20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Code of Criminal Procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond a period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghubir Singh v. State of Bihar (1986) 4 SCC 481 and more so of the Constitution Bench in Antulay (1992) 1 SCC 225, we are spurred to extrapolate the quintessence of the proviso to Section 167(2) CrPC, 1973 to moderate suspension orders in cases of departmental/ disciplinary enquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a memorandum of charges/charge-sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) CrPC postulates personal freedom, but respect and preservation of human dignity as*

> *well as the right to a speedy trial should also be placed on the same pedestal."*

29. The hardship caused to the Appellant, and more significantly to the approximately 800 regular and contract employees whose livelihoods depend on its operations, is not an incidental or collateral consideration; it is direct evidence of the punitive weight that this continuing suspension has come to carry, notwithstanding the preventive label under which it was originally issued. For these reasons, we are of the considered view that an order of suspension under Regulation 11(2), left unaddressed and unreviewed for as long as the present one, loses its character as a preventive measure and assumes the character of a punitive one — a consequence that Regulation 11(2), by its very terms and rationale, was never intended to permit.

30. It is significant that, despite the stated concerns for revenue, public safety and national security underlying both the initial and continued suspension, the Commissioner permitted the Appellant to clear around 3,000 containers already lying with it, without directing any additional precautionary measures, a circumstance that is, on its face, difficult to reconcile with the premise of urgency. At the time of the initial suspension order dated 13.4.2026 itself, the Appellant was permitted to clear the cargo/containers then available with it for export and import. More than 3,000 containers were cleared notwithstanding the allegations recorded in the impugned order, without any

additional customs officers being deployed, any special monitoring mechanism being adopted, or any restriction or protective measure being prescribed for their handling. If immediate action was truly necessary, it is difficult to appreciate why no additional safeguards were directed for the clearance of these very containers so as to mitigate the threat to revenue, cargo security or national security that the suspension order purported to address. This circumstance itself indicates the absence of the urgency that Regulation 11(2) presupposes, and is consistent with the absence of any intentional violation on the part of the Appellant.

31. We are not oblivious that the Report prepared by the Customs team headed by the Assistant Commissioner of Customs following its inspection of the appellant's ICTPL/Globicon CFS on 18.12.2025 does not record any deficiency in the existing security or access control mechanism, nor does it indicate that the prevailing arrangements were inadequate to prevent unauthorised access into the CFS premises. Likewise, the earlier inspection conducted by the Customs authorities on 08.01.2025 is also conspicuously silent on any shortcomings relating to the security infrastructure or access control systems maintained by the appellant. These contemporaneous official records assume significance, as they do not disclose any adverse observations regarding compliance with the security obligations cast upon the appellant under the HCCAR, 2009.

32. Consequently, there is no contemporaneous official material, in the nature of inspection or evaluation reports prepared by the licensing authority during the course of its continuous supervision of the appellant's CFS, which could reasonably justify the formation of an opinion that the appellant's continued operation posed such an immediate risk as to warrant recourse to the extraordinary power of suspension under Regulation 11(2) of the HCCAR, 2009. The material relied upon by the Revenue primarily emanates from the preliminary investigation itself, comprising CCTV footage, photographs, vehicle and personnel entry/exit records and other documents obtained from the appellant's own CFS. Such investigative material, by itself, cannot be equated with an objective assessment by the licensing authority establishing that the appellant had failed to maintain the prescribed standards of security warranting immediate suspension.

33. Learned counsel for the Appellant submitted that the Respondent failed to verify the Appellant's claim that the deficiencies alleged had long since been cured, and that the authorities have deliberately declined to examine the corrective measures and revised SOPs placed on record, choosing instead to await the conclusion of the DRI investigation which, it was submitted, amounts to an abdication of the regulatory function entrusted to the authority under Regulation 11(2). Learned counsel drew our attention to the case of *M/s. DP World Multimodal Logistics Pvt. Ltd. (CFS)*, wherein also a suspension

order was issued under Regulation 11(2) on 28.8.2025 in similar circumstances, but was revoked within a week, by order dated 4.9.2025, after the Commissioner examined the corrective measures adopted by that CFS in contrast to the present case, where the Commissioner declined to verify the Appellant's preventive measures and revised SOPs, deferring the exercise to a later, unspecified stage.

34. It cannot be overlooked that it was the Appellant's own employee who alerted DRI to the unauthorised removal of goods from container No. TGHU6099161 on the night of 11.4.2026, enabling DRI to intervene and secure the container. This sequence of events, DRI's e-mail at 19:44 hrs., its telephonic intimation at 19:45 hrs., and the Appellant's own call to DRI at 20:14 hrs. is not in dispute, and it was this timely disclosure by the Appellant that led to the halting of the de-stuffing activity.

