IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
MS PADMAVATHY S, AM

I.T.A. No. 3815/Mum/2025
(Assessment Year: 2018-19)

I.T.A. No. 3816/Mum/2025
(Assessment Year: 2020-21)

DCIT, CC-2(1), 804, 8th Floor, Pratishtha Bhavan, Maharshi Karve Road, Mumbai-400020.	Vs.	**Gateway Distriparks Ltd. ,** Container Freight Station VPT Exim park, Opp. GAIL Near Ayyappa Swami Temple, Sheela Nagar Vishakhapatanam, Andhra Pradesh-530012. **PAN: AABCV1938N**
Appellant)	:	**Respondent**)

Revenue / Appellant by	:	Shri Swapnil Choudhary, Sr. DR
Assessee / Respondent by	:	Shri Ashok Kumar Jain, AR
Date of Hearing	:	25.08.2025
Date of Pronouncement	:	03.09.2025

O R D E R

Per Padmavathy S, AM:

These appeals by the revenue are against the separate orders of the Commissioner of Income Tax (Appeals)-48, Mumbai [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) both dated 12.03.2025 for Assessment Years (AY) 2018-19 & 2020-21. The revenue has raised the following the grounds of appeal:

"1. Whether on the facts and circumstances of the case and in law, The Ld. CIT(A) is right in law in holding that the assessee is entitled to deduction u/s. 801A(4) of the Income Tax Act, 1961 in respect of income derived by the assessee from Container Freight Stations (CFS) overlooking the clarification issued by the CBDT in this respect vide Circular dated 06th January 2011?"

2. "Whether on the facts and circumstances of the case and in law Ld. CIT(A) is legally correct in relying on Circular No. 18/2009 dated 08/06/2009 issued by CBEC under a different enactment when the definition of 'infrastructure facility' is provided u/s. 80IA(4) and clarified by the CBDT."

3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is erred in deleting addition made by the assessing officer by disallowing claim of the assesse u/s. 801A of Rs.7,32,86,130/- on the ground that the assessee is entitled to deduction u/s. 801A of the Income Tax Act, 1961 in respect of income derived by the assessee from Container Freight Stations (CFS) overlooking the clarification issued by the CBDT in this respect vide Circular dated 06th January 2011?"

4. "The appellant craves leave to add, DLEETE, alter, modify, rectify, substitute OR otherwise any OR all of grounds of appeal at OR before the time of hearing of the appeal."

5. "The appellant, therefore, prays that on the ground(s) stated above, the order of the Ld. CIT(A), Mumbai, may be set aside and that of the Assessing Officer to be restored."

2. The assessee is a company engaged in the business of operating, maintaining, Containers Freight Station (CFS) approved by Ministry of Commerce and the Customs Department, Government of India. The assessee filed the return of income for AY 2018-19 on 23.10.2018 declaring a total income of Nil after claiming deductions under Chapter-VIA which includes deduction to the tune of Rs. 13,25,18,676/- under section 80IA(4) of the Act. The assessee for AY 2020-21 filed the return on 11.02.2021 declaring Nil income and the deduction claimed under section 80IA(4) amounted to Rs. 7,32,86,130/-. The Assessing Officer (AO) completed the assessment for both the AYs wherein the AO denied the deduction under section 80IA(4) stating that the issue is recurring in nature and that the

revenue has filed an appeal before the Hon'ble High Court in this regard. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) by placing reliance on the findings of the Co-ordinate Bench in assessee's own case for AY 2017-18 (ITA No. 38/Viz/2021 dated 14.07.2023).

3. We heard the parties and perused the material on record. The assessee earlier known as M/s Gateway East India Pvt. Ltd. got merged with M/s Gateway Distriparks Ltd. vide NCLT order dated 02.12.2021. We notice that the assessee was earlier assessed to tax in Visakhapatnam and that the Visakhapatnam Bench of the Tribunal has considered the identical issue of allowability of claim under section 80IA(4) from AY 2011-12 onwards and has been consistently holding that the assessee is entitled for deduction under section 80IA(4). The relevant findings of the Co-ordinate Bench for AY 2017-18 are extracted as under:

