

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 4**

CUSTOMS APPEAL NO. 51767 OF 2025

[Arising out of Order-in-Original No. 19/2025/VCG/Pr. Commr./ICD/Import/TKD dated 30.06.2025 passed by the Principal Commissioner of Customs, New Delhi]

CONCOR

.....APPELLANT

Administrative Block, ICD Tughlakabad,
New Delhi-110044

Vs.

**PRINCIPAL COMMISSIONER OF
CUSTOMS IMPORTS ICD TKD-NEW DELHI****RESPONDENT**

Appearance:

Shri Ram Chandra Sankhla and Shri Rahul Sankhla, Advocates
for the Appellant

Shri M.K. Shukla, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 50616 /2026

DATE OF HEARING : 27/02/2026

DATE OF DECISION : 30/03/2026

P.V.SUBBA RAO

1. M/s Container Corporation of India Limited¹ filed this appeal to assail the order dated 30.06.2025 passed by the Principal Commissioner in which he decided the proposals made in the Show Cause Notice dated 27.09.2024² and confirmed the demand of Rs. 51,80,776/- as duty to be paid by the appellant

1 CONCOR
2 SCN

in its capacity as custodian under section 45 of the Customs Act, 1962³ read with Regulation 6 of Handling of Cargo in Customs Area Regulations, 2009⁴. He also imposed a penalty of Rs. 5,10,000/- under section 112(a)(ii) of the Act and penalty of Rs. 2,00,000/- under section 117 of the Act on the appellant.

2. The facts of the case are that the appellant is a public sector undertaking and as a part of its business it also maintains Inland Container Depots⁵ and Container Freight Station⁶ in which imported goods are kept before their clearance by the Customs. Thus, the appellant is the custodian of the goods imported into India through the ICD/CFS until they are handed over to the importer after their clearance from the customs.

3. When goods are imported into India, the exporter gives the goods to master of the vessels or the shipping line and obtains a Bill of Lading⁷ which acts as the document of title to the goods. The exporter sends the BL through the bank to the importer in India. Meanwhile, the goods are transported in the vessel to India. The master of the vessel gives the goods to the port trust which ends his responsibility for the goods. If the goods have to be cleared through the ICD the goods are given by the port trust to the custodian of the ICD which, in this case, is the appellant.

3 Act
4 HCCAR
5 ICD
6 CFS
7 BL

4. The custodian is required to keep the goods safe in its custody. Meanwhile, the importer files the Bill of Entry with the Customs to seek clearance of the goods. When filing the Bill of Entry, the importer also self-assesses the duty liability which assessment is subject to any re-assessment by the proper officer. The goods may also be examined by the customs officers. After the assessment is completed and the duty, as assessed, has been paid, the proper officer issues an order under section 47 of the Act permitting clearance of the goods for home consumption. After the proper officer issues an order clearing the goods for home consumption, the importer can approach the custodian with the Bill of Entry, BL and other documents and take the goods out of the customs area. Until the goods are cleared from the customs area, it is responsibility of the custodian to keep them safe. If the imported goods are pilfered, the custodian is liable to pay duty on such goods at the rate prevailing on the date of delivery of the arrival manifest or import manifest as the case may be. Section 45 of the Act which deals with this matter is reproduced as below:

45. Restrictions on custody and removal of imported goods.—

(1) Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Principal Commissioner of Customs or Commissioner of Customs] until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII.

(2) The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force,—

(a) shall keep a record of such goods and send a copy thereof to the proper officer;

(b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer or in such manner as may be prescribed.

(3) Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an arrival manifest or import manifest] or, as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.”

5. Sometimes, the importer does not clear or warehouse or transship the goods after their importation and they block the customs area. Besides, the custodian will also lose revenue for its services. As per section 48 of the Act, if the goods are not cleared, warehoused or transshipped within thirty days after unloading, the proper officer may allow them to be sold by the custodian. Section 48 of the Act is reproduced below:

“48. Procedure in case of goods not cleared, warehoused, or transhipped within thirty days after unloading.—If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within thirty days from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof:

Provided that —

(a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;

(b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.

Explanation.— In this section, —“arms” and “ammunition” have the meanings respectively assigned to them in the Arms Act, 1959 (54 of 1959).”

