

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**REGIONAL BENCH-ALLAHABAD**

(E-HEARING)

**Customs Appeal No.70764 Of 2025**

[Arising out of Memorandum-Order-No.01/Noida/Cus/2025-26 dated 16.05.2025 passed by the Commissioner of Customs, Noida-UP]

**CMA CGM Logistics Park Dadri Private Limited : Appellant**

Capt V. M. Bawa, Tilpata Road, Noida  
Gautam Buddha Nagar, U.P. 201311

Vs

**Commissioner of Customs, Noida**

**: Respondent**

Concor Complex, P.O. Container  
Depot, Gautam Budh Nagar, Greater  
Noida. U.P. – 201311

**APPEARANCE:**

Ms. Riya Soni, Advocate for the Appellant

Shri Ashok Kumar Chaudhary, Authorized Representative for the Respondent

**CORAM :**

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**

**HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No.70780/2025**

Date of Hearing:03.11.2025

Date of Decision:11.11.2025

**BINU TAMTA**

M/s CMA CGM Logistics Park Dadri Pvt Ltd.<sup>1</sup> has filed the present appeal in view of the liberty granted by the High Court of Allahabad to challenge the Memorandum-Order-No. 01/Noida/Cus/2025-26 dated 16.05.2025 passed by the Commissioner Customs, Noida which is appealable in terms of section 129A of the Customs Act, 1962<sup>2</sup>.

2. The factual matrix of the case is that pursuant to the application made by the appellant, Ministry of Commerce and Industry granted

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**1** the appellant  
**2** the Act

them approval for setting up Container Freight Station<sup>3</sup> at Dadri on 20.02.2006. Subsequently, the Commissioner, Central Excise and Customs, Noida, also approved the CFS set up by the appellant under section 8(a) of the Act and vide Public Notice dated 20.02.2007, appointed the appellant as a Custodian of the CFS under section 45 of the Act.

3. The Commissioner, Customs & Central Excise, Noida vide letter C. No. VIII(30)Cus/CMA-CGM/364/05/19098 dated 31.10.2007 addressed to the Under Secretary (Ad IV), CBEC, New Delhi informed that M/s CMA had started their operation as custodian of approved CFS and that two Superintendents, one STA & one Sepoy had been posted there and the work of Deputy/Assistant Commissioner and appraiser was being discharged by the officers posted at ICD Dadri as additional charge. It was also informed that the Custodian had also started paying cost recovery charges, on advance basis, and it was requested that 13 posts on cost recovery basis may be sanctioned in terms of Circular No. 52/97-Cus dated 17.10.97 for the proposed CFS i.e. M/s CMA.

4. The appellant vide letter dated 24.04.2009 requested the Additional Commissioner of Central Excise and Customs, ICD Dadri to consider exemption/waiver from payment of Cost Recovery Charges<sup>4</sup> of the posts sanctioned for carrying Customs functions forthwith in pursuance of Circular No. 13/2009 dated 23.03.2009. The said request had been reiterated by the appellant subsequently through various letters. As a one time measure, DGHRD vide letter dated 03.11.2015 authorised the concerned Chief Commissioner of Customs/ Central

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**3** CFS  
**4** CRC

Excise to grant exemption from payment of cost recovery charges to the eligible facilities, including the facilities for which post were not sanctioned in terms of the Board's letter dated 12.09.2005 and Circular No. 16/2013 - CUS dated 10.04.2013. The Chief Commissioner of Customs and Central Excise, vide letter dated 17.05.2018 granted exemption to the appellant from payment of CRC w.e.f. 4.11.2015 only. The appellant requested for refund of CRC deposited by them for the period April 2009 to November 2015 as against the exemption granted w.e.f. 04.11.3015. The appellant filed writ application, where the High Court vide order dated 6.03.2025 directed the Office to pass a reasoned order after giving an opportunity to the appellant. Consequently, the Commissioner Customs passed the impugned order. The appellant being aggrieved, once again approached the High Court and the learned Division Bench vide order dated 21.08.2025 took the view that the impugned order passed by the Commissioner is assailable as statutory appeal is provided under the provisions of section 129A of the Act and therefore granted liberty to the appellant to file the appeal within a period of six weeks and directed the Tribunal to pass a reasoned order within a period of eight weeks from the date of filing the appeal. Hence, the present appeal has been filed before this Tribunal on 16.09.2025.

