



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,  
चौथी मंज़िल 4th Floor, हड्डको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250771MN000000EF3D

क	फ़ाइल संख्या FILE NO.	S/49-45/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-122-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	02.07.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. 52/DC/ACC/OIO/Omni Lens/23-24, dated 12.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	02.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Omni Lens Pvt. Ltd., 5, Samruddhi, Opp. Sakar - III, Navrangpura, Ahmedabad – 380 014

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 व्रेणियों 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)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods imported on baggage
(ख)	भारत में आयात करने हेतु किसी बाह्य 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 की 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 दस्तावेजों 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 मर्दों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र)या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रुपए 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	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर 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)	(क) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए या उससे कम हो तो एक हजार रुपए.	
(a)	(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)	(ख) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रुपए	
(b)	(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 ;	
	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रुपए से अधिक हो तो; दस हजार रुपए.	
(c)	(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)	(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)	(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. Omni Lens Pvt. Ltd., 5, Samruddhi, Opp. Sakar - III, Navranpura, Ahmedabad – 380 015 (hereinafter referred to as "the Appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the OIO No. 52/DC/ACC/OIO/Omni Lens/23-24, dated 12.02.2024 (hereinafter referred to as the "impugned order") passed by the Deputy Commissioner of Customs, Air Cargo Complex, Ahmedabad (hereinafter referred to as the "adjudicating authority").

2. Briefly stated, facts of the case are that the Appellant had filed refund claim of Rs. 34,14,422/- under Section 27 (1) (a) of the Customs Act, 1962 vide their letter dated 07.10.2023 in respect of interest charged on IGST recovered in terms of provisions of Notification No. 18/2005-Cus, dated 01.04.2015 read with Supreme Court Order dated 28.04.2023 in Civil Appeal No. 290 of 2023 and Circular No. 16/2023-Cus, dated 07.06.2023.

2.1 From the facts mentioned in the refund claim of the Appellant, it was observed that the Appellant did not observe the conditions of Notification No. 18/2015-Cus, dated 01.04.2015. Hon'ble Supreme Court in its Order dated 28.04.2023 in Civil Appeal No. 290 of 2023 have held that the "Pre Import condition in Notification No. 18/2023-Cus to be valid". The Appellant approached appropriate Customs authority for depositing amount of IGST for failure to observe condition of Notification No. 18/2015-Cus, dated 01.04.2015. Notification No. 18/2023-Cus, dated 01.04.2015 requires recovery of IGST along with interest at the rate of 15% per annum from the date of clearance of goods if condition of the Notification are not complied with. Accordingly, the Appellant have paid the interest amounting to Rs. 34,14,422/-, as detailed in Table – A of the impugned order.

2.2 There was ongoing dispute regarding exemption to the IGST in respect of goods cleared under the Advance Authorization governed by Notification No. 18/2023-Cus as amended. The said Notification was amended vide Notification No. 79/2017-Cus, dated 13.10.2017 wherein the 'pre-import' condition was inserted for the purpose of granting exemption to IGST. Such 'pre-import' condition was struck down as ultra-virus by the Hon'ble High Court of Gujarat in R/SCA No. 14558 of 2018 in the case of M/s. Maxim Tube Company P. Ltd. The result of the judgment was that the IGST was exempted under Notification No. 18/2015 without applicability of the 'pre-import' condition.

2.3 Subsequently, the Hon'ble Supreme Court of India, vide Order dated 28.04.2023, over-ruled the judgment of the Hon'ble High Court of Gujarat in the case of M/s. Cosmo Films Ltd. (C.A. No. 290 of 2023) along with other tagged matters. On the basis of the said judgment of the Hon'ble Supreme Court of India, the Central Board of Indirect Taxes and Customs (CBIC) issued 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.

2.4 In view of such clarification issued by the CBIC, the Appellant got the Bills of Entry, as detailed at Column No. 2 of the Table – A of the impugned order, re-assessed and paid the IGST in respect of the goods imported under the said Bills of Entry. Upon re-assessment, the systems created a Challan for payment of IGST and also the interest was computed by the EDI system and incorporated in the Challan. In such circumstances, the Appellant had no option but to pay the IGST along with interest in terms of the Challan generated by the EDI system. Accordingly, the Appellant had paid interest amounting to Rs. 34,14,422/- of which the details are as per Column No. 5 of the Table – A of the impugned order.