6. In this case, the SCN indicates that the appellant had submitted an Inventory Report of five unclaimed containers for the purpose of obtaining the final no objection certificate⁸ to dispose of their contents. These are as follows:

S. No.	Container No.	Date of arrival	BOE No.	BOE No.	Commodity
1	GESU-6789950/40	25.07.2020	113477	04.03.2024	Cement blocks size 40*20cm
2	BEAU-2170195/20	17.05.2012	113431	14.02.2024	Cement blocks
3	KKTU-7320971/20	25.12.2020	113432	14.02.2024	Cement blocks
4	BEAU-2175999/20	05.06.2014	113430	14.02.2024	Cement blocks
5	SCZU-7927305/20	30.08.2014	113433	14.02.2024	Cement blocks

7. It is further stated in the SCN that while the containers were said to contain cement blocks of various sizes as per the Inventory Report submitted by the appellant, on checking from the Customs EDI system, the goods were, as per the IGM, N-5 face masks, aluminum ingots, disposable gloves and special high grade zinc ingots. On finding the discrepancy, the contents of the all five containers were examined on 16.04.2024 in the presence of CONCOR officers and two independent witnesses under a Panchnama. The manager of the appellant was requested by letters dated 19.04.2024 and 01.05.2024 to provide details of the status of seals of these containers at the time of their arrival in the ICD and details of change of seals till date with copies of letters and records. The manager was also asked to intimate if the containers were examined by any agency

8 NOC

including SIIB, Customs Preventive and DRI and if so provide relevant records/ panchnama, etc. By letter dated 01.05.2024, the CONCOR submitted the examination reports of these five containers conducted on 26.09.2022, 17.05.2023, 19.05.2023, 16.05.2023 and 18.08.2023. Copies of these reports were also submitted by the learned counsel for the appellant during hearing. These reports bear the signatures of the customs inspector, representative of the appellant, examiner, security and the surveyor. Each of these documents indicates the seal numbers. The finding in these reports is that the containers had concrete blocks which appeared to be useful for construction. After examination, the containers were sealed with the CONCOR seals. At Serial number 6(A) of the Reports against the question whether the seal was found intact, in three reports "YES" has been marked and in other reports there is no marking as "YES" or "NO".

8. Since the appellant was the custodian as per section 45 of the Act, if any imported goods were pilfered, the appellant was liable to pay duty. In this case, the goods found in the containers were different from the goods described in the IGM. Instead of high value items like Aluminum Ingots, Zinc Ingots, face masks, etc., concrete cement blocks were found. Therefore, the SCN proposed the recovery of duty from the appellant. The appellant resisted the proposals which were, however, confirmed in the impugned order.

Submissions of CONCOR

9. Shri Ram Chander Sankhla assisted by Shri Rahul Sankhla, learned counsels for CONCOR made the following submissions:

- (i) All the containers are received by the shipping line as well as by the custodian and are retained on 'said to contain basis'. Neither the shipping line nor the custodian has the authority to open any container or examine its contents. This can be done only by the customs officers.
- (ii) If the goods declared in the Bill of Lading are different from those which were actually imported in the container, the master of the vessel or the custodian cannot be held responsible because it is beyond their knowledge and control. Neither CONCOR nor the customs will know in advance the nature and value of the goods and these will be known only when the goods are examined.
- (iii) The Commissioner has recorded in respect of one of the containers that as per the customs records, container no. KKTU 7320971 was marked for examination and, therefore, customs seal was fixed on it. He, therefore, dropped the demand in respect of this container. For this container the importer had filed the Bill of Entry but did not clear the goods and,

therefore, the contents of these container are also part of these proceedings.

- (iv) For other containers, no Bills of Entry were filed. Despite repeated reminders, attested copies of the seal register were not provided to the appellant by the customs which would have enabled CONCOR to determine if the goods were examined before and customs seals were also issued for other containers. By letter dated 15.02.2025, Customs intimated "no records found" for customs seal in respect of other containers. By another letter dated 23.05.2025, it was intimated that "no customs seals was issued". Both letters are materially different.
- (v) The burden lies on the department to prove through positive evidence that the goods were replaced or substituted while in the custody of the custodian. There is no evidence either that the goods which were declared in the IGM were imported in the containers or that they were replaced with cement blocks while in the custody of CONCOR.
- (vi) The examination job orders were issued by CONCOR in respect of all the disputed containers.
- (vii) The weight of the containers matched with the bill of lading.

