



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,  
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,  
चौथी मंज़िल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,  
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DIN - 20250771MN000000A2A8

क	फ़ाइलसंख्या FILE NO.	S/49-141/CUS/JMN/2025-26
ख	अपीलआदेशसंख्या ORDER-IN- APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-103-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	10.07.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	05/AC/RNS/GPPL/REF/2025-26 dated 02.05.2025
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	10.07.2025
छ	अपीलकर्तानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Arvind Ltd., Moti Bhoyan, P O - Khatraj, Tal – Kalol, Dist. – Gandhinagar, Gujarat
1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.	
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2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं.
	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.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	वैज्ञानिकरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकीसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.
(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)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	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)	कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां, जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(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)	सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां, यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमर्दोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र) या रु. 1000/- (रूपएएकहजारमात्र), जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क, मांगागयाब्याज, लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु. 200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु. 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.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी. ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	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, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधि- करण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधर नगर पुल, असार वा, अहमदाबाद-380016	2 <sup>nd</sup> 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 कि सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथालगाया गया दंड की रकम पाँच लाख रूपए या उस से कम हो तो एक हजार 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 कि सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथालगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक नहीं तो; पाँच हजार 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 कि सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथालगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार 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 है, 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 Arvind Ltd. situated at Moti Bhoyan, PO-Khatraj, Tal-Kalol, Dist-Gandhinagar, Gujarat (hereinafter referred to as 'the appellant') have filed the present appeal challenging Order-in-Original No. 05/AC/RNS/GPPL/REF/25-26 dated 02.05.2025 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Customs, Pipavav(hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, the appellants had imported goods under EPCG scheme under the following Bill of Entry No. 8110076 dated 8.7.2020 by availing of exemption under Notn. No. 16/2015-Cus.

2.1 Subsequent to the import of capital goods under EPCG Licence, export of all masks other than non-medical/ non-surgical masks was prohibited and export of 2/3 ply surgical masks was restricted vide Notification No. 21/2015-2020 dated 28.7.2020. With such changes in the export policy, the appellants could not fulfill the export obligation against the EPCG Licence. Accordingly, the appellants requested the adjudicating authority to re-assess the Bill of Entry for payment of the customs duty foregone which included IGST leviable under Section 3(7) of the Customs Tariff Act. Upon re-assessment, the systems created a challan for payment of customs duty along with interest of which the interest on the IGST portion was computed at Rs. 9,39,500/- and the appellants paid such interest amounting to Rs. 9,39,500/-.

2.2 The appellants filed refund of Rs. 9,39,500/- before the adjudicating authority on the ground that there was no provision under Section 3 of Customs Tariff Act for charge of interest in respect of IGST. While claiming the refund, the appellants had placed reliance on the case of M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom) which had been upheld by the Hon'ble Supreme Court.

3. The adjudicating authority rejected the refund claim filed by the appellants vide the impugned order.

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

- IGST was leviable under Section 3(7) of the Customs Tariff Act and not under Section 12 of the Customs Act. Reliance was placed on the case laws of M/s Hyderabad Industries Ltd. reported at 1999 (108) ELT 321 (SC) and M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom)





- Interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. Reliance was placed on the case law of M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom), M/s Ukai Pradesh Sahakari Khand Udyog Mandli Ltd. reported at 2011 (271) ELT 32 (Guj) and order dated 16.7.1997 of the Hon'ble Supreme Court in the case of M/s India Carbon Ltd.
- There were no provisions under Section 3(12) of the Customs Tariff Act for charge of interest and as such no interest could have been charged in the case. Reliance was placed on the case laws of M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom) and M/s A R Sulphonates Pvt. Ltd. reported at (2025) 29 Centax 212 (Bom).
- Even if the SLP is dismissed, it is a declaration of law by the Hon'ble Supreme Court within the meaning of Article 141 of the Constitution of India if a speaking order has been passed.
- The order dated 28.7.2023 of the Hon'ble Supreme Court in Special Leave Petition Diary No. 18824/2023 in the case of M/s Mahindra & Mahindra is a speaking order and is a declaration of law by the Hon'ble Supreme Court within the meaning of Article 141 of the Constitution of India. Reliance was placed on the case of Kunhayammed V/s State of Kerala reported at 2001 (129) ELT 11 (SC) and Instruction F. No. 276/114/2015-CX.8A dated 9-2-2016
- The order dated 15.9.2022 of Hon'ble High Court of Bombay stood merged with the order dated 28.7.2023 of the Hon'ble Supreme Court in Special Leave Petition Diary No. 18824/2023 in the case of M/s Mahindra & Mahindra since the reason for dismissal of SLP had been assigned and the same was a speaking order attracting the doctrine of merger. Reliance was placed on Hon'ble Supreme Court in order dated 8.3.2011 in the case of Gangadhar V/s The Revenue Divisional Officer & Anr. (C.A. No. 1044 of 2009) where the same was a speaking order attracting the doctrine of merger. Reliance was placed on Hon'ble Supreme Court in order dated 8.3.2011 in the case of Gangadhar V/s The Revenue Divisional Officer & Anr. (C.A. No. 1044 of 2009)
- Reliance on the case laws of M/s Bangalore Jute Factory reported at 1992 (57) ELT 3 (SC), M/s Indian Oil Company Ltd. reported at AIR 2019 Supreme Court 3173, M/s J K Synthetics Ltd. reported at (1994) 4 SCC 276 and M/s Indian Carbide Ltd. reported at (1997) 6 SCC 479 by the adjudicating