35. We have also been informed, by learned counsel that none of the Appellant's employees investigated to date have made any allegation implicating any member of the Appellant's management in the alleged illegal acts. About 18 persons in the Appellant's employment including the AGM (Operations), Deputy Manager (Operations), senior executives, and operational staff such as seal-cutters, surveyors, and Reach Stacker/Kalmar operators appeared before DRI pursuant to summons and gave voluntary statements, none of which, as of now, implicates management. The services of several surveyors have been

suspended, and one has been terminated. No statement of any employee investigated by DRI has been placed before us to support the Revenue's stand that management was actively involved in the alleged illegal activities.

36. One factor that appears to have weighed with the Commissioner, while ordering continuation of suspension, was that Assistant Manager (Exports) Milind Balkrishna Joshi, described as a key conspirator, was absconding at the time of the impugned order and was said to be impeding the investigation. The said Mr. Joshi, who was operational staff rather than a senior functionary, thereafter arrested on 16.5.2026 and was granted bail by the Court of the Additional Sessions Judge, Panvel-Raigad, at Panvel, vide order dated 12.6.2026 in Criminal Bail Application No. 480/2026. The surveyor, Harshal Suryavanshi, was similarly arrested on 30.6.2026.

37. It was vehemently contended on behalf of the Appellant that its management was not involved in the alleged illegal activity, which was carried out by lower-level operational staff only. Another factor that appears to have influenced the Commissioner was that the Appellant's CFS allowed entry of goods on two occasions after the initial suspension order of 13.4.2026. We are informed that two Bills of Entry had already been filed on 13.4.2026 itself, and that once the Port released the containers to the nominated CFS under the supervision of

the Customs officer, the CFS had no option but to receive them. In these circumstances, we are unable to agree that such conduct demonstrates a blatant disregard of regulatory directions.

38. We cannot lose sight of the fact that the Appellant cooperated with the investigating agencies, furnishing CCTV coverage, details of vehicular entry and exit, and other material as required. It handles approximately 400 containers per day, and the continued suspension of its operations affects both its business and the employment of more than 800 direct and outsourced employees.

39. We have been informed that as per statutory requirement, the Customs officers were also posted at the CFS at the Appellant's cost under Regulations 5(1)(i)(b) and 5(2) of HCCAR, 2009. The relevant part of the Regulation 5 is extracted as under:-

> ***"Regulation 5. 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:*
>
> *(i) Infrastructure, equipment and adequate manpower for loading, unloading, stacking, handling, stuffing and destuffing of containers, storage, dispatch and delivery of containers and cargo etc., including:-*
>
> *xxx xxx xxx*

> *(b) <u>free of cost or rent fully furnished office accommodation for Customs, Customs Electronic Data Interchange (EDI) Service Centre, with required amenities and facilities and residential accommodation and transportation facilities for customs staff</u>;*
>
> *xxx xxx xxx*
>
> *(2) <u>Undertake to bear the cost of the Customs officers posted, at such customs area, on cost recovery basis, by the Commissioner and shall make payments at such rates and in the manner prescribed</u>, unless specifically exempted by an order of the Government of India in the Ministry of Finance;*
>
> *Xxx xxx xxx"*
> *[emphasis supplied]*

Therefore, while deciding the issue involved in the present case, it cannot be overlooked that Customs Officers remained continuously posted at the CFS premises throughout the relevant period by the Commissioner. This is a material circumstance that cannot be ignored while assessing the alleged lapses on the part of the appellant.

40. As regards the allegation of unauthorised outsourcing of services, it was brought to our notice, as mentioned in preceding paragraphs also, that the CFS is subject to periodic audit by the customs authorities, covering operational structure, infrastructure, manpower deployment and statutory compliance, and that the last such audit was conducted in December 2025 but no such objection was raised therein on this score. It was also pointed out that the Appellant had, by a communication of February 2023, already furnished the Commissioner with details of outsourced services and the related contractual arrangements. In these circumstances, the absence of any

objection at the relevant audits, and the fact that the licence was renewed in 2023 without any adverse note on this account, make it difficult to now treat this as a ground for continuing the suspension.

41. The record indicates that measures for surprise inspections, periodical security audits, and compliance verification were already in place in respect of all CFSs, including the present one, and that no deficiency arising from any inspection, audit, or verification prior to DRI's intervention had ever been noted. By an Advisory dated 25.6.2026, the Department directed the intensification of surprise inspections, security audits, and compliance verification across all CFSs with immediate effect; the Appellant states that it has complied with the requirements of this Advisory. It follows that intensified, ongoing verification of the compliance by appellant will in any event continue under the Respondent's supervision, irrespective of the outcome of these proceedings.