2.5 In support of the claim, the Appellant submitted the documents as mentioned at Para 3 of the impugned order. The Appellant had produced CA Certificate dated 05.10.2023 issued by Kantilal Patel & Co., Chartered Accountants, Membership No. 153599, office at KPC House, Besides High Court Auditorium Gate, Sola, Ahmedabad, whereby it had been certified that the Appellant have paid interest amounting to Rs. 34,14,422.20/- with regard to re-assessment of Bills of Entry filed for the import of goods during the period from 13.10.2017 to 10.01.2019 and they have not passed on the incidence of such interest to any another person but have borne the same themselves. The said interest amounting to Rs. 34,14,422/- had been shown as 'receivables' in the Books of Accounts maintained by the Appellant.



The adjudicating authority vide the impugned order has rejected the refund claim of Rs. 34,14,422/-, of the Appellant

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

- The adjudicating authority has not considered the grounds of refund as submitted under Statement R of the refund claim. The refund has been rejected on the sole ground to the effect that the interest had been levied in accordance to the conditions of Notification No. 18/2015-Cus dated 1.3.2015 and the case relied upon by the them in the refund claim did not incapacitate the recovery of interest in terms of the said notification;
- The adjudicating authority has not considered the fact that the interest under dispute is pertaining to levy and collection of IGST under Section 3 (7) of the Customs Tariff Act. Section 3 (12) of the Customs Tariff Act stipulated that the provisions of Customs Act will be applicable with respect to exemption from duties under Section 3 of the Customs Tariff Act which is evident from the relevant text of the statute reproduced under:

*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*

- It is by virtue of the above applicability that the exemption Notification No. 18/2015-Cus dated 1.3.2015 has been issued wherein the exemption to Basic Customs duties as well as duties / taxes leviable under Section 3 (7) of the Customs Tariff Act has been granted. However, it needs to be appreciated that only the provisions pertaining to grant of exemption of duties have been extended to the levies under Section 3 of the Customs Tariff Act and no corresponding powers under the Customs Act have been extended to charge of interest. Thus, the said notification doesn't enjoy the powers to create the charge of interest so far as the levy under Section 3 of the Customs Tariff Act is concerned;
- It also needs to be appreciated that the said Notification has been issued in terms of the powers conferred by sub-section (1) of Section 25 of the Customs Act. Thus, it is of vital importance to examine the powers conferred under the said statute and the relevant text of the same is reproduced under:

*If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.*



- 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 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. The adjudicating authority has over-looked the said scheme of things and proceeded to come to an erroneous conclusion;
- Even otherwise, the Appellant humbly submit that a notification creating a liability for interest can be issued if and only if the legislation empowers issuance of such notification. Section 25 of the Customs Act does not grant such powers for charge of interest. Additionally, it is submitted that Section 3 of the Customs Tariff Act does not make any provision for charge of interest in respect of the levies made thereunder. In light of such facts, the liability for interest cannot be created by virtue of a notification in absence of corresponding powers having

been provided for in the legislation. In the instant case, there is no statutory provision for charge of interest with respect to the levy under Section 3 of the Customs Tariff Act as already discussed in the refund claim and as discussed hereinbelow. However, the adjudicating authority has concluded that interest is chargeable without attributing any statutory provision which levies the charge of interest with respect to recovery of IGST under Section 3(7) of the Customs Tariff Act;

- That Section 12 of the Customs Act, 1962 levies duty on goods imported into India at such rates as may be specified in the Customs Tariff Act, 1975. In Customs Tariff Act, 1975, Section 2 provides the rates at which duties of customs are to be levied under the Customs Act, 1962 are as specified in the first and second schedules of the Customs Tariff Act, 1975. In Section 12 of the Customs Act, 1962 there is no reference to any specific provision of Customs Tariff Act, 1975. These facts are evident from the language employed in the respective statutes which are reproduced under for ease of reference:

**Section 12 of the Customs Act**

*Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.*

**Section 2 of the Customs Tariff Act**

*The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.*



The highlighted text of Section 12 of the Customs Act implies that the duties of customs may be levied under 1) The Customs Act OR 2) Any other law for the time being in force. Likewise, the highlighted portion of Section 2 of the Customs Tariff Act implies that the duties of customs which are levied under the Customs Act is that which are specified in the First and Second Schedule to the Customs Tariff Act. In other words, the import duties levied under the Customs Act are Basic Customs Duty as per the First Schedule to the Customs Tariff Act;

- On the other hand levy of IGST under Section 3 (7) of the Customs Tariff Act, 1975 is not relatable to the first or second schedule but the rate is prescribed in that section itself. This itself shows the charging section for IGST is not Section 12 of the Customs Act, 1962 but Section 3 (7) of the Customs Tariff Act, 1975;
- It may be appreciated that prior to introduction of Goods and Services Tax, additional duty (which was known as CVD in trade parlance) was leviable under Section 3 (1) of the Customs Tariff Act. With the inception of Goods and Services Tax Act, 2017, sub-section 7 was inserted in Section 3 to the Customs Tariff Act which provides for levy of IGST. Thus, prior to Goods and Services Tax Act, CVD was leviable under Section 3 (1) of the Customs Tariff Act which is akin to IGST leviable under Section 3 (7) of the Customs Tariff Act. Further, the judgment has been rendered with respect to the levy under Section 3 of the

Customs Tariff Act and as such the same will be applicable to all the taxes/duties leviable under Section 3 of the Customs Tariff Act. Thus, the position of law as enunciated by the Hon'ble Supreme Court in the case of M/s Hyderabad Industries Ltd. *supra* is squarely applicable to the facts of the case at hand;

- The above principle was 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;
- The above 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); (Paras 12, 13 and 14 may be referred);
- The verdict of the Hon'ble High Court of Bombay was upheld by the Hon'ble Supreme Court vide order dated 28.7.2023 in Special Leave Petition (Civil) Diary No. 18824/2023. The Review Petition filed by the department against the said order dated 28.7.2003 was dismissed by the Hon'ble Supreme Court vide order dated 09.01.2024 in R.P (C) Diary No. 41195/2023. Thus, it is a settled position of law that IGST is levied under Section 3 (7) of the Customs Tariff Act and not under Section 12 of the Customs Act;
- It is submitted that Section 3 of the Customs Tariff Act levies additional duties equal to excise duty, sales tax, local taxes and other duties of which sub-section 7 pertains to levy of IGST. Sub-section 12 of the said Section 3 *ibid* stipulates that the provisions of Customs Act relating to drawback, refunds and exemption from duties shall be applicable to the various duties leviable under the said statute;
- Anti-dumping duty is levied under Section 9A of the Customs Tariff Act. As opposed to the above provisions, sub-section 8 of the said statute specifically mentions that the provisions of Customs Act relating to interest, penalties, etc. would be applicable to the said statute. For ease of understanding the text of the same is reproduced under:

*The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.]*

The above provision was amended by the Finance (No. 2) Act, 2004. Prior to its amendment, the same read as under:

*The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, relating to non-levy, short levy, refunds and appeals shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.*

Comparison of the language employed in Section 3 (12) and amended 9 A (8) of the Customs Tariff Act clearly establishes that the provisions of interest and



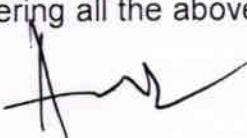
penalty are made under Section 9 A (8) *ibid* for anti-dumping duty whereas no such provisions have been enacted for the duties / taxes leviable under Section 3 of the Customs Tariff Act. No amendment to Section 3 (12) has been made on the similar lines as those amendments made to Section 9A(8).

- The above is fortified by the fact that safeguard duty and countervailing duty on subsidized articles is levied under Sections 8 B and 9 respectively of the Customs Tariff Act and the sub-sections 9 & 7 A respectively thereto specifically include interest and penalty. The respective statutes are identically worded and the same is reproduced under:

*The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.*

The provisions of Section 3 (12) of the Customs Tariff Act when compared to Section 8 B (9), 9 (7) and 9 A (8) clearly establishes that no provision for levy and charging of interest and penalty has been made for the duties / taxes leviable under Section 3 of the Customs Tariff Act.