> *"6. We have heard both the sides and perused the material placed on record as well as the orders of the Ld. Revenue Authorities. We have also gone through the case laws cited by the Ld. AR. The only issue involved in this appeal is whether the assessee is eligible for claiming deduction U/s. 80IA(4) of the Act or not? This issue was came up before the Tribunal in the assessee's own case for a the AY 2011-12 in ITA No. 15/Vizag/2015, dated 29/05/2015 wherein the Tribunal discussed the issue at length and came to a conclusion that the assessee is eligible for deduction U/s. 80IA(4) of the Act. For the sake of immediate reference and convenience, relevant portion from the Tribunal's order is extracted herein below:*
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> > *"8. In circular no. 18/2009 dated 08/06/2009 issued by the Central Board of Excise and Customs in F.No. 434/17/2009-CUS.IV the difference between Inland Container Depots (ICD) and Container Freight Stations(CFS) has been spelt out in the following manner:*
> >
> > *"(a) DEFINITION OF ICD:*
> > *An Inland Container Depot may be defined as:*
> > *A common user facility with public authority status (emphasis supplied) equipped with fixed installations and offering services for handling and temporary storage of import/export laden and empty containers carried*

under customs control and with Customs and other agencies competent to clear goods for home use, warehousing, temporary admissions, reexport, temporary storage for onward transit and outright export. Transshipment of cargo can also take place from such stations.

(b) DEFINITION OF CFS:
A Container Freight Station may be defined as:
Container Freight Stations are specified as customs area under Clause (b) of the said Section 8 wherein imported goods or export goods are ordinarily kept before clearance by the customs. Firstly, CFS do not have "public authority status" whereas ICD is a place that acts as a "self contained Customs Station" as categorically spelt in Circular of CBEC dt. 08.06.2009. Further the said circular clearly distinguishes ICD and CFS and makes it very obvious that CFS is nothing but a warehouse.

(c) Distinction between ICD & CFS:
"Inland Container Depot is a place that acts as a "self contained customs station" like a port or air cargo unit where –
Filling of customs manifests,
Bills of entry,
Shipping bills and other declarations, assessment and all the activities related to clearance of goods for home use, warehousing,
temporary admissions,
re-export, temporary storage for onward transit and outright export, transshipment, etc., takes place."

•"Container Freight Stations are specified as customs area under Clause (b) of the said Section 8 wherein imported goods or export goods are ordinarily kept before clearance by the customs".

• An ICD is a 'self contained Customs station' like a port or air cargo unit where filing of Customs manifests, Bills of Entrys, Shipping Bills and other declarations, assessment and all the activities related to clearance of goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export, transshipment, etc., take place. An ICD would have its own automated system with a separate station code [such as INTKD 6, INSNF6 etc.] being allotted by Directorate General of Systems and with in-built capacity to enter examination reports and enable assessment of documents, processing of manifest, amendments, etc.

• Container Freight Stations are specified as customs area under Clause (b) of the said Section 8 wherein imported goods or export goods are

ordinarily kept before clearance by the customs. A CFS is only a Customs area located in the jurisdiction of a Commissioner of Customs exercising control over a specified Customs port, airport, LCS/lCD. A CFS cannot have an independent existence and has to be linked to a Customs station within the jurisdiction of the Commissioner of Customs. It is an extension of a Customs station set up with the main objective of decongesting the ports. In a CFS only a part of the Customs processes mainly the examination of goods is normally carried out by Customs besides stuffing/destuffing of containers and aggregation/segregation of cargo. Thus, Custom's functions relating to processing of manifest, import/export declarations and assessment of Bill of Entry/Shipping Bill are performed in the Custom House/Custom Office that exercises jurisdiction over the parent port/airportlICD/LCS to which the said CFS is attached. In the case of Customs Stations having facility of automated processing of documents, terminals are provided at such CFSs for recording the result of examination, etc. In some CFSs, extension Service Centers are available for filing documents, amendments etc. However, the assessment of the documents etc. is carried out centrally.

• An ICD may also have a number of CFSs attached to it within the jurisdiction of the Commissioner of Customs just as in the case of a port and its CFSs (as on date there are 28 CFSs linked to Chennai port) [Refer Circular No. 18/2009-Cus. , dated 8- 6-2009].

• A standalone Customs clearance facility in an inland Commissionerate cannot be approved by the Commissioner as a CFS, if there is no ICD/port within its 9 jurisdiction to which the said CFS can be attached. Sucha facility can, however, be notified as an ICD i.e., as an independent Customs station with provision for filing and assessment of documents and examination of goods. A Customs clearance facility could be established as a CFS at a port city for examination of imported/export goods, since the CFS would fall under the jurisdiction of Commissioner of Customs, having jurisdiction over the Customs port with which the CFS would be attached. Further, in a port city such as Chennai or Mumbai, it may be possible to develop an ICD within the territorial jurisdiction of the concerned Customs Commissionerate in addition to existing CFSs. Such an ICD should be capable of providing full-fledged Customs services, independent EDI system, and all procedures meant for transshipment of cargo have to be followed for movement of goods from the port of import to the ICD. Further, such an ICD would function as an independent Customs Station in all respects and would not be attached to any other port or airport. Thus, in respect of proposals for setting up of ICD/Container Freight Station from prospective operators it has to be

examined whether the proposed facility is required to be approved as an ICD or CFS.

