



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,  
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,  
चौथी मंज़िल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250671MN0000777C46

क	फ़ाइलसंख्या FILE NO.	S/49-164/CUS/JMN/2023-24
ख	अपीलआदेशसंख्या ORDER-IN- APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-21-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	04.06.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	96/DC/RD/2023-24 dated 23.01.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	04.06.2025
छ	अपीलकर्तकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Shakti Polyweave Pvt. Ltd., Harmony, 3 <sup>rd</sup> Floor, 15/A Shree Vidhyanagar Co-op. Housing Society Ltd., Opposite NABARD, Near Usmanpura Garden, Ahmedabad

1. यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.



	This copy is granted free of cost for the private use of the person to whom it is issued.
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)	वैगजकेरूपमेंआयातितकोईमाल।
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतरेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो।
(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, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र) या रु. 1000/- (रूपएएकहजारमात्र), जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां। यदिशुल्क, मांगागयाव्याज, 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 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदि कोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 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 अपील अथि करण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधर नगर पुल, असारवा, 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 तथा लागाया गया दंड की रकम पाँच लाख रूपए या उससे 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 तथा लागाया गया दंड की रकम पाँच लाख रूपए से अधिक हो ले किन रूपये पचास लाख से अधिक न हो 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 तथा लागाया 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, मांगा 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.	
	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 रूपये 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 Shakti Polyweave Pvt. Ltd. situated at Harmony, 3<sup>rd</sup> Floor, 15/A Shree Vidhyanagar Co-op. Housing Society Ltd., Opp. NABARD, Nr. Usmanpura Garden, Ahmedabad (hereinafter referred to as 'the appellant') have filed the present appeal challenging Order-in-Original No. 96/DC/RD/23-24 dated 23.01.2024 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Customs Division, Jamnagar (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, the appellants had imported goods under Advance Authorization by availing the exemption under Notification No. 18/2015-Cus under the following Bills of Entry:

Sr. No	Bill of Entry No.	Date	IGST	INTEREST
1	2003420	07-Mar-18	1576134	1298691
2	2003533	08-Mar-18	1842096	1517080
3	2016636	23-Nov-18	714437	512046
4	2016629	23-Nov-18	678020	485945
5	2016627	23-Nov-18	678020	485945
			5488707	4299707

2.1 The 'pre-import' condition in respect of all the imports had not been fulfilled and all the above Bills of Entry were re-assessed in terms of Circular No. 16/2023-Cus wherein it was clarified that in all similar cases the Bills of Entry may be re-called and re-assessed for imposition of IGST. Upon re-assessment, the systems created a challan for payment of IGST along with interest and the appellants paid interest amounting to Rs. 42,99,707/-.

2.2 The appellants filed refund of Rs. 42,99,707 with the Deputy Commissioner, Customs Division, Jamnagar 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.



2.3. The adjudicating authority rejected the refund claims filed by the appellants vide the impugned order.

3. 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:

- The refund claim was rejected without issuance of a Show Cause Notice and thereby the principles of natural justice were vitiated. Reliance was placed on the case laws of M/s Sidheshwar SSK Ltd. reported at 2011 (274) ELT 141 (T) and M/s Leister Technologies India P Ltd. reported at 2018 (364) ELT 650 (T) and Circular No. 1053/2/2017-CX dated 10.3.2017.
- No recovery can be affected without the authority of law in terms of Article 246 of the Constitution of India. Reliance was placed on the case laws of M/s Mafatlal Industries Ltd. v/s Union of India reported at 1997 (089) ELT 247 (SC) and M/s Somaiya Organics v/s State of Uttar Pradesh reported at 2001 (130) ELT 03 (SC).
- 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).
- 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 declaration of law by the Hon'ble Supreme Court within the meaning of Article 141 of the Constitution of India.
- 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.

- 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)

4. Personal hearing in the matter was held on 08.05.2025 wherein Shri John Christian and Shri Ashish Jain, Consultants 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).

5. 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.

5.1. The limited issue for consideration is whether interest is chargeable in respect of the levy of IGST. It is a well-settled principle of law that interest on delayed payment of tax can be levied only if there is a substantive provision to that effect under the statute that imposes the tax. This view is supported by the decision dated 16.07.1997 in the cases of *M/s Indian Carbon Ltd.* and *M/s Ukai Pradesh Sahakari Khand Udyog Mandli Ltd.*, reported at 2011 (271) ELT 32 (Guj).

5.2 There is no dispute that IGST is leviable under Section 3(7) of the Customs Tariff Act. However, for the purpose of charging interest or imposing a penalty, there must be corresponding provisions within Section 3 of the said Act. The recovery mechanism provided under sub-section (12) of Section 3 does not contain any provision for the levy of interest or penalty. A comparison between the substituted Section 3(12) and the erstwhile provision clearly establishes this position. The relevant text of both versions is reproduced below 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 between the substituted and the earlier version of the statute clearly establishes that the provision for charging interest and imposing penalties in respect of IGST levied under Section 3(7) of the Customs Tariff Act was introduced only with effect from 16.08.2024. Prior to this amendment, there was no statutory provision under Section 3(12) of the Customs Tariff Act for the levy of interest or imposition of penalty.

5.3 The amended Section 3(12) of the Customs Tariff Act is prospective in nature; therefore, the provision for charging interest is applicable only with effect from 16.08.2024. This view is supported by the decision 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 follows:

*"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."*

5.4 The issue of whether there existed a 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), has categorically held that the imposition of penalty and levy of interest under Section 3(6) of the Customs Tariff Act (now re-numbered as Section 3(12)) is not sustainable in respect of duties leviable under Section 3. This decision was upheld by the Hon'ble Supreme Court by its 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 vide order dated 09.01.2024 in SLP (C) No. 16214/2023.

5.5 The Hon'ble High Court of Bombay, in the case of *M/s A.R. Sulphonates Pvt. Ltd.*, reported at (2025) 29 Centax 212 (Bom), has followed the above mentioned ruling. The facts of the case were analogous, centering on whether interest and penalty could be levied for delayed payment of IGST. The Hon'ble Court held that neither interest is chargeable nor penalty imposable in respect of such IGST demands. This judgment conclusively settles the legal position on the matter, dispelling any ambiguity that previously existed. The relevant portion of the judgment, which is self-explanatory, is reproduced below for ready 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.*





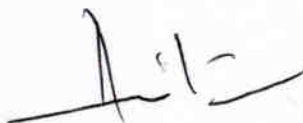
61. Further, we are unable to accept the submissions of the Respondents that the decision in the case of Mahindra & Mahindra Limited (supra) is not applicable to the facts of the present case since it does not interpret Section 3 (12) of the Tariff Act. The provisions under consideration before this 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 High Court of Bombay has unequivocally ruled that interest is not chargeable in cases involving the levy of IGST, leaving no room for doubt in relation to the facts under consideration.

5.6 In view of the foregoing, the issue is no longer *res integra*, and it is now settled that interest cannot be levied in cases involving IGST payable under Section 3(7) of the Customs Tariff Act.

6. In light of the judicial principles enunciated by the Hon'ble Supreme Court in *M/s Kamlakshi Finance Corporation Ltd.* [1991 (55) ELT 433 (SC)], I am duty-bound to follow the decisions 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 in the absence of any stay on the operation of these judgments or their being overruled as on date.

7. Furthermore, I respectfully submit that the order dated 28.07.2023 passed by the Hon'ble Supreme Court in the case of *M/s Mahindra & Mahindra Ltd.* [SLP (Civil) Diary No. 18824 of 2023], as reported in (2023) 9 Centax 361 (SC), constitutes the law of the land under Article 141 of the Constitution of India, for the following reasons:

- a) The Special Leave Petition (SLP) filed by the Department was dismissed by the Hon'ble Supreme Court through a reasoned order, thereby constituting a speaking order. This legal position has been clarified in Instruction F. No. 276/114/2015-CX.8A dated 09.02.2016, the relevant portion 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 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.



8. Furthermore, I find that the Department had exercised its statutory right of appeal under Section 130E of the Customs Act. Accordingly, the dismissal of the appeal whether by a speaking or non-speaking order would attract the doctrine of merger. This view is supported by the following judicial precedents:

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*



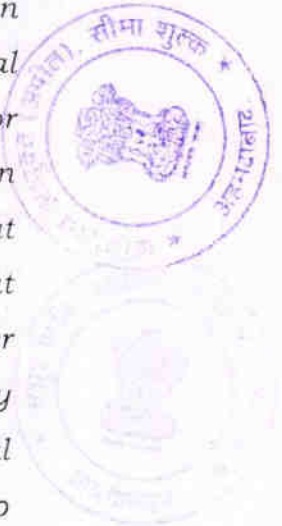
to judiciary scrutiny. In our opinion, in the instant case, the doctrine of merger would be attracted and the appellant is estopped from raising the issue of applicability of Rule 6 in their case.

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. Rusy Mistry and Another*, AIR 1960 SC 391, *Municipal Board v. Mohendra*, 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



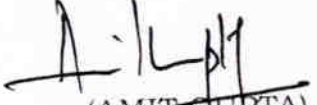


the High Court or the Tribunal will merge into the judgment of the Supreme Court. Hence in our opinion the judgment of the Supreme Court dismissing the appeal against the order of the CEGAT is binding on us.

9. In view of the foregoing, I find that interest cannot be levied on the IGST in the absence of any enabling provision under the Customs Tariff Act. Consequently, the interest recovered in the present case is without authority of law and cannot be retained by the Department; it is liable to be returned/refunded. Accordingly, the impugned order rejecting the refund applications filed by the appellants is unsustainable in law and is, therefore, liable to be set aside.

10. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant by way of grant of refund as claimed by them.



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

By Registered Post A.D.

F.Nos. S/49-164/CUS/JMN/2023-24

Dated -04.06.2025

To,

1. ✓ M/s Shakti Polyweave Pvt. Ltd.  
Harmony, 3<sup>rd</sup> Floor, 15/A  
Shree Vidhyanagar Co-op. Housing Society Ltd.,  
Opp. NABARD, Nr. Usmanpura Garden, Ahmedabad,

**Copy to:**

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Jamnagar.
3. The Deputy Commissioner of Customs, Customs Division, Jamnagar
4. Guard File

सत्यापित/ATTESTED  
  
अधीक्षक/SUPERINTENDENT  
सीमा शुल्क (अपील), अहमदाबाद.  
CUSTOMS (APPEALS), AHMEDABAD