- The above position of law has been fortified by the Hon'ble High Court of Bombay in the case of M/s Mahindra & Mahindra Ltd. (W.P. 1848/2009) *supra*. (Para 26, 27 & 28 may be referred);  
The above verdict of the Hon'ble High Court of Bombay was upheld by the Hon'ble Supreme Court vide order dated 28.07.2023 in Special Leave Petition (Civil) Diary No. 18824/2023 and the Review Petition filed by the department was also dismissed by the Hon'ble Supreme Court vide order dated 09.01.2024. It may be appreciated that prior to introduction of Goods and Services Tax, additional duty (which was known as CVD in trade parlance) was leviable under Section 3 (1) of the Customs Tariff Act. With the inception of Goods and Services Tax Act, 2017, sub-section 7 was inserted in Section 3 to the Customs Tariff Act which provides for levy of IGST. Thus, prior to Goods and Services Tax Act, CVD was leviable under Section 3(1) of the Customs Tariff Act which is akin to IGST leviable under Section 3(7) of the Customs Tariff Act. Thus, the position of law as enunciated by the Hon'ble High Court of Bombay in the case of M/s Mahindra & Mahindra Ltd. *supra*, as upheld by the Hon'ble Supreme Court, is squarely applicable to the facts of the case at hand;
- The Hon'ble High Court of Bombay was deliberating upon levy and charge of interest and penalty on CVD or SAD under Section 3 or Section 3 A of the Customs Tariff Act, 1975 or surcharge under Section 90 of the Finance Act, 2000. After considering all the above facts, the Hon'ble High Court concluded as under:




*In view of the above, imposing interest and penalty on the portion of demand pertaining to surcharge or additional duty of customs or special additional duty of customs is incorrect and without jurisdiction.*

- The additional duty of customs is leviable under Section 3 of the Customs Tariff Act. Likewise, IGST is also leviable under Section 3 of the Customs Tariff Act. Therefore, the decision of the Hon'ble High Court of Bombay, as upheld by the Hon'ble Apex Court, is equally applicable to the facts of the case at hand. Accordingly, the provisions of Section 28AA of the Customs Act will not be applicable to IGST and as such interest is not chargeable in the instant case;
- The adjudicating authority has failed to consider the above judicial pronouncement of the Hon'ble Supreme Court. It may be appreciated that the law laid down by the Hon'ble Supreme Court is the law of the land in terms of the provisions of Article 141 of the Constitution of India and the same is reproduced under for ease of reference:

**141. Law declared by Supreme Court to be binding on all courts.—**

*The law declared by the Supreme Court shall be binding on all courts within the territory of India.*

- The above provisions make it amply clear that the law laid down by the Hon'ble Supreme Court is mandatorily abiding on the lower authorities. In the dated 02.05.2023 in the case of Satender Kumar Antil Misc. Application No. 2034/2022, the Hon'ble Supreme Court has categorically mentioned that wherever the judgment is applicable, its principles must be followed and there is no question of violating the principles laid;
- In the instant case, the judgment in the Order dated 28.07.2023 in Special Leave Petition (Civil) Diary No. 18824/2023 in the case of Mahindra & Mahindra is squarely applicable to the facts of the case at hand since it has been delivered on the interpretation of sub-section 6 (now renumbered 12) of Section 3 of the Customs Tariff Act. Thus, in light of the above judgment, the principles therein have to be unreservedly followed and any deviation thereof would tantamount to violation of the principles laid down;
- The principles of judicial discipline require that the orders of the higher authorities / courts are to be followed unreservedly by the sub-ordinate officers. This principle has been enunciated by the Hon'ble Supreme Court in the case of M/s Kamlakshi Finance Corporation Ltd. as reported at 1991 (55) ELT 433 (SC);
- In the instant case, the adjudicating authority has ignored the law laid down by the Hon'ble Supreme Court and proceeded to reject the refund claim. Further, there is no discussion on the above aspects in the impugned order and the same maintains complete silence with regard to the law laid down by the Hon'ble Supreme Court. Thus, the impugned order is violative to the principles of judicial discipline and as such deserves to be set aside forthwith;