authority was mis-placed in as much as the said case laws dealt with different statutes than the statute under consideration. The fact of the case at hand is that the present case deals with interpretation of Section 3 of the Customs Tariff Act with regard to applicability of interest and the Hon'ble High Court of Bombay has already interpreted the said provision in the same context in the case of M/s Mahindra & Mahindra Ltd. in Writ Petition No. 1848 of 2009. The appeal filed by the department against the said judgment stands dismissed by the Hon'ble Supreme Court and also the Review Petition filed by the department against such dismissal stands dismissed.

- Reliance on the case of M/s Atul Kaushik reported at 2015 (330) ELT 417 (T) was mis-placed in as much as the principal issue for examination under the said case was Valuation and the final judgment delivered by the Tribunal set aside the redemption fines and penalties on the appellants
- Civil Appeal No. 1022 of 2014 filed by M/s Valecha Engineering Ltd. against the order of the Hon'ble High Court of Bombay was dismissed by the Hon'ble Supreme court vide order dated 4.11.2019 only on the ground of non-prosecution and as such the order dated 4.11.2019 of the Hon'ble Supreme Court is not a law declared within the meaning of Article 141 of Constitution as opposed to that in the case of M/s Mahindra & Mahindra Ltd.
- It is no longer *res integra* that the levies under Section 3 of the Customs Tariff Act cannot be considered as a levy under Section 12 of the Customs Act. The said position of law is enunciated by the Hon'ble Supreme Court in the case of M/s Hyderabad Industries Ltd. reported at 1999 (108) ELT 321 (SC) and further reiterated by the Hon'ble High Court of Bombay in the case of M/s Mahindra & Mahindra Ltd. in Writ Petition No. 1848 of 2009 reported at (2023) 3 Centax 261 (Bom.)
- The substitution of Section 3(12) of the Customs Tariff Act vide Section 106 of the Finance (No. 2) Act which has been enacted on 16.8.2024 in itself establishes that prior to 16.8.2024 there was no provision for charging of interest. In the instant case, the matter pertains to a period prior to 16.8.2024 and as such the interest collected by the department is without authority of law and is simply in the nature of deposit which is required to be returned forthwith.
- The powers emanating from Section 25(1) of the Customs Act are restricted to the act of exempting a part or whole of the duty. There is nothing in the said statute which empowers the department to create the liability of interest by virtue of a notification especially in light of the fact that no statutory





provision for interest has been made with respect to the levies under Section 3 of the Customs Tariff Act. In such circumstances, the interest referred to in the said notification and resultantly in the Bond under Section 143 of the Customs Act is only for the purpose of Basic Customs Duty leviable under Section 12 of the Customs Act read with Section 2 of the Customs Tariff Act and not with respect to the levies under Section 3 of the Customs Tariff Act.

- In absence of any provision to charge interest on the levies under Section 3 of the Customs Tariff Act, the interest recovered from them assumes the nature of collection without the authority of law. It is a settled matter of law that any amount collected without the authority of law cannot be retained and has to be returned forthwith. Reliance was placed on the case laws of M/s G B Engineers reported at 2016 (43) STR 345 (Jhar) and M/s KVR Construction reported at 2012 (26) STR 195 (Kar) as affirmed by the Hon'ble Supreme Court as reported at 2018 (14) GSTL J70 (SC)
- Section 18 pertains to the cases of provisional assessment. However, in the instant case all Bills of Entry were not provisionally assessed at the time of Import instead of all the Bills Entry were final assessed. Thus, the provisions of Section 18 of the Customs Act would not be applicable to the facts of the case at hand.
- The impugned order seeks to interpret the provisions of Section 3(12) of the Customs Tariff Act by referring to the word 'including' used in the said statute. The revenue has lost sight of the fact that interpretation of sub-section 6 (now renumbered to 12) of Section 3 of the Customs Tariff Act has been expressly dealt with by the Hon'ble High Court of Bombay in the case of M/s Mahindra & Mahindra Ltd. in Writ Petition No. 1848 of 2009 reported at (2023) 3 Centax 261 (Bom.) wherein it has been ruled that the reference to application of Customs Act and the rules and regulations made thereunder is only with respect to the procedural provisions and if the penalty or interest was to be levied, the authority has to be specific, explicit and expressly provided.
- In the case of M/s A R Sulphonates *supra* the Hon'ble High Court of Bombay has also considered the issue to recover the interest along with IGST clarified in the Circular No. 16/2023-Customs dated 07.06.2023 and it is held that the said Circular is bad in law.