• Movement of goods from a port/airport/LCS to an ICD is in the nature of movement from one Customs station to another, governed by Goods Imported (Condition of Transshipment) Regulations, 1995. On the other hand, movement of goods from a port/airport/LCS or an ICD to a CFS is akin to local movement from a Customs area of the Customs station to another Customs area of the same station, covered by local procedure evolved by the Commissioner of Customs and covered by bonds, bank guarantee, etc. Further, the person undertaking the transshipment would be required to follow the prescribed procedure."

As rightly contended by the learned AR of the appellant, the above circular answers in a very clear and categorical manner the objections raised by the assessing officer.

9. As far as the contention that there is no agreement with any Government or statutory authority, we find that the assessee has placed on record letter of intent. In fact the Ministry of Commerce and Industry, vide letter dated 10/02/2005, written to the Managing Director of the assessee company regarding setting up of a CFS at Visakhapatnam apropos the assessee's case.

10. In the case of A L Logistics P. Ltd. (supra) the Chennai Bench of the Tribunal at para 7 held as follows:

"7. Now, we proceed to the next issue, whether in the absence of specific agreement with the Central/State Government, local authority or Statutory Body, the assessee is entitled to claim the benefit of section 80IA(4)(i)? The assessee had made an application for setting up of CFS at Haldia. In response to the application of assessee, the Department of Commerce, Infrastructure Division, Ministry of Commerce and Industry approved the proposal of the assessee for setting up of CFS at Haldia for handling import/export of cargo subject to execution of certain documents and compliance of other terms and conditions as stated in the letter. The Id. Counsel for the assessee has placed on record letter dt.27-05-2003 from theMinistry of Commerce and Industry permitting the assessee to set up CFS at Raldia. The contents of the letter are reproduced herein below:

"No. 16/6/2003-lnfra-I
Government of India

Ministry of Commerce & Industry
Deptt.of Commerce
Infrastructure Division UdyogBhawan,
New Delhi,

Dated the 27th May,2003.

To The Director,
M/s A L Logistics Pvt. Ltd.,
Chennai.

Subject: Setting up of an CFS at Haldia.

Sir,
I am directed to refer to your application dated 8.2.2003 on the above subject and to say that the Government has approved your proposal for setting up of an Container Freight Station at Haldia for Handling import and export cargo. The approval is subject to t le following terms and conditions:-

(a) The Letter of Intent holder shall take adequate steps to create proper infrastructure keeping in view the indicative norms given in Parts A& B of the Guidelines for setting up Inland container Depots I Container Freight Stations (ICDs/CFs) within a period of one year from the date of issue of this letter.

(b) Necessary bond and guarantees, as required, would be executed with the concerned Commissioner of Customs and Central Excise.

(c) The approval would be subject to cancellation in the event of violation of the Customs and other laws of the land and Rules.

(d) A quarterly progress report of the implementation shall be sent to the Ministry of Commerce.

(e) The working of the CFS will be open to review by the Inter Ministerial Committee.

(f) Formalities in respect of acquisition/possession of the land shall be completed within 60 days and intimated to the Mlo Commerce, failing which the approval granted would be automatically cancelled.

2. The facility to be set up shall be full computerized, with EDI compatibility and a minimum complement of equipment and accessories as necessary shall be made available at the facility. The indicative list of equipment/accessories considered necessary is annexed. The status regarding confirmation of the installation! availability of the items shall be furnished to the appropriate authorities to facilitate issue of requisite notification.

3. Please acknowledge receipt of this letter. Yours faithfully,

Sd/- (N.G. Biswas)

DIRECTOR"

A perusal of clause 'b' of the above letter shows that the assessee was required to execute necessary bond and guarantees with the concerned Commissioner of customs an –Central Excise. It was only on the compliance of all the terms and conditions mentioned in the aforesaid letter that the assessee was allowed to carry on the services of CFS. The assessee on the compliance of the terms and conditions as mentioned in the letter, was notified as CFS Complex for the purpose of receiving, storing, import containers, receiving/consolidating export cargo etc. vide Public Notice OUO-1l-2013. The Public Notices were issued by the office of the Commissioner of Customs (Port) Kolkata.

8. Thus, it is evident that the proposal of the assessee was accepted by the Government on certain conditions which were duly complied with by the assessee. There may not be any specific agreement, but the sequences of events clearly show that the assessee is providing CFS facility in accordance with the conditions laid down by the Government. In such circumstances there is no need to insist for the specific execution of agreements. The coordinate bench of the Tribunal in the case of United Liner Agencies of India (P.) Ltd (supra), has taken a similar view, Where no specific agreement with the State Government was entered into but from the approvals granted to the assessee it was inferred that assessee should be deemed to have entered into an agreement with the State Government. Thus, we are of the considered view that the assessee has complied with all the provisions of section 80IA(4)(i) and is eligible to claim deduction under the said section. The impugned order is set aside. The appeal of the assessee is allowed."