- Once it has been endorsed by the Hon'ble Apex Court that there is no provision to charge interest with respect to the levies under Section 3 of the Customs Tariff Act, the same is not open for another round of dispute. In absence of any provision to charge interest on the levies under Section 3 of the Customs Tariff Act, which includes levy of IGST, the interest recovered from us 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. They placed reliance on the case of M/s G B Engineers reported at 2016 (43) STR 345 (Jhar);
- Similar observations have been made by the Hon'ble High Court of Karnataka in the case of M/s KVR Construction reported at 2012 (26) STR 195 (Kar);
- The above case was affirmed by the Hon'ble Supreme Court as reported at 2018 (14) GSTL J70 (SC). Apart from the above, there are a number of judgments of various High Courts to the effect that any collection without authority of law cannot be retained by the department. Thus, it was incumbent upon the adjudicating authority to have returned the amount collected without the authority of law under the guise of interest;
- It needs to be appreciated that no recovery can be affected without the authority of law as provided for under Article 246 of the Constitution of India which reads as under:

*"No tax shall be levied or collected except by authority of law"*

- If taxes are not permitted to be collected without the authority of law, it goes without saying that interest cannot be charged without authority of law. In light of the express provision, any amount which has been collected unlawfully is required to be returned and cannot be retained by the Government. In this regard, the findings of the Hon'ble Supreme Court in the case of M/s Mafatlal Industries Ltd. v/s Union of India reported at 1997 (089) ELT 247 (SC) are very much relevant (Para 208, 303 may be referred);
- At this juncture reliance on case of M/s Somaiya Organics v/s State of Uttar Pradesh reported at 2001 (130) ELT 03 (SC) is not out of context (Observation Para 28 and 32 may be referred);
- The underlying principle laid down by the Constitution of India and the Hon'ble Apex Court is to the effect that any duty, tax, amount, etc. cannot be collected without the authority of law. For the purpose of charging and collecting interest there ought to be an express provision in the relevant law. This principle has been laid down by the Hon'ble Supreme Court vide order dated 16.07.1997 in the case of M/s India Carbon Ltd.; 9.4
- In the instant case, the matter pertains to payment of IGST as payable in terms of the provisions of Section 3 (7) of the Customs Tariff Act in respect of import of goods; that there is no provision for charge of interest in respect of duties / taxes leviable under Section 3 of the Customs Tariff Act which has been elaborated at length hereinafter. This aspect has not been considered by the adjudicating authority and as such the impugned order is a non-speaking, vague and cryptic order which is violative of the principles of natural justice;



- The adjudicating authority has also failed to consider the fact that the Customs Act makes provisions for payment of interest only in the following cases:
  - a. Finalization of Provisional Assessment – Payment of interest is provided for under Section sub-section 3 of Section 18 of the Customs Act;
  - b. Where the duty is liable to be paid in accordance with the provisions of Section 28 – Provision for charging of interest has been made under Section 28AA of the Customs Act;
  - c. Duty payable as a result of assessment – Provision for charging interest on delayed payment of duty has been made under sub-section (2) of Section 47 of the Customs Act;
  - d. Payment of export duty – Interest chargeable under sub-section 2 of Section 51 of the Customs Act;
  - e. In case of warehoused goods – Interest chargeable in terms of the provisions of sub-section 2 of Section 61 of the Customs Act, Section 72(1) of the Customs Act and Section 73 A (3) of the Customs Act;
  - f. Recovery of erroneously paid drawback – Interest chargeable under Section 75 A (2) of the Customs Act.

Apart from the aforesaid provisions, there are no other provisions in the Customs Act for charging of interest.

- The present issue does not pertain to finalization of provisional assessment, payment of export duty, warehoused goods or recovery of erroneously paid drawback. Thus, the provisions of Sections 18 (3), 51 (2), 61 (2), 72 (1), 73 A (3) and 75 A (2) of the Customs Act do not come to play in the instant case. After having eliminated the above statutory provisions, the only remaining statutory provisions are Section 28AA and Section 47(2) of the Customs Act;
- Section 28AA of the Customs Act is reproduced under for ease of reference:

**SECTION [28AA. Interest on delayed payment of duty. — (1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.**

The highlighted portion of the above statutory provision amply demonstrates the fact the provisions of Section 28AA will come into play only in circumstances where the duty is payable in accordance with the provisions of Section 28. The concept of duty payable in accordance with the provisions of Section 28 of the Customs Act finds credence in sub-section 10 which is reproduced under:

(10) *Where an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall*



pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

The above statute expressly specifies that duty would be payable in accordance with the provisions of Section 28 of the Customs Act **only in cases where an order determining duty is passed by the proper officer**. Such order determining the duty is required to be passed in terms of the provisions of sub-section 8 of Section 28 of the Customs Act. In the instant case, no order under Section 28 (8) of the Customs Act has been passed by the proper officer and as such the duty cannot be said to be payable in accordance with the provisions of Section 28. Resultantly, the provisions of Section 28AA of the Customs Act will not be applicable to the facts of the present case.

- Thus, the only remaining provision of charge of interest is Section 47 (2) of the Customs Act which is reproduced under for ease of reference:

*The importer shall pay the import duty -*

- (a) *on the date of presentation of the bill of entry in the case of self-assessment; or*
- (b) *within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or*
- (c) *in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf,*

*and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten per cent. but not exceeding thirty-six per cent. per annum, as may be fixed by the Central Government, by notification in the Official Gazette.*



The above statute stipulates the time frame for paying the Customs duty and failure to do so would attract interest at the above specified rate of 15% per annum as specified in Notification No. 28/2002-Cus (NT), dated 13.5.2002. In cases where the Bill of Entry is re-assessed, the duty is required to be paid on the date on which the same has been returned to the importer as stipulated in Section 47 (2) (b) of the Customs Act. And in the event of failure to do so, interest would be payable for the number of days delay from the date of return of the Bill of Entry to the actual date of payment of duty;

- The above position of law has been upheld by the Hon'ble Ahmedabad Tribunal in the case of M/s Essar Project India Ltd. reported at 2019 (369) ELT 1547 (T);
- In the instant case, the Bill of Entry has been re-assessed in terms of the provisions of Circular No. 16/2023-Cus, and as such the instant case is governed by the provisions of Section 47 (2) (b) of the Customs Act. In terms of the said provision, the due date for making payment of duty is the date on which the Bill of Entry is returned to us by the proper officer after re-assessment. Thus, interest would be payable only in cases where the duty is not paid on the date of

return of Bill of Entry. In case of failure of payment of duty on the same day, interest would be payable for the number of days delay from the date of return of the Bill of Entry to the actual date of payment of duty. However, the interest in the present case has been computed from the date of presenting the Bill of Entry till the date of making payment which is erroneous and bad in law;

➤ The 'pre-import' condition inserted in Notification No. 18/2015-Cus by virtue of Notification No. 79/2017-Cus dated 13.10.2017 had been struck down as *ultra vires* by the Hon'ble High Court of Gujarat in the case of M/s Maxim Tubes Company Ltd. reported at 2019 (368) ELT 337 (Guj). The same was over-ruled by virtue of the order dated 28.04.2023 of the Hon'ble Supreme Court in the case of M/s Cosmo Films Ltd. (C.A. 290 of 2023). Thus, till the time that the order of the Hon'ble High Court of Gujarat was over-ruled, the same remained operative. This would mean that the 'pre-import' condition was not a part of Notification No. 18/2015-Cus as amended till 28.04.2023 and as such the act of non-payment of IGST by the Appellant was in consonance to the provisions of law. Thus, even if it is assumed that interest is chargeable, the same would be chargeable only from 28.04.2023 i.e. the date when the order of the Hon'ble High Court of Gujarat was over-ruled by the Hon'ble Supreme Court. Even, in such a scenario, the findings of the adjudicating authority to the effect that interest was payable from the date of filing the Bill of Entry is erroneous and deserves to be set aside;

### PERSONAL HEARING

4. Personal hearing in the matter was held on 08.05.2025. Shri John Christian and Shri Ashish Jain, Consultants, appeared for hearing on behalf of the Appellant. They reiterated the submission made in the appeal memorandum and vide their additional submission have placed on record the Bombay High Court judgment in case of A.R. Sulphonates Pvt. Ltd. v. Union of India reported at [2025 29 Centax 212 (Bom) (09.04.2025)] and submitted that the matter is squarely covered in the said judgment and requested that the refund may be allowed.

