	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</b>
A. File No.	: F.No. S/20-05/CWC-CFS/2008-Appg(G) Part-II
B. Order-in- Original No.	: MUN-CUSTM-000-COM-12-19-20
C. Passed by	: Shri Sanjay Kumar Agarwal Principal Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order / Date of issue	: 13.12.2019/13.12.2019
E. SCN No. & Date	: ----
F. Noticee(s)/Party/ Importer	: M/s. Central Warehousing Corporation, Bharat CFS Zone-I, Mundra Port & SEZ Ltd, Mundra.

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 A (1) के अंतर्गत प्रपत्र सीए- 3 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है- Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:  
"केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवा कर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2<sup>nd</sup> फ्लोर, बहुमाली भवन, मंजुश्रीमिल कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद 380 004"  
"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."
- उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।  
Appeal shall be filed within three months from the date of communication of this order.
- उक्त अपील के साथ 1000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो -/5000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बैंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा। Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
- उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची 1- न्यायालय शुल्क अधिनियम, 1870 के मद सं. 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए। The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
- अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।  
Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए। While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.
- इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा। An appeal against this order shall lie before the Tribunal on payment of 7.5 % of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Sub: M/s. Central Warehousing Corporation, Bharat CFS Zone-I, Mundra Port & SEZ Ltd,  
Mundra.

P.O (CEN)  
F.N.A  
[Signature]

**Brief Facts of the Case:**

M/s. Central Warehousing Corporation, Bharat CFS Zone-I, Mundra Port & SEZ Ltd, Mundra have been declared as CFS and 'Customs Area' under Section 8(b) of the Customs Act, 1962 and have been approved as the Custodian of the said premises under Section 45 of the Customs Act, 1962 (Hereinafter referred to as the Custodian) vide Customs Notification No. 01/2008 dated 13.02.2008 valid till 21.03.2013 as per Regulation 10(1) of Handling of Cargo in Customs Areas Regulations, 2009 (Hereinafter referred to as HCCAR, 2009).

2. Whereas on scrutiny of documents, it was observed that the Custodian license had been further extended for five years (valid upto 12.02.2018). The custodian has not applied for further renewal application as provided under HCCAR, 2009.

3. Whereas as per Regulation 13 of HCCAR, 2009, "Renewal or approval for appointment of Customs Cargo Service provider:

The Commissioner of Customs may on application made by the Customs Cargo Service provider before the expiry of the validity of the appointment under regulation 10, renew the approval for a further period of five years from the date of expiration of the original approval granted under regulation 10 or of the last renewal of such approval, as the case may be, if the performance of the approved Customs Cargo Service provider is found to be satisfactory with reference to his obligations under any of the provisions of the Act and the rules, regulations, notifications and orders made thereunder."

4. Whereas as per Regulation 10(2) of HCCAR, 2009, "The Commissioner of Customs shall review the approval granted under sub regulation (1) before the expiry of the initial period of approval of two years of five years, as the case may be, and may extend such approval to a further period of five years at a time.

Provided that the Commissioner of Customs, for reason to be recorded in writing, may order for review of the approval granted to any Customs Cargo Service provider before the completion of the period of approval."

5. Whereas as per Regulation 12(8) of HCCAR, 2009, "If any Customs Cargo Service provider contravenes any of the provisions of these regulations, or abets such contravention or who falls 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.

6. Whereas it appears that the Custodian M/s. Central Warehousing Corporation has failed to follow the prescribed condition of applying for renewal before the expiry of the validity of the appointment under Regulation 10 as per regulations 13 of HCCAR, 2009 and thus made themselves liable for penal action under rule 12(8) of HCCAR, 2009.

7. The custodian vide their letter dated 09.12.2019 submitted that they have paid cost recovery charges amounting to Rs.97,10,360/- vide challan no.5100 dated 09.12.2019 for the period from 01.04.2018 to 31.03.2019 as per Regulation 5(2) of HCCAR, 2009. Further, they have undertaken to pay Cost

Recovery Charges for the period from April 2019 to September, 2019 as per their undertaking furnished with their letter.

8. Whereas the Custodian vide their letter dated 09.12.2019 submitted that there was minimum/no operation at CWC CFS Mundra during 2018, so due to oversight, they could not apply for renewal of license. Now, they are applying for renewal of license. They have requested for waiver of Show Cause Notice, however, they have requested Principal Commissioner for granting personal hearing in this regard.