5. Personal hearing in the matter was held on 09.07.2025 wherein Shri John Christian, Consultant appeared for hearing on behalf of the appellants



and they reiterated the submissions made in appeal memorandum and placed on record the case law of M/s A R Sulphonates Pvt. Ltd. reported at (2025) 29 Centax 212 (Bom).

6. I have carefully gone through the impugned order, appeal memorandum filed by the appellants, submissions made by the appellants during course of hearing as well as the documents and evidences available on record.

7. The short point for consideration is whether interest is chargeable in respect of the levy of IGST. It is a settled principle of law that interest on delayed payment of tax can be levied and collected only if the charging statute contains a substantive provision authorizing such levy. In the absence of such a provision, the imposition of interest is not legally sustainable. This position is supported by the order dated 16.07.1997 in the case of M/s Indian Carbon Ltd., as well as the decision in M/s Ukai Pradesh Sahakari Khand Udyog Mandli Ltd., reported at 2011 (271) E.L.T. 32 (Guj.), which reaffirm that interest is compensatory in nature and must flow from the statute itself.

7.1 There is no dispute that IGST is leviable under Section 3(7) of the Customs Tariff Act. However, for the purpose of levying interest or imposing penalty in relation to such levy, there must be specific enabling provisions within Section 3 of the said Act. Notably, the recovery mechanism provided under sub-section (12) of Section 3 does not contain any provision authorizing the charge of interest or the imposition of penalty. In the absence of such express statutory authority, any such recovery would be without the sanction of law. Comparison of the substituted Section 3(12) of the Customs Tariff Act and the erstwhile Section 3(12) amply demonstrates the above fact and the same are reproduced under for ease of reference:

Statute prior to substitution i.e. before 16.8.2024

*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 16.8.2024

*"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 of the substituted provision with the earlier version of the statute 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 enabling provision under Section 3(12) of the Customs Tariff Act authorizing the levy of interest or the imposition of penalty in relation to IGST.

7.2 The amended Section 3(12) of the Customs Tariff Act is prospective in nature and as such the provision for charging of interest would be applicable w.e.f. 16.8.2024 only. My view is supported by the case law of M/s A R Sulphonates Pvt. Ltd. reported at (2025) 29 Centax 212 (Bom) wherein the Hon'ble High Court of Bombay has 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, shortlevy, 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 provision for levying interest and imposing penalty on duties under Section 3 of the Customs Tariff Act is now 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), has

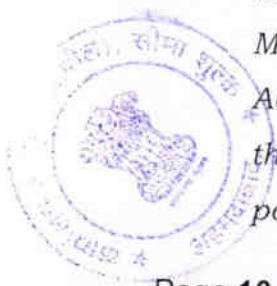


categorically held that Section 3(6) (now renumbered as Section 3(12) of the Customs Tariff Act does not support the imposition of interest or penalty in respect of duties levied under Section 3 of the Act. This ruling was affirmed by the Hon'ble Supreme Court, which dismissed the Special Leave Petition (Civil) Diary No. 18824/2023 vide order dated 28.07.2023. Furthermore, the Review Petition filed by the Department was also dismissed by the Hon'ble Supreme Court through its order dated 09.01.2024 in SLP (C) No. 16214/2023, thereby giving finality to the legal position.

7.4 The Hon'ble Bombay High Court has also reaffirmed the above legal position in the case of M/s A R Sulphonates Pvt. Ltd., reported at (2025) 29 Centax 212 (Bom). In that case, the issue under consideration was whether interest could be levied and penalty imposed for the delayed payment of IGST, and the facts were materially similar. The Hon'ble Court categorically held that interest is not chargeable, and penalty is not imposable, in respect of IGST levied under Section 3(7) of the Customs Tariff Act. In rendering this decision, the Hon'ble Court has effectively settled all legal controversies surrounding the issue. The relevant portion of the judgment, which is self-explanatory and directly applicable to the present case, is reproduced below for reference:

*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 unamended 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 3A(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 be quashed and set aside.

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.

The Hon'ble Bombay High Court has left no room for ambiguity in the facts of the present case and has explicitly held that interest is not chargeable in respect of the levy of IGST under Section 3(7) of the Customs Tariff Act.





7.5 In view of the above, the issue stands conclusively settled, and it is now well established that interest is not chargeable in cases involving IGST levied under Section 3(7) of the Customs Tariff Act. Accordingly, the matter is no longer res integra.

8. In light of the judicial principles laid down by the Hon'ble Supreme Court in M/s Kamalakshi Finance Corporation Ltd., reported at 1991 (55) E.L.T. 433 (S.C.), I am duty-bound to follow the binding precedents of the Hon'ble Supreme Court in M/s Mahindra & Mahindra Ltd. (supra) and the Hon'ble Bombay High Court in M/s A R Sulphonates Pvt. Ltd. Notably, there is no stay on the operation of these judgments, nor have they been overruled as on date. Accordingly, these rulings continue to hold the field and are binding on the adjudicating authorities.

9. Further, I find that the order dated 28.7.2003 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 in terms of 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 by giving reasons and as such the same was a speaking order. This position has been clarified vide Instruction F. No. 276/114/2015-CX.8A dated 9-2-2016 of which the relevant text is reproduced under:

*"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 or authority in*





any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country.

- c) The Review Petition Diary No. 41195/2023 filed by the department against order dated 28.7.2023 was dismissed by the Hon'ble Supreme Court vide order dated 9.4.2024
- d) The order dated 28.7.2023 of the Hon'ble Supreme Court is not *in limine* stands established from the very fact that the department had filed Review Petition Diary No. 41195/2023 against the said order. If the order dated 28.7.2023 was *in limine*, no review petition could have been filed against the said order in light of the Board's Instruction F. No. 276/114/2015-CX.8A dated 9-2-2016.

10. Further, I find that the department had invoked the statutory right of appeal by virtue of the provisions of Section 130E of the Customs Act and as such dismissal of the appeal, whether by a speaking order or by a non-speaking order, would attract the doctrine of merger. My views are supported by the following case laws:

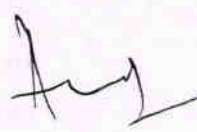
- a) M/s Pernod Ricard India (P) Ltd. reported at 2010 (256) ELT 161 (SC) wherein the Hon'ble Supreme Court has held as under:

*In our opinion, once a statutory right of appeal is invoked, dismissal of appeal by the Supreme Court, whether by a speaking order or non-speaking order, the doctrine of merger does apply, unlike in the case of dismissal of special leave to appeal under Article 136 of the Constitution by a non-speaking order.*

24. In the present case, the appellant preferred statutory appeal under Section 130E of the Act against order of the Tribunal dated 25th March 2003 and, therefore, the dismissal of appeal by this Court though by a non-speaking order, was in exercise of appellate jurisdiction, wherein the merits of the order impugned were subjected to judiciary scrutiny. In our opinion, in the instant case, the doctrine of merger would be attracted and the appellant is estopped from raising the issue of applicability of Rule 6 in their case.

- b) M/s Caryaire Equipments India Ltd. reported at 2005 (179) ELT 522 (All) wherein the Hon'ble Allahabad High Court has ruled as under:

22. It may be mentioned that dismissal of an SLP without giving reasons does not amount to merger of the judgment of the High Court in the order of the Supreme Court vide Kunhayammed v. State of





Kerala, 2001 (129) E.L.T. 11 (S.C.) = (2000) 6 SCC 359. However, in our opinion dismissal of an appeal under Section 35L(b) by the Supreme Court would amount to a merger even if the Supreme Court does not give 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. Rusa 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.

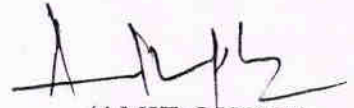
24. On the other hand Section 35L provides a regular forum of appeal. Hence if an appeal under Section 35L is dismissed by the Supreme Court, whether by giving reasons or without giving reasons in either case. The doctrine of merger will apply and the judgment of the High Court or the Tribunal will merge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

11. In view of the foregoing, I am of the considered opinion that interest cannot be levied in respect of IGST payable under Section 3(7) of the Customs Tariff Act, in the absence of any express statutory provision authorizing such a levy. Consequently, the interest recovered in the present case is without the authority of law and therefore cannot be retained by the department; it is liable to be refunded to the appellant. Accordingly, the impugned order rejecting the refund claim is not legally sustainable and is hereby set aside.





12. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, in accordance with law.



(AMIT GUPTA)  
COMMISSIONER (APPEALS)  
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

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2. N R Associates, F-503, Titanium City Centre,  
100 ft Road, Anand Nagar, Ahmedabad - 380015

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