



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
 चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
 दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20251271MN000000D0F7

क	फ़ाइल संख्या FILE NO.	S/49-177/CUS/AHD/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-470-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	11.12.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	44/DC/ICD/IMP/REF/2024 dt. 06.09.2024 passed by the Deputy Commissioner, Customs, ICD-Khodiyar, Gandhinagar
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	11.12.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Angiplast Pvt Ltd., Plot No.: 4803, Phase-IV, GIDC, Vatva, Ahmedabad- 382 445

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है। This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं। Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :

(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु.1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench

	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रूपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रूपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रूपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
(a)	in an appeal for grant of stay or for rectification of mistake or for any other purpose; or	
(b)	for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



Order-In-Appeal

M/s Angiplast Pvt Ltd., Plot No.: 4803, Phase-IV, GIDC, Vatva, Ahmedabad-382 445 (hereinafter referred to as "the Appellant") have filed the present appeal against the Order-In-Original No.: 44/DC/ICD/IMP/REF/2024 dt. 06.09.2024 (herein after referred to as "the impugned order") passed by the Deputy Commissioner, Customs, ICD-Khodiyar, Gandhinagar (herein after referred to as "the adjudicating authority").

2. Facts of the case, in brief, are that the Appellant is engaged in the manufacturing and supplying of medical devices and are registered with the GST department. The appellant, during the period 23.10.2017 to 31.03.2022, imported raw materials by availing the benefits of exemption from payment of IGST under Advance Authorisation as per Not.No.: 79/2017-Cus.dated 13.10.2017-. The appellant, vide letter dt. 05.09.2023, requested to the Deputy Commissioner, Customs, ICD Khodiyaar, Gandhinagar to reassess the Bills of Entry in terms of Section 149 of the Customs Act, 1962 and permit them to pay the IGST alongwith interest. Subsequently, the Bills of Entry were re-assessed by the proper officer and the appellant was asked to pay applicable IGST alongwith applicable interest. The appellant paid the IGST on the imported goods but did not pay interest leviable thereon. He was advised to pay interest of Rs. 58,01,156/- on the payment of IGST. Finally, the appellant paid the required interest amount on the IGST paid.

2.1 It is observed that the appellant, vide letter dt. 22.02.2024, filed refund claim of interest Rs. 58,01,156/- paid for payment of IGST on imported raw materials. The Appellant relied upon the decision of the Hon'ble Bombay High Court in the case of *M/s Mahindra & Mahindra Ltd.*, reported at (2023) 3 Centax 261 (Bom), which was subsequently upheld by the Hon'ble Supreme Court. As per this judgement, there is no substantive provision in section 3 of the Customs Tariff Act, 1975 that provides for payment of penalty or interest on duty other than basic Customs duty and therefore, in absence of such a specific provision for levy of interest or penalty, same cannot be charged.

2.2 The adjudicating authority, vide impugned order i.e. Order-in-Original No.: 44/DC/ICD/IMP/REF/2024 dt. 06.09.2024, rejected the Appellant's claim for refund of interest amounting to Rs. 58,01,156/- paid on IGST. The adjudicating authority, relying upon the judgment of the Hon'ble Supreme Court in Civil Appeal No. 290/2023 (Union of India & Others v. Cosmo Films Ltd.) and CBIC Circular No. 16/2023-Cus. dated 07.06.2023, held that the interest amount of Rs. 58,01,156/- paid on IGST had been correctly paid by the Appellant.