5. Heard Ms. Riya Soni, learned counsel for the appellant and Shri Ashok Kumar Chaudhary, Authorized Representative for the Department.

6. The dispute in the present case relates to waiver of cost recovery charges from the date of the application for the period April

2009 to November 3, 2015 and whether the appellant is eligible to claim the refund thereof.

7. Ms Riya Soni, the learned Counsel for the appellant referring to the decision of the **Gujarat High Court in Adani Ports & Special Economic Zone Ltd versus Union of India**<sup>5</sup> submitted that the appellant is entitled to waiver of CRC w.e.f. the date of the application. She submitted that the issue before the High Court was whether the authorities made a mistake in granting the exemption from payment of CRC prospectively, from the date of the order and leaving the earlier period from the date of the application till the date of the order uncovered. The Court, therefore clarified the requirement under Circular dated 10.04.2013 that the exemption from CRC would be prospective does not means that it makes such exemption available only from the date of order and not from the period anterior to the date of the order and the purpose of mentioning that the exemption shall be prospective was to ensure that no entity can claim such exemption for a period prior to the date of the circular or for a period prior to the application for such period i.e., the period under review for exemption. It was therefore concluded that once such application is accepted in the facts of the case, the exemption should be granted from the date of the application. She further emphasised that the High Court having struck down the order granting exemption from the date of the order, directed that the amount already deposited towards CRC shall be refunded to the petitioners for the earlier period. The learned counsel then referred to the decision of the **Andhra Pradesh High Court in CBEC versus GMR Hyderabad International Airport**

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5 **Special Civil Application No. 4083 of 2016 dt. 04.12.2017**

**Limited**<sup>6</sup> where again the issue pertained to waiver of cost recovery charges and to grant Custodianship of Sea Ports and Air Cargo Complexes without imposing any such onerous conditions. During the pendency of the writ petition, Notification No. 26/2009 dated 17.03.2009 was issued by CBEC in exercise of powers under section 141(2) and section 157 of the Act, whereby Handling of Cargo in Customs Areas Regulations, 2009 were framed with retrospective effect i.e., from 17.03.2009, which then became the subject matter of the writ petition and the High Court considered whether the impugned 2009 Regulations are ultra vires the Customs Act, 1962. On the touchstone of the well settled legal principle that no tax can be imposed by any rules or regulations unless the statute under which such subordinate legislation is made specifically authorised imposition of such tax, the High Court examined the provisions of section 141 and 157 of the Act and came to the conclusion that they do not enumerate any specific provision under which cost recovery charges, i.e., the amount of salary payable to the officials of the Customs department, who are deployed at the airport and perform their statutory duties, can be recovered.

8. The learned AR representing the revenue has reiterated the findings arrived at by the Commissioner and therefore prayed for the dismissal of the appeal.

9. The admitted fact is that the appellant has been functioning as the Custodian at ICD Dadri since 2005 and had been paying CRC for the custom staff deployed at its CFS under CBEC Circular No. 52/97-CUS dated 17.10.1997. It is also not disputed that no CRC posts were

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**6 Writ Petition No. 1321 of 2012 decided on 27.03.2024**

sanctioned by the competent authority during the relevant period and the appellant has deposited the CRC totalling ₹3,13,16,626 during the period from April 1, 2009 to November 3, 2015 against the salary amount with regard to the staff posted at the CFS. Initially under F.No 434/17/2004-CUS.IV dated 12.09.2005 the following instructions were issued :

"I am directed to bring your kind attention that it has been decided to consider regularization of those cost recovery posts at ICD/CFSs which have been in operation or two consecutive years with following performance benchmark for past two years-

|   |   |
|---|---|
| (i) No. of containers handled by ICD        | 7200 TEUs per annum                               |
| (ii) No. of containers handled by CFS       | 1200 TEUs per annum                               |
| (iii) No. of BE or SB processed by ICD/CFSs | 7200 TEUs per annum for ICDs and<br>1200 for CFSs |

(iv) The bench mark at (1) to (3) shall be reduced by 50% for those ICDs/CFSs exclusively dealing with exports, as per staffing norms.