**9. Reasons given for delay in applying for renewal:**

(i) They refer to Customs Kandla Notification No. 01/2008 dated 13.02.2008 specifying the limit of customs area at CWC-CFS Mundra and Customs, Mundra letter No. S/20-05/CWC-CFS/2008/Appg. (G)-Part-II dated 04.08.2015 conveying renewal of Custodian/CCSP license of Central Warehousing Corporation at CFS Mundra for the period of five years.

(ii) Customs Mundra vide letter dated 04.08.2015 conveyed the approval of renewal application for CCSP license and they had assumed the date of renewal from issuing of the letter i.e. Aug 2020. There was minimum/no operation at CWC CFS Mundra during 2018, so due to oversight, they could not apply for renewal of license. Now, it has come to notice that the CCSP license was valid upto Feb 2018 and therefore they are applying for renewal of license.

(iii) As per Customs Mundra letter No. S/20-05/CWC-CFS/2008/APPG(G) Pt.II dated 20.11.2019, they have paid cost recovery charges amounting to Rs.97,10,360/- vide challan no.5100 dated 09.12.2019 for the period from 01.04.2018 to 31.03.2019. From April 2017 to March 2018, they had achieved the benchmark. They have given undertaking to pay cost recovery charges for the period from April 2019 to September 2019 in case they fail to achieve the benchmark for 2019-20 by 31<sup>st</sup> March 2020.

(iv) In view of their submission, they requested to approve the application for renewal of CCSP license.

**10. Record of Personal Hearing:**

Shri Navin Kumar, Manager CWC-CFS Mundra attended the personal hearing. He reiterated the reasons mentioned in their letter for delay in applying for renewal. He requested to condone the delay and renew the custodianship.

**11. Discussions and Findings.**

**11.1** I have carefully gone through the records of the case, submissions made by M/s. CWC and record of personal hearing held before me.

**11.2** On scrutiny of documents, it was observed that M/s. CWC was appointed as Custodian of CFS vide Custom House, Kandla notification no. 01/2008 dated 13.02.2008. They applied for renewal under HCCAR, 2009 vide their letter no. CWC-CFS/Mundra/Customs-Corres./13-14 dated 10.4.2013. The approval of renewal application was conveyed to them vide



letter dated 04.08.2015. Accordingly, the Custodian license was further extended for five years (valid upto 12.02.2018). M/s CWC have not applied for renewal of appointment as provided under HCCAR, 2009. Rule 10(2) of Rule HCCAR, 2009 stipulates that "The Commissioner of Customs shall review the approval granted under sub regulation (1) before the expiry of the initial period of approval of two years of five years, as the case may be, and may extend such approval to a further period of five years at a time."

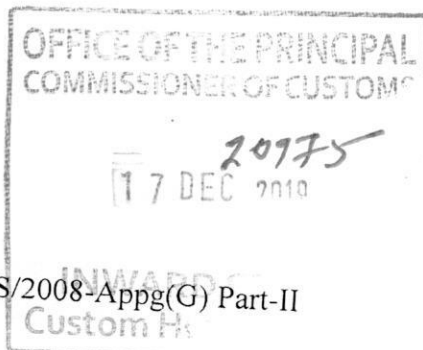
**11.3** I find that the Custodian vide their letter dated 09.12.2019 submitted that there was minimum/no operation at CWC CFS Mundra during 2018, so due to oversight, they could not apply for renewal of license. Now, they have applied for renewal of license.

**11.4** In view of the facts as discussed above, I find that M/s. CWC have failed to follow the prescribed procedure as per regulations of HCCAR, 2009 and thus are liable for penal action under rule 12(8) of HCCAR, 2009.

**11.5** In view of the above discussions and findings, I pass the following order.

**ORDER**

I impose penalty of Rs.50,000/- (Rupees Fifty Thousand only) upon M/s. Central Warehousing Corporation under Sub-Regulation 8 of Regulation 12 of HCCAR, 2009 and extend the approval under Regulation 10(2) of HCCAR, 2009 for further period of 5 years i.e. upto 12.2.23.



*Sanjay Kumar Agarwal*  
(Sanjay Kumar Agarwal)  
Principal Commissioner,  
Mundra Customs.

Date: 13.12.2019

**BY SPEED POST/RPAD**

F.NO. F.No. S/20-05/CWC-CFS/2008-Appg(G) Part-II

**Copy to:**

1. The Chief Commissioner of Customs, Ahmedabad Zone, Ahmedabad
2. The Asstt./Dy. Commissioner (Recovery), Customs House, Mundra.
3. The Asstt./Dy. Commissioner (RRA), Customs House, Mundra.
4. The Asstt./Dy. Commissioner (Adjudication Section), Customs House, Mundra.
- ✓ 5. The Asstt./Dy. Commissioner (EDI), Customs House, Mundra.
6. Guard File