3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal. They have, inter-alia, raised various contentions and filed detailed submissions as given below in support of their claims:

- That the adjudicating authority has wrongly relied on Circular No. 16/2023-Cus. dated 07.06.2023 to reject the refund claim. The said Circular applies only to cases involving violation of the 'pre-import' condition and has no relevance to the present matter. Even otherwise, the Circular merely refers to 'applicable interest', which implies interest is chargeable only where the statute mandates it. Without prejudice to the above, the Hon'ble Tribunal, Ahmedabad in *Chiripal Polyfilms* (2024 (9) TMI 940) has categorically held that Circular No. 16/2023-Cus., directing levy of 'applicable interest', is contrary to Section 3(7) of the Customs Tariff Act, 1975. The Tribunal also held that CBIC circulars represent only departmental views and cannot override judicial pronouncements. Therefore, reliance placed by the adjudicating authority on the said Circular, in disregard of the binding decision of the Jurisdictional Tribunal, is illegal and arbitrary. It is well settled that departmental authorities are bound by the decisions of the Jurisdictional Tribunal unless reversed by a higher court.
- That the adjudicating authority has also relied on the bond furnished by the Appellant to justify the levy of interest. It is submitted that a bond executed under an exemption notification cannot create a liability that does not exist under the statute. A bond merely secures compliance with statutory obligations; it cannot impose a new levy such as interest unless the statute itself provides for it. In the present case, the bonds executed under Notification No. 18/2015-Cus. only obliged the Appellant to discharge statutory liabilities, including interest—if such interest was legally leviable. However, the Customs Tariff Act contains no provision analogous to Section 28AA of the Customs Act for interest on IGST. Section 28AA applies only to 'duty' under Section 12 of the Customs Act, and IGST is not a 'duty' under that provision. Though Section 28 has been made applicable to IGST by virtue of Section 3(12) of the Customs Tariff Act, Section 28AA has not been similarly extended. Therefore, merely because IGST was re-assessed, interest cannot be demanded in the absence of a charging provision. Accordingly, reliance on the bond to sustain interest liability is misconceived and without jurisdiction.
- That the question of whether interest is a separate levy—and that no such levy exists under the Customs Tariff Act for integrated tax—has been conclusively settled by the Hon'ble CESTAT, Ahmedabad in *M/s. Chiripal Poly Films Ltd.*, Final Order No. 11628-11630/2024 dated 23.07.2024. All arguments now relied upon in the impugned order were already raised by the Department before the Tribunal



and were expressly rejected. The Hon'ble CESTAT held that importers had no option to pay only the IGST amount at the time of reassessment under Circular No. 16/2023-Cus., since the EDI-generated challan compulsorily included interest, making such payment involuntary. The Tribunal further held that provisions of the Customs Act, such as Sections 28AA, 114A and 125, are not applicable to IGST levied under Section 3(7) of the Customs Tariff Act, and that Section 3(12) does not authorize imposition of interest, penalty or fine for IGST.

- That Parliament has amended Section 3(12) of the Customs Tariff Act, 1975 through the Finance (No. 2) Act, 2024 by expressly inserting the term 'interest'. This conscious insertion shows that, prior to the amendment, the provision did not cover interest. The Hon'ble Supreme Court in *CCE, Ahmedabad v. Orient Fabrics Pvt. Ltd.*, 2003 (158) ELT 545 (SC), while interpreting an identical amendment under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, held that insertion of expressions such as 'offences' and 'penalties' was intended to cure a defect in the unamended law. The Court categorically held that, in the absence of such specific words, corresponding levies could not be presumed or imposed. Applying the same principle, the insertion of the word 'interest' in Section 3(12) clearly indicates that no statutory authority existed earlier to levy interest on IGST imposed under Section 3(7). Therefore, any interest recovered prior to the amendment lacked authority of law and violated Article 265 of the Constitution.
- That that adjudicating authority has, in para 14 of the impugned order, confirmed interest under Section 28AA of the Customs Act, 1962. However, Section 28AA applies only to 'duty' levied under Section 12 of the Customs Act and cannot be invoked for Integrated Tax (IGST), which is a separate levy imposed under Section 3(7) of the Customs Tariff Act, 1975. IGST on imports is charged and collected under Section 3(7), as substituted by Section 4 of the Taxation Laws (Amendment) Act, 2017, and is distinct from customs duty. Since IGST is not a 'duty of customs' under Section 12, the interest provisions of the Customs Act—including Section 28AA—are inapplicable. Interest is a separate, independent levy and requires a specific charging provision. The Customs Tariff Act contains no provision authorising interest for delayed payment of IGST under Section 3(7). In the absence of statutory authority, no interest could be demanded or retained.
- That the Hon'ble Gujarat High Court, in *CCE, Surat-I v. Ukai Pradesh Sahkari Khand Udyog Mandli Ltd.*, 2011 (271) ELT 32 (Guj.), has categorically held that interest on delayed payment of tax can be levied only where the charging statute expressly provides for such interest. Likewise, the Hon'ble Bombay High Court in *Mahindra & Mahindra Ltd. v. Union of India*, 2022 (10) TMI 212 (Bom.), held that