### DISCUSSION & FINDINGS

5. I have carefully examined the impugned order, the appeal memorandum filed by the Appellant, their submissions during the hearing, and the documents and evidence on record. The brief issue for determination is whether interest is chargeable on the levy of IGST.

5.1 Before going into the merits of the case, I find that as per CA-1 Form of the Appellant, the present appeal has been filed on 16.04.2024 against the impugned order dated 12.02.2024 received by the Appellant on 01.03.2024, which is within the statutory time limit of 60 days prescribed 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.

6. It is observed that the Appellant have filed the present appeal challenging the amount paid as interest on the IGST, which they have claimed to have paid in terms of the challan generated by the EDI system. It is observed that the Appellant has contended that the demand of interest on IGST is unsustainable as there is no charging provision under the Customs Tariff Act, 1975 authorizing the levy of interest on IGST. Further, Section 3 (12) of the said Act, as it stood during the period of import, did not extend the provisions of the Customs Act relating to interest or penalty to IGST levied under Section 3 (7).

6.1 It is observed that the Appellant has relied upon various judicial pronouncements to support their claim. However, particular attention is drawn to the decision of the Hon'ble Bombay High Court in *Mahindra & Mahindra Ltd. v. Union of India* [2022-VIL-690-BOM-CU], wherein the Court categorically held that in the absence of a specific charging provision under the Customs Tariff Act, the levy of interest and penalty on IGST is unsustainable. This view was reaffirmed and applied in the case of *A.R. Sulphonates Pvt. Ltd. v. Union of India & Ors.* [2025 (4) TMI 578 (Bom.)], where the Hon'ble High Court quashed the demand of interest and penalty on IGST levied under Section 3 (7) of the Customs Tariff Act and also held that CBIC Circular No. 16/2023-Cus, to the extent it seeks to recover interest, is not legally tenable. Both decisions establish that Section 3 (12) of the Customs Tariff Act, prior to its amendment effective from 16.08.2024, did not extend the provisions for interest or penalty to IGST, thereby rendering such demands devoid of legal authority.



6.2 I have perused the aforesaid judgments and the relevant para of the Hon'ble Bombay High Court in the case of A.R. Sulphonates vs. Union of India & Ors is reproduced as below:

"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.”

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 7 th 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 APRIL 09, 2025 S.R.JOSHI 13-wp-19366-2024-judgement.doc 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.

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

- (i) It is declared that Circular No.16 of 2023-Customs dated 7<sup>th</sup> 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 1<sup>st</sup> 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 16<sup>th</sup> August, 2024 is prospective in nature and is applicable only from 16<sup>th</sup> August, 2024 onwards;

6.3 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 recovery of interest as in the present case. In view of the same, the adjudicating authority shall examine the facts of the case and decide the issue on the basis of the aforesaid judgments.

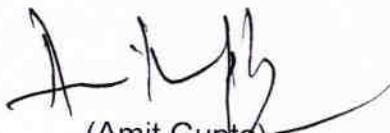
7. In view of the discussions made above, I find that remitting the present appeal to adjudicating authority for passing fresh speaking order in light of the aforesaid judgments, has become sine qua non to meet the ends of justice. Accordingly, the case is remanded back to the adjudicating authority, in terms of sub- section 3 (b) of Section 128A of the Customs Act, 1962, for passing a fresh order by following the principles of

natural justice and legal provisions. In this regard, I also 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 Judgments of Hon'ble Tribunals in case of Prem Steels Pvt. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri.-Del)] holding 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.

8. Accordingly, I set aside the impugned order and allow the appeal filed by the Appellant by way of remand to the adjudicating authority for passing fresh order after considering the submissions made by the Appellant in the present appeal on record. The Adjudicating Authority shall examine the available facts, documents, submissions and issue speaking order afresh following principles of natural justice and legal provisions. No view on merits has been expressed in this order.



The appeal preferred by the Appellant is allowed by way of remand

  
 (Amit Gupta)  
 Commissioner (Appeals)  
 Customs, Ahmedabad

F. Nos. S/49-45/CUS/AHD/24-25  
1833

Dated: 02.07.2025

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