42. In substance, the following developments have transpired since the passing of the order of initial suspension dated 13.4.2026:

(i) inspection of the facility by the CCSP Cell on 17.4.2026, the outcome of which has not been disclosed in the impugned order. [*We are presuming that had there been any serious deficiency, it must have been brought to the Commissioner's notice by the Department*];

(ii) implementation of the corrective and preventive measures assured by the Appellant and referred to in the impugned order namely digital gate entry and exit using OCR technology, deployment of the Appellant's own surveyors, strengthened entry-gate controls, mandatory digital recording and supervision of seal-cutting, an upgraded CCTV network, revised scanning, labour-entry and cargo-handling SOPs, and strengthened authorisation protocols for CHA representatives and labour;

(iii) termination of Assistant Manager (Exports) Milind Joshi (absconding at the time of the impugned order but subsequently arrested on 16.5.2026 and released on bail on 12.6.2026), and of surveyor Harshal Suryavanshi (arrested on 30.6.2026);

(iv) investigation of 18/19 employees by DRI pursuant to summons;

(v) production of CCTV footage, gate records, and vehicle and labour entry data;

(vi) compliance, on 13.7.2026, with DRI's further requisitions by e-mail dated 5.7.2026 and summons dated 9.7.2026; and

(vii) clearance, during the period of suspension, of more than 3000 containers from the CFS without any reported incident.

43. Though the impugned order records the Appellant's cooperation with the investigation and its disciplinary action against certain employees were also noted, but holds that the Appellant cannot claim immunity from action under the Regulations merely on the ground of such cooperation. It also records that the corrective and preventive measures claimed by the Appellant viz. strengthened gate controls, digitisation, enhanced CCTV surveillance, and new SOPs, were taken on record for verification and while such measures might be relevant at a later stage of adjudication or revocation, they did

not erase the past violations concerning the integrity and security of the Customs area.

44. An Independent Review Report dated 24.6.2026, prepared by Major General Abhay Dayal, AVSM, VSM (Retd.), a former senior officer of the Indian Army, has also been placed on record. The report reviews the Appellant's revised SOPs and Process Control Framework against established security and risk-management principles, and concludes that the corrective measures and enhanced security controls implemented by the Appellant are adequate and appropriate to address the security concerns identified. Learned Special Counsel submitted that such a paper audit of infrastructure cannot cure active human complicity or institutional collusion. We are, however, of the view that such improvements are relevant to the question whether continuation of the suspension remains justified, and we are satisfied that it does not. Regulation 11(2), we reiterate, being a preventive and not a punitive measure.

45. The DRI investigation, on the material presently available, proceeds on the basis of seized records and goods, recorded statements, information gathered from persons whether or not arrested, and documents already produced. The Commissioner has not identified any specific investigative step that would be obstructed by the resumption of the CFS's functioning, more so when the Department's own officers remain posted on the premises. Any residual and articulable concern arising from the

pendency of the investigation is capable of being addressed through conditions such as preservation and production undertakings, access protocols, and enhanced supervision at the Appellant's cost — all of which the Appellant has offered to accept.

46. No Show Cause Notice under Regulation 12 has been issued to date, even after more than 100 days of suspension. In these circumstances, applying the doctrine of proportionality, the availability of a conditional framework of the kind indicated above weighs against continuation of the suspension as a preventive measure, since the apprehension of interference with the investigation, and the need to ensure compliance, can be secured through measures less restrictive than the complete closure of the CFS.

47. As regards the allegation of clandestine removal of goods in the past, nothing prevents the Revenue from taking action, as and when evidence in support of such allegation is obtained, under Regulation 11(1). Learned Special Counsel for the Respondent contended that the impugned order refers to all the violations alleged against the Appellant, and must therefore be construed as an order of immediate action. We are unable to accept this submission. As already noted, suspension under Regulation 11(2) is preventive and not punitive in character, and the mere existence of alleged violations cannot, without more, constitute the sole basis for invoking that provision.

48. Learned Special Counsel vehemently contended that the Appellant has violated various procedures contemplated under the Regulations, all of which are set out in the impugned order, and that the suspension is accordingly justified. It bears noting, however, that after the alleged incident and the suspension order, the Appellant was permitted to clear more than 3,000 containers which must have taken quite a few days that itself indicates the absence of any imminent threat to revenue or national security, which are sine qua non for continuation of suspension under Regulation 11(2). We clarify that the Department is not precluded from suspending or revoking the licence by invoking Regulation 11(1), after due notice and in accordance with the procedure under Regulation 12. Our interference with the impugned order is confined to the ground that it does not satisfy the requirements of Regulation 11(2); the other contentions on the merits of the allegations against the Appellant need not, therefore, be examined at this stage.

49. The reliance placed by the learned Commissioner and by learned Special Counsel on the decision of Hon'ble Madras High Court in M/s.*Chandra CFS & Terminal Operators Pvt. Ltd. vs. The Commissioner of Customs & Anr.; 2015 (326) E.L.T. 122 (Mad.)* is misplaced, the facts of that case being materially different. There, the custodianship of M/s. Chandra CFS was initially suspended with immediate effect under Regulation 11(2), without hearing, by order dated 23.12.2014, against the background of a pattern of repeated offences: a show cause

notice in 2011, culminating in a penalty imposed by the Tribunal in 2013 for permitting entry and storage of goods without export documents; a further show cause notice dated 12.9.2014 for permitting illegal export of red sanders logs by substitution of the declared cargo, the goods on that occasion having already left the country before being called back; and a third, similar attempt at illegal export by the same modus operandi. The matter before the Hon'ble High Court concerned a fourth such offence, involving red sanders stuffed into a container at the appellant's CFS premises by substitution of the declared cargo. The Hon’ble Madras High Court has also observed the same in the following paragraph:-

> *“113. In the given case on hand, the earlier show cause notice, dated 12.9.2014 reveals the previous antecedents of the appellant. On three occasions, the appellant had violated the Regulations of HCCAR, 2009 and in one case, the appellant was also penalized with penalty.”*

50. As regards the two past instances relied upon by the Revenue viz. improper handling of a suspicious container, for which a penalty was also imposed and another case of unauthorised breaking of its compound wall expanding the customs earmarked area of CFS by of 1,355 sq.m., for which the Appellant was penalised, learned counsel for the Appellant pointed out that the first instance, as pointed out by Revenue, was not an isolated one but reflected a wider pattern in the area, necessitating the Public Notice dated 28.7.2023 issued by the Commissioner of Customs, NS-III, JNCH, addressing pilferage,

removal and replacement of goods from containers, especially marked as suspicious by CSD officers, enroute to the CFS from the respective scanning points. As to the second, it was pointed out that the area in question was subsequently regularised as part of the Appellant's CFS by a notification dated 11.7.2025, issued by the Commissioner under Section 8(a) of the Act. In these circumstances, it is difficult to regard the allegations as being of such a gravity as to warrant recourse to the extra-ordinary power of immediate suspension under Regulation 11(2), particularly when such action is taken after a considerable lapse of time. The prolonged interval between the alleged violations and the order of suspension itself belies the existence of any compelling or imminent necessity for invoking the preventive power under Regulation 11(2). As to the allegation of false recording of scanning, learned counsel submitted that, under Public Notice dated 7.2.2025, all stakeholders namely Customs Brokers, importers/exporters, shipping lines, CFS operators and port terminals, can verify, by entering the container number, whether a given container was selected for scanning and whether it was in fact scanned/examined, this authentic data being available to negate any possibility of false recording.

51. It is equally pertinent that the Revenue has not claimed that any show cause notice had been issued to the appellant under the HCCAR, 2009, nor has it established that any inquiry, as contemplated under Regulation 12, had either been initiated or was pending so as to provide the statutory foundation for

invoking Regulation 11. In the absence of such proceedings, and in the absence of any contemporaneous official material demonstrating the existence of circumstances necessitating immediate preventive action, the invocation of Regulation 11(2) cannot withstand judicial scrutiny. The power of immediate suspension is an exceptional one, intended to be exercised only where compelling and objectively verifiable circumstances exist. Those circumstances are conspicuously absent in the present case.

52. For the foregoing reasons, we are of the considered view that the continuation of suspension under Regulation 11(2) is not sustainable and the issue raised is therefore decided in favour of appellant. The impugned order dated 5.5.2026 is accordingly set aside, and the jurisdictional Commissioner of Customs-licensing authority, is directed to restore the licence of Appellant. However, for allowing the entry of imported goods or export goods into or out of appellant CFS, the learned commissioner is free to prescribe necessary conditions in order to safeguard the interest of revenue. At the same time, having regard to the nature of lapses noticed, the Appellant is also directed to ensure continued implementation and strict adherence to the corrective and preventive measures stated to have been adopted by it, so as to obviate recurrence of similar incidents. It is, however, made clear that this order shall not preclude the Respondent from initiating appropriate proceedings against the Appellant under Regulation 11(1) of Handling of

Cargo in Customs Areas Regulation, 2009, if so advised, after conducting a proper inquiry strictly in accordance with law.

53. The Appeal is accordingly allowed with consequential relief.

(Pronounced in open Court on 10.08.2026)

(Ajay Sharma)
Member (Judicial)

(A K Jyotishi)
Member (Technical)

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