in the absence of a specific statutory provision for interest, the same cannot be recovered by invoking general recovery or machinery provisions. Both Courts examined similar deeming provisions—such as Section 7(4) of the Sugar Export Promotion Act, 1958—which apply certain Central Excise Act provisions to other levies, and held that such provisions do not, by themselves, create a charge of interest. These judgments reinforce that interest is a substantive levy which must be specifically authorised by the parent statute.

- That a proper reading of Section 3 of the Customs Tariff Act, 1975 makes it evident that there is no specific charging provision for interest on delayed payment of IGST levied under Section 3(7). Although Section 3(12) extends certain provisions of the Customs Act—such as those relating to refunds, exemptions, drawbacks, etc.—it does **not** incorporate the interest provisions of the Customs Act for levies under Section 3 of the Tariff Act. Both the Hon'ble Gujarat High Court in *Ukai Pradesh Sahkari Khand Udyog Mandli Ltd.* and the Hon'ble Bombay High Court in *Mahindra & Mahindra Ltd.* have categorically held that interest is a separate levy and can be imposed only when the statute creating the tax contains an explicit charging provision for interest. Machinery provisions cannot be used to recover interest in the absence of such a substantive charging section. Despite these binding decisions, the adjudicating authority erroneously relied on the Tribunal's decision in *Atul Kaushik*, which neither considered the above High Court judgments nor laid down the correct legal position. The Tribunal itself, in *Torrent Pharma Ltd.*, had earlier held that penalty or interest cannot be levied when the Customs Tariff Act does not incorporate the relevant provisions of the Customs Act. Most importantly, *Mahindra & Mahindra Ltd.*, upheld by the Hon'ble Supreme Court, conclusively affirms that Section 3 of the Customs Tariff Act contains no charging provision for interest or penalty in respect of levies under that section—including IGST under Section 3(7). The appellant also quoted various court's order in support of their claim.

PERSONAL HEARING:-

4. Personal hearing in the matter was held on 10.09.2025, wherein Shri Amal Dave, advocate attended personal hearing on behalf of the Appellant virtually and they reiterated the submissions made in appeal memorandum.

DISCUSSION & FINDINGS:-

5. The Appellant have filed the present appeal on 04.10.2024. The date of communication of the impugned order dated 06.09.2024 have been shown as 12.09.2024. Thus, the appeals have been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. As the appeal has been filed

against refund of interest on the IGST amount, pre-deposit under the provisions of Section 129E is not required. As the appeal have been filed within the stipulated time-limit, the said appeal have been admitted and being taken up for disposal on merits. Further, one set of Appeal memorandum dated 04.10.2024 received from the appellant were forwarded to the DC, Customs, ICD Khodiyar vide letter dt. 11.11.2024 for information and comments. However, till date no reply received in the matter.

6. I have carefully examined the impugned order, the appeal memorandum submitted by the Appellant, as well as the documents and evidence available on record. The main issue to be decided in present appeal is whether the impugned order rejecting refund of interest, paid towards delayed payment of IGST, under the provisions of Section 27 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

7. It is a well-settled principle of law that interest on delayed payment of tax can be levied and charged only when there is a substantive provision in the statute expressly authorizing such levy. This position finds support in the order dated 16.07.1997 in the case of *M/s Indian Carbon Ltd.* and the judgment in *M/s Ukai Pradesh Sahakari Khand Udyog Mandli Ltd.*, reported at 2011 (271) ELT 32 (Guj).