2. The waiver of cost-recovery-charges-would-be-prospective-with-no-claim for past period. Criteria would be applicable on actual performance of ICDs/CFSs"

10. Subsequently, Circular 13/2009-CUS dated 23.03.2009 was issued, which reads as under:

"M.F. (D.R.). Circular No. 13/2009-Cus, dated 23-3-2009 F.No. 450/55/2008-Cux. IV of Government of India, Ministry of Finance (Department of Revenue) Central Board of Excise & Customs, New Delhi

Subject: "Handling of Cargo in Customs Areas Regulations, 2009"- Regarding. A reference is invited to Notification No. 26/2009-Customs (N.T.), dated 17-3-2009 bringing into effect the "Handling of Cargo in Customs Areas Regulations, 2009 (referred in short as 'regulations").

3. The charges in respect of the Customs officers deployed at the customs clearance facility (ICD/CFS/port/airport etc.) are required-to-be-paid by the Custodian less these have been exempted for an individual-custodian-by-an order issued by the Ministry of Finance or by a circular or instructions issued by the Ministry of Finance [Regulation 5(2)) Payment of cost recovery charges in respect of ports and airports has been exempted for three categories of custodians specified in Circular No. 27/2004-Customs dated 6-4-2004 [2004 (166) ELT T14]. It is clarified that these specified categories of custodians at- ports/airports would continue to be exempt from the payment of charges for the customs officers deployed therein.

11. From the arguments raised by the learned Counsel for the appellant on the basis of the decision of the **Gujarat High Court in Adani Ports**, we find that the issue is clearly covered and therefore the appellant is entitled to waiver of the cost recovery charges, retrospectively from the date of the application and is entitled to refund of the amount deposited by them during the said period. However, we find that the **Andhra Pradesh High Court in GMR International** has completely overruled the levy of cost recovery charges by the department by holding the Regulations as ultra vires the provisions of the Customs Act under section 141 and 157. The High Court has categorically observed that there is no express statutory provision conferring authority on the appellant to levy CRC and in the absence of any special authorisation to recover charges, the department have no authority to impose CRC by means of Regulations. Once the Regulations have been held to be ultravires, the impugned order passed by the Commissioner is unsustainable. The entire controversy in the present case gets settled and in view thereof it is not even necessary for us to examine whether the conditions required for availing the exemption have been satisfied and as noted by the Gujarat High Court once the Department has granted the exemption prospectively is evident of the fact that the appellant has complied with the conditions. The judgment of the High Court in GMR International was passed on 27.03.2024 and it appears that no appeal has been filed by the department, challenging the same, which means that the revenue has accepted the decision. We note that before the notification of the 2009 Regulations, collection of cost recovery charges was only based on circulars and administrative instructions

and there was no provision in the Customs Act to recover cost recovery charges even during that period. In other words, cost recovery charges ever collected from the appellant or from any other custodian by the department was without any authority of law. As judicial proprietary demands, the decision of the Division Bench of the High Court is binding on us.

12. In view of our discussion above, the impugned order is unsustainable and is hereby set aside. The appellant is entitled to the refund of Cost Recovery Charges ever paid by them. The appeal is, accordingly allowed with consequential relief.

*(Order pronounced in the open Court on-11.11.2025)*

**(BINU TAMTA)**  
MEMBER (JUDICIAL)

**(P. V. SUBBA RAO)**  
MEMBER (TECHNICAL)

G.Y.