- (viii) One who alleges needs to prove with evidence and there is no evidence that any goods were pilfered while in the custody of the custodian.
- (ix) There is no specific time limit to raise a demand section 45 of the Act but the provisions of under section 28 of the Act which pertain the demand of duty will equally apply to demands under section 45 of the Act.
- (x) The demand can only be issued within a reasonable time even if no time limit is fixed.
- (xi) The goods were not improperly imported hence they were not liable for confiscation and consequently no penalty is imposable on the appellant under section 112 of the Act.
- (xii) The appellant had no violated any of the regulations of HCCAR.

Submissions of the Revenue

10. Shri M.K. Shukla, learned authorized representative for the Revenue vehemently supported the impugned order and submitted as follows:

- (i) CONCOR has been approved as the custodian under Act and, therefore, has full responsibility for safe custody of the imported goods until they are cleared.

It has to maintain complete control over their storage and movement and ensure that the goods were not tampered with or irregularly handled. It is also required to maintain records and audit trails and prevent mis-use of bonded premises. The appellant failed to maintain effective custody of the goods within its premises as required under section 45 of the Act.

- (ii) In view of the above, CONCOR is liable to pay duty on the goods which were pilfered in its custody as per section 45 of the Act;

11. After hearing had concluded, learned counsel for the appellant submitted some more documents which were part of the records.

12. We have considered the submissions on both sides and perused the records.

13. The undisputed fact is that CONCOR was the custodian of the goods and was, as per section 45 of the Act, it responsible for their safety. Further as per section 45 (3) of the Act, if any goods were pilfered while in its custody CONCOR was liable to pay duty.

14. The next question which arises is whether the goods were pilfered while in the custody of CONCOR or the declared goods were not imported in the containers at all. It must be pointed

out that only the customs have access and authority to open and inspect the goods. Once the goods are stuffed in a container and sealed, the master of the vessel receives the container on "said to contain" basis. There is no way for the master of the vessel to know whether the goods mentioned in the documents are in the container or there are some other goods. Thereafter, the custody of the container from the master of vessel to the port trust and to the ICD/CFS all takes place only on "said the contain" basis. So long as the seal of the container is intact, the custodian cannot be held responsible for the contents. However, if the seal is broken and the container is opened and the goods are pilfered or substituted, the custodian is responsible as per section 45(3) of this Act. Similarly, if there is evidence that the original seal has been broken and tampered with and the container has been sealed with a different seal, the custodian in whose custody the goods were substituted will be responsible to pay customs duty.

15. The SCN refers to "Inventory Report" submitted by CONCOR in August/ September 2023 in which final NOC was sought to sell the contents of the containers.

16. In this report, the nature of the goods were mentioned as cement blocks whereas the IGM indicated that the goods were ingots, zinc ingots, face masks, etc. The question which would arise is as to how did the CONCOR submit its report indicating the contents as cement blocks when the IGM mentioned them to

be something else. According to the learned counsel for CONCOR, it had originally submitted details of these containers by letters dated 15.05.2018, 03.02.2021 and 03.03.2023 indicating the contents of the containers as indicated in the IGM. Thereafter, the goods were examined by the customs officers on 26.09.2022, 17.05.2023, 16.05.2023, 19.05.2023 and 18.08.2023. In these reports, the actual contents found in the containers were indicated. These reports were signed by the customs inspector and the representative of CONCOR. None of these reports indicated that the seal was tampered with or broken or substituted. Against the Sr. No. 6(A) whether seal was found intact in some of the reports "YES" is marked and in others neither "YES" nor NO is marked. Thereafter in August/September 2023 the appellant had submitted a complete Inventory Report including several containers including the containers in dispute in which the contents of the containers was indicated as cement blocks as was found during the joint examination and recorded in the reports

17. The examination reports are part of the records and so is the letter seeking final NOC for disposal of the goods.

18. The short question to be answered by us is if there is evidence that the goods were pilfered while they were in the custody of CONCOR which renders it liable to pay duty under Section 45(3) of the Act or not. Clearly, before the Final Inventory Reports was submitted by the appellant which

triggered the SCN and the consequential order impugned in this appeal, there are examination reports in respect of the same containers signed by the CONCOR, customs officers and others. None of these indicate that the seals were found broken or that contents were changed. These reports only indicate that the contents were cement blocks. Unless the seals were broken while the container was in the custody of CONCOR, it cannot be said that CONCOR had either opened the containers or that the contents of the container were pilfered or substituted.

19. In view of the above, the impugned order confirming demand of duty on CONCOR cannot be sustained. Consequently, the penalties imposed on CONCOR cannot be sustained. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

[Order pronounced on **30/03/2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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