7.1 There is no dispute that IGST is leviable under Section 3 (7) of the Customs Tariff Act. However, for the purposes of charging interest or imposing a penalty, there must be specific enabling provisions within Section 3 of the Customs Tariff Act itself. Sub-section (12) of Section 3, which provides the recovery mechanism, does not contain any provision authorizing the levy of interest or the imposition of penalties. A comparison between the substituted Section 3 (12) and the erstwhile Section 3 (12) clearly illustrates this point. The relevant text of both versions is reproduced below for ease of reference:

Statute prior to substitution i.e. before 16.08.2024

The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act.]

Statue after substitution i.e. after 16.08.2024



[Handwritten signature]

"The provisions of the Customs Act, 1962 and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be."

A comparison between the substituted statute and the earlier version clearly demonstrates that the provisions enabling the levy of interest and imposition of penalty in respect of IGST under Section 3 (7) of the Customs Tariff Act were introduced only with effect from 16.08.2024. Prior to this amendment, there was no statutory basis under Section 3(12) of the Customs Tariff Act for charging interest or imposing penalties in relation to IGST.

7.2 The amended Section 3 (12) of the Customs Tariff Act is prospective in nature; accordingly, the provision for charging of interest is applicable only with effect from 16.08.2024. This view finds support in the judgment of the Hon'ble Bombay High Court in the case of *M/s A R Sulphonates Pvt. Ltd.*, reported at (2025) 29 Centax 212 (Bom), wherein the Court observed as under:

"66. Further, as far as the applicability of Section 3 (12), after its amendment by Finance (No. 2) Act, 2024, dated 16th August, 2024, is concerned, it would be appropriate to first refer to the provisions of the amended Section 3 (12) of the Tariff Act. Amended Section 3 (12) of the Tariff Act reads as under:-

"12:- The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be."

67. In our view, the amended Section 3 (12) of the Tariff Act is prospective in nature and would apply only with effect from 16th August, 2024."

7.3 The issue of whether there existed a statutory provision for charging interest and imposing penalty under Section 3 of the Customs Tariff Act is no longer *res integra*. The Hon'ble Bombay High Court, in the case of *M/s Mahindra & Mahindra Ltd.*, reported



at (2023) 3 Centax 261 (Bom), categorically held that the imposition of penalty and levy of interest under Section 3 (6) of the Customs Tariff Act [now renumbered as Section 3(12)] is not sustainable in respect of duties levied under Section 3 of the said Act. This decision was affirmed by the Hon'ble Supreme Court vide order dated 28.07.2023 in Special Leave Petition (Civil) Diary No. 18824/2023. Furthermore, the Review Petition filed by the Department against the said order was also dismissed by the Hon'ble Supreme Court through its order dated 09.01.2024 in SLP (C) No. 16214/2023.

7.4 The Hon'ble High Court of Bombay reaffirmed the above legal position in *M/s A R Sulphonates Pvt. Ltd.*, reported at (2025) 29 Centax 212 (Bom). The issue in that case similarly concerned the chargeability of interest and imposition of penalty for delayed payment of IGST. The Court unequivocally held that interest is not chargeable, nor is penalty imposable, in respect of IGST demands in the absence of a specific statutory provision. In delivering this judgment, the Hon'ble High Court conclusively settled the legal controversy surrounding the matter. The relevant portion of the judgment, which is self-explanatory, is reproduced below:

“60. In Mahindra & Mahindra Limited (supra), this Court, after going through the provisions of Section 3 (6) of the Tariff Act and Section 3 A (4) of the Tariff Act as applicable at the relevant time, held that no specific reference was made to interest and penalties in Sections 3 (6) and 3A (4) of the Tariff Act, which are substantive provisions and, therefore, imposing interest and penalty would be without the authority of law. In the present case, the levy of IGST is under Section 3 (7) of the Tariff Act, and Section 3 (12) of the Tariff Act which is applicable to the said levy is parimateria to Sections 3 (6) and 3A (4) of the Tariff Act as referred to in the case of Mahindra & Mahindra Limited (supra). In these circumstances, in our view, the said decision is squarely applicable to the facts of the present case.

61. Further, we are unable to accept the submissions of the Respondents that the decision in the case of Mahindra & Mahindra Limited (supra) is not applicable to the facts of the present case since it does not interpret Section 3 (12) of the Tariff Act. The provisions under consideration before this Court in the case of Mahindra & Mahindra Limited (supra) were Sections 3 (6) and 3A (4) of the Tariff Act. In Mahindra & Mahindra Limited (supra), this Court interpreted the provisions of Sections 3 (6) and 3 A(4) of the Tariff Act, which are parimateria to the un amended Section 3 (12) of the Tariff Act, which is in consideration in the present case. On interpreting Sections 3 (6) and 3A (4) of the Tariff Act, this Court held that when no specific reference was made to interest and penalties in the said provisions, imposing interest and penalty would be without the authority of law. In these circumstances, in our view, the ratio of the decision in the case of Mahindra &

Mahindra Limited (supra), would be squarely applicable to the facts of the present case.

62. *We are also not able to accept the submission of the Respondents that the provisions of Section 3 (12) use the term "including" and the same implies that the provisions of the Customs Act will be made applicable to the Tariff Act. As can be seen from the Judgement of this Court in Mahindra & Mahindra Limited (supra), Sections 3(6) and 3 A(4) of the Tariff Act, which were considered by this Court in the said Judgement, also use the word "including". Despite the same, this Court came to the conclusion that, since there was no specific reference to interest and penalties, imposing interest and penalties would be without the authority of law.*

63. *In these circumstances, in our view, the submissions of the Respondent, based on the use of the word "including" in Section 3 (12) of the Tariff Act, cannot be accepted.*

67. *In our view, the amended Section 3 (12) of the Tariff Act is prospective in nature and would apply only with effect from 16th August, 2024.*

69. *From the said judgement, it is abundantly clear that Section 3 (12) of the Tariff Act, as amended by Finance (No. 2) Act, 2024 dated 16th August, 2024, would apply only prospectively and would not be applicable to the case of the Petitioner at all.*

70. *In our view, for all the reasons stated hereinabove, the impugned Order, to the extent that it levies interest and penalty, is without the authority of law and is liable to quashed and set aside.*

71. *As far as Circular No. 16/ 2023-Customs dated 7th June, 2023 is concerned, it seeks to recover interest along with IGST. The relevant part of the said Circular reads as under:-*

"(a). for the relevant imports that could not meet the said pre-import condition and are hence required to pay IGST and Compensation Cess to that extent, the importer (not limited to the respondents) may approach the concerned assessment group at the POI with relevant details for purposes of payment of the tax and cess along with applicable interest."

72. *In our view, for all the reasons stated herein above, the said Circular, to the extent that it seeks to recover interest, is bad in law."*



73. As far as redemption fine imposed by the impugned Order is concerned, the same is demanded in lieu of confiscation of goods under *Section 111(o)* of the Customs Act. As per *Section 111(o)* of the Customs Act, the goods shall be liable for confiscation in the event the condition subject to which the goods are exempted from duty is not observed. As already held by us on the basis of the Judgement of the Hon'ble Supreme Court in the case of *Orient Fabrics Limited* (supra), *Section 3 (12)* of the Tariff Act, after its amendment by Finance (No.2) Act, 2024, dated 16th August, 2024, makes applicable the provisions relating to interest, offences and penalties of the *Customs Act to the Tariff Act*. As already held by us, *Section 3 (12)* of the Tariff Act, as amended, is applicable only after 16th August, 2024 and is not applicable to the present case. Accordingly, in the present case, no confiscation could have been imposed.

74. Further, the Joint Director General of Foreign Trade, by Trade Notice No. 7 of 2023-24 dated 8th July, 2023 clarified that all imports made under the Advance Authorization Scheme on or after 13th October, 2017 and upto and including 9th January, 2019, which could not meet the pre-import condition, may be regularized by making payments as prescribed in the Customs Circular No. 16/2023 - Customs dated 7th June, 2023. For this reason also, no confiscation can be done nor any redemption fine can be imposed.

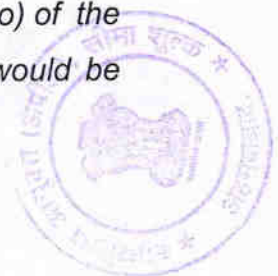
75. Further, in the present case, once the Petitioner pays the IGST, it would amount to the Petitioner not having availed the benefit of the exemption and the issue would be regularized. Therefore, the provisions of *Section 111 (o)* of the Customs Act will not be attracted. Consequently, no fine and penalty would be recoverable from the Petitioner.

76. For all the aforesaid reasons, we pass the following orders:-

(i) It is declared that Circular No.16 of 2023-Customs dated 7th June, 2023, to the extent that it purports to levy interest upon the IGST payment, is beyond the provisions of the Customs Tariff Act, 1975 and is bad in law;

(ii) The impugned Order dated 1st August, 2024, to the extent that it seeks to recover interest, confiscate goods, impose redemption fine and impose penalty, is quashed and set aside;

(iii) It is declared that the amendment to the provisions of *Section 3 (12)* of the Customs Tariff Act, 1975 by Finance (No.2) Act, 2024 dated 16th August, 2024 is prospective in nature and is applicable only from 16th August, 2024 onwards;



.....”

The Hon'ble High Court of Bombay has unequivocally held that interest is not chargeable in cases involving the levy of IGST, leaving no scope for doubt in the facts of the present case.

7.5 In view of the above, the matter is no longer *res integra* and interest cannot be charged in cases pertaining to IGST leviable under Section 3 (7) of the Customs Act.

8. In light of the judicial principles laid down by the Hon'ble Supreme Court in the case of *M/s Kamlakshi Finance Corporation Ltd.*, reported at 1991 (55) ELT 433 (SC), I am bound to follow the rulings of the Hon'ble Supreme Court in *M/s Mahindra & Mahindra Ltd.* (supra) and the Hon'ble High Court of Bombay in *M/s A R Sulphonates Pvt. Ltd.*, particularly as there is no stay on the operation of these judgments and they have not been overruled as on date.

9. Further, I find that the order dated 28.07.2023 of the Hon'ble Supreme Court in the case of *M/s Mahindra & Mahindra Ltd.* [SLP (Civil) Diary No. 18824 of 2023], reported at (2023) 9 Centax 361 (SC), is the law of the land under the provisions of Article 141 of the Constitution of India for the following reasons:

- a) The SLP filed by the department was dismissed by the Hon'ble Supreme Court with detailed reasons, thus constituting a speaking order. This position has been further clarified in Instruction F. No. 276/114/2015-CX.8A dated 9-2-2016, the relevant excerpt of which is reproduced below:

“If the SLP is dismissed at the first stage by speaking a reasoned order, there is still no merger but rule of judicial discipline and declaration of law under Article 141 of the Constitution will apply. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave.”

- b) The above position of law has also been laid down in the case of *Kunhayammed V/s State of Kerala* reported at 2001 (129) ELT 11 (SC) wherein it has been held as under:

If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal

reasons. This is because Article 136 of the Constitution is not a regular forum of appeal at all. It is a residuary provision which entitles the Supreme Court to grant at its discretion Special Leave to Appeal from any judgment, decree, order etc. of any Court or Tribunal in India. This is an exceptional provision in the Constitution which enables the Supreme Court to interfere wherever it feels that injustice has been done but it is not an ordinary forum of appeal at all. In fact unless leave is granted by the Supreme Court under Article 136 no appeal is registered. Article 136 is a discretionary power in the Supreme Court and it does not confer a right of appeal upon a party but merely vests discretion in the Supreme Court to interfere in exceptional cases vide *State of Bombay v. Rusy Mistry and Another*, AIR 1960 SC 391, *Municipal Board v. Mahendra*, AIR 1982 SC 1293 etc.

23. Article 136 does not confer a right to appeal at all. It only confers a right to apply for a Special Leave to Appeal vide *Bharat Bank v. Its Employees*, AIR 1950 SC 88. It is for this reason that a dismissal of an SLP does not amount to merger of the order of the High Court or the Tribunal with the order of the Supreme Court. The Supreme Court can reject an SLP without even going into the merits of the case e.g. if it believes that the matter is not so serious as to require consideration by the Supreme Court or for any other reasons.

24. On the other hand Section 35L provides a regular forum of appeal. Hence if an appeal under Section 35L is dismissed by the Supreme Court, whether by giving reasons or without giving reasons in either case. The doctrine of merger will apply and the judgment of the High Court or the Tribunal will merge into the judgment of the Supreme Court. Hence in our opinion the judgment of the Supreme Court dismissing the appeal against the order of the CEGAT is binding on us.


In view of the above, it is observed that the issue involved in the aforesaid judgments is identical in nature and squarely covers the present case as they had also dealt with the levy of interest on IGST as in the present case. Further, at the time of passing the impugned order-in-original dated 06.09.2024, the judgment dated 09.04.2025 of Hon'ble Bombay High Court in the case of *A. R. Sulphonates Pvt. Ltd.* (supra) was not available. Therefore, the adjudicating authority had no opportunity of examine the present case in light of the said Judgment. The decisions relied upon by the adjudicating authority in the impugned order are regarding levy of interest/penalty on Cess or Additional Duty, but none of them is regarding levy of interest on IGST prior to 16.08.2024. Whereas, the Judgment dated 09.04.2025 of Hon'ble High Court of Bombay in the case of **A.R. Sulphonates Pvt. Ltd.** [(2025) 29 Centax 212 (Bom.)] specifically deals on this issue, which is involved in the present case. Therefore, I am of the considered view that the

matter needs to be remanded back to the adjudicating authority, who shall examine the facts of the case and decide the issue on the basis of the aforesaid Judgments.

12. In view of the discussions made above, I allow the appeal by way of remand to the adjudicating authority with the direction to pass the fresh speaking order in light of the aforesaid judgments. As regards powers of Commissioner (Appeals) to remand cases, I rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs – 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and orders of Hon'ble Tribunal in case of Prem Steels P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri. – Del)] wherein it has been held that Commissioner (Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

13. The appeal is allowed by way of remand to the adjudicating authority and pass order afresh after taking into consideration above findings and judgements pronounced by the higher appellate authority.




(AMIT GUPTA)

COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD

F. No. S/49-177/CUS/AHD/2024-25 4821/04822

Dated 11.12.2025

By email (as per Section 153(1)(c) of the Customs Act, 1962)

To
M/s Angiplast Pvt Ltd.,
Plot No.: 4803,
Phase-IV, GIDC, Vatva,
Ahmedabad- 382 445
(email: pareshdave.lawyer@gmail.com)

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
(email: ccoahm-guj@nic.in)
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
(email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)
3. The Deputy/Assistant Commissioner of Customs, ICD-Khodiyar, Dist. Gandhinagar. (email: icdkhd-ahd@gov.in , icd_ahd@yahoo.co.in)
4. Shri Shri Amal Dave, Advocate, Ahmedabad
(email: pareshdave.lawyer@gmail.com)
5. Guard File.