11. Respectfully following the Coordinate Bench order, we hold that the contention of the AO that there is no agreement and hence the assessee is not eligible for exemption is not the correct position of law.

12. The Hon'ble Delhi High Court in the case of Container Corporation Ltd. (supra) held as follows:

"The term "infrastructure facility" was defined in section 80- IA(12)(ca) of the Income Tax Act, 1961, to mean a road, highway, bridge, airport, port or rail system or any other public facility of a similar nature as may be notified by the Central Board of Direct Taxes. The Finance (No. 2), 1998, included the words "Inland water ways and inland ports" in the definition of "infrastructure facility" in sub-section (12), clause (ca), with effect from April 1, 1999. When the entire section was recast and even after several amendments were thereafter made to the section, inland ports continued to enjoy the dededuction as infrastructure facility. There is no definition of the words "inland ports" in any of the dictionaries. But the words "inland container depot" "were introduced in sec. 2(12) of the Customs Act, 1962, which defines "customs port". This was by way of an amendment made by the Finance Act, 1983, with effect from May 13, 1983. Simultaneously, clause (aa) was inserted in sec. 7(1) of the Act under which the CCHI issue notification appointing the places which alone shall be considered as inland container depots for the unloading of imported goods and loading of exported goods. The Central Board of Excise and Customs issued a clarification that inland container depots were inland ports. The power to notify infrastructure facilities for the purpose of the section was taken away from the Central Board of Direct Taxes w.e.f. April 1,2002. However, there was no provision made in the Act saying that notifications issued earlier would cease to have from April 1, 2002.The assessee, a public sector undertaking, was engaged in the business of handling and transportation of containerised cargo. The activity of the assessee was carried out mainly on its inland container deports, Central freight stations see had a totala of 45 inland container depots. It claimed special deduction under section 80-IA(4) for the assessment years 2003-04 to 2005-06. The Assessing Officer denied special deduction but the Tribunal allowed it. On appeal to the High Court:

Held, allowing the appeals, that out of the total 45 inland container depots operated by the assessee, except two all others were notified by the Central Board of Direct Taxes for the purpose of sec. 80IA(12)(ca). Having regard to the provisions of the Customs Act, the communication issued by the Central Board of Excise and Customs as well as the

Ministry of Commerce and Industry, the object of including "inland port" as an infrastructure facility and also that customs clearance also takes place in the inland container depot, the assessee's claim that the inland container depots were inland ports under Explanation (d) to sec. 80IA(4) required to be upheld."

13. The issue has also been clarified by the Government vide CBEC circular no. 18/2009 dated 08/06/2009. Respectfully following the above decisions, we allow this appeal of the assessee."

7. Since, the there is no change in the facts and circumstances of the case for the AY 2011-12 and 2017-18, respectfully following the decision of the Coordinate Bench in the assessee's own case for the AY 2011-12 (supra) as well as the ratio laid down by the Hon'ble Supreme Court in the case of M/s. Container Corporation [404 ITR 397 (SC) (2018)] and M/s. AL Logistics (P) Ltd of Hon'ble Madras High Court [374 ITR 609, Madras – HC], decision of the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation [374 ITR 645, Bom. – HC], we find no infirmity in the order of the Ld. CIT(A) while allowing the assessee's appeal. Hence, we are of the considered opinion that the decision taken by the Ld. CIT (A) is in order and no interference is required. Accordingly, the Grounds raised by the Revenue are dismissed."

4. On perusal of the order of the AO, we notice that the AO has made the disallowance though it was brought to his notice that the Tribunal has settled the issue in earlier years for the reason that the revenue is in appeal before the higher Forum. We further notice that the AO did not record any finding that the facts pertaining to the year under consideration are different from earlier AYs. During the course of hearing, the ld. DR also did not deny the same. In view of these discussions, we are of the view that the ratio laid down by the Co-ordinate Bench in assessee's own case for earlier AYs is applicable for the year under consideration also. Accordingly, we see no reason to interfere with the decision of the CIT(A) for both AY 2018-19 and 2020-21

5. In result, the appeals of the revenue for AY 2018-19 & 2020-21 are dismissed.

Order pronounced in the open court on 03-09-2025.

Sd/-	***Sd/-***
(SAKTIJIT DEY)	**(PADMAVATHY S)**
Vice President	**Accountant Member**

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai