HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

D.B. Custom Appeal No. 1/2026
CNR: RJHC010534772026
URN: CUSTA / 9U / 2026

Commissioner Of Customs (Preventive), Jodhpur Hqrs. At Ncr Building, Statue Circle, C-Scheme, Jaipur- 302005.

----Appellant

Versus

M/s Thar Dry Port B- 1, B- 1, Shastri Nagar, Near Shastri Circle, Jodhpur Rajasthan-342003.

----Respondent

For Appellant(s)	:	Ms. Hemanshi for Mr. Rajat Arora
For Respondent(s)	:	

HON'BLE MR. JUSTICE MUNNURI LAXMAN
HON'BLE MR. JUSTICE ANUROOP SINGHI

Order

08/07/2026

1. Heard on the substantial question of law.

2. The learned counsel appearing for the appellant submits that the Customs, Excise & Service Tax Appellate Tribunal, New Delhi, (**CESTAT**) while quashing the impugned demand for payment of cost recovery charges, has relied upon the judgment of the Telangana High Court in the case of ***Central Board of Excise and Customs, New Delhi Versus GMR Hyderabad International Airport Ltd.*** reported in ***2024 SCC OnLine TS 508***, which has held Regulation 5(2) of the Handling of Cargo in Customs Area Regulation, 2009 (hereinafter referred as '**Regulations of 2009**'), to be *ultra vires.*

3. It is also his submission that there are conflicting opinions from different High Courts with regard to the Regulations of 2009, wherein, on one hand the said regulation has been held to be *intra vires* and on the other hand the regulation has been held as *ultra vires*, and subsequently, SLPs have been filed before the Hon'ble Supreme Court to adjudicate on such conflicting views. Hence, in view of such conflict, the CESTAT ought not to have proceeded to quash the demand notice.

4. The judgment of the Telangana High Court in ***GMR (supra)*** refers to the judgments of the Bombay High Court in the case of ***Mumbai International Airport Private Limited Versus Union of India*** reported in ***2014 SCC OnLine Bom 1536*** and the Delhi High Court in the case of ***Allied ICD Services Limited Versus Union of India*** reported in ***2018 SCC OnLine Del 10816***, wherein the validity of the very same regulation was under challenge. The Bombay High Court specifically held the regulation to be *intra vires*, and even the Hon'ble Delhi High Court, though not in express terms has held the regulation to be *intra vires,* however, the demand has not been interfered with. The Telangana High Court in ***GMR (supra),*** while referring to the judgment passed by the Bombay High Court in ***Mumbai International Airport Private Limited (supra)***, has held that there was no consideration of the challenge to the Regulation 5(2) of the Regulations of 2009, in ***Mumbai International Airport Private Limited (supra)*** and as such, the Telangana High Court has taken a different view to hold the Regulations of 2009 to be *ultra vires*.

5. We have gone through the judgment of the Bombay High Court which clearly upholds the Regulation 5(2) of the Regulations of 2009, whereas the very same regulation has been held to be *ultra vires* by the Telangana High Court. In the said facts and circumstances, the following substantial questions of law arise:

> *"1. Whether the CESTAT, while quashing the demand notices, is right in taking the view that the regulation under which the demand was raised, was non-est, when there exist two conflicting judgments from two different High Courts with regard to the validity of the same regulation and when the matters were pending before the Hon'ble Supreme Court?*
>
> *2. Whether the findings of the CESTAT holding that the demands are unsustainable without considering the undertaking given by the custodian at the time of obtaining the permission, suffer from perversity?"*

6. Admit.

7. In the above facts and circumstances, there shall be an interim stay on the operation of the judgment dated 04.12.2025 passed by the CESTAT.

8. Issue notice to the respondents, returnable within four weeks.

9. List the matter on 12.08.2026.

(ANUROOP SINGHI),J **(MUNNURI LAXMAN),J**

JAYANT KUMAR /99