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

DIN- 20260371MN000011161F

क	फ़ाइल संख्या FILE NO.	S/49-130/CUS/AHD/2024-25
ख	अपीलआदेश संख्या **ORDER-IN-APPEAL No.** (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-780-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	31.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	OIO No. 27/DC/ICD/IMP/REF/2024 dated 24.05.2024
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	31.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Shah Industries Ltd, C1/270, GIDC estate Naroda, Ahmedabad-382 330

1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.

	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order - In - Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध 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, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने,मांगे गए शुल्क के 10 % अदा करने पर,जहां शुल्क या शुल्क एवं दंड विवाद में हैं.या दंड के10 % 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 Shah Industries Ltd, C1/270, GIDC estate Naroda, Ahmedabad-382 330 (hereinafter referred to as 'the appellant') has filed the present appeal in terms of Section 128 of the Customs Act, 1962, against Order-In-Original No. 27/DC/ICD/IMP/REF/2024 dated 24.05.2024 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner of Customs, ICD, Khodiyar (hereinafter referred to as 'the adjudicating authority'). Vide impugned order, the appellant's claim for refund of interest of Rs.55,61,412/- paid on delayed payment of IGST has been rejected by the adjudicating authority.

2. Facts of the case, in brief, are that the appellant was importing goods under Advance Authorisation Scheme without payment of Customs duties, including IGST leviable under Section 3(7) of the Customs Tariff Act, 1975. It appeared that the appellant had exported the goods first and subsequently imported duty-free goods/inputs under Advance Authorisation by availing Exemption under Notification No. 18/2015-Cus dated 01.04.2015, as amended by Notification No. 79/2017-Cus dated 13.10.2017. Later, in view of the Judgment dated 28.04.2023 of Hon'ble Supreme Court in the case of ***Union of India vs. Cosmo Films Ltd.*** [(2023) 5 Centax 286 (S.C.)], it was settled that the 'Pre-import condition' for imports under Advance Authorisation is valid and required to be fulfilled. The 'Pre-import condition' was omitted vide Notification No. 01/2019-Customs dated 10.01.2019. Thus, during the period of 13.10.2017 to 09.01.2019 there was 'pre-import condition' in Para 4.14 of the Foreign Trade Policy 2015-20, which was held to be valid by Hon'ble Supreme Court. So, during the period of 13.10.2017 to 09.01.2019, the appellant was required to import the inputs under Advance Authorisation Scheme first; and by using such inputs the goods manufactured by them were required to be exported in discharge of their export obligation. Whereas, in the present case, the appellant has made exports first and imported inputs under Advance Authorisation later duty free, which was not proper.

2.1 Following the aforesaid Judgment of Hon'ble Supreme Court, the CBIC issued a ***Circular No. 16/2023-Customs dated 07.06.2023***, which clarified the procedure for paying IGST and availing Input Tax Credit (ITC). The appellant had stated to have voluntarily paid total sum of ₹3,28,56,915/-, which included IGST of ₹2,72,95,503/- and interest aggregating to ₹55,61,412/- for 35 Bills of

Entry filed at ICD, Sabarmati. Interest was automatically calculated by the EDI System during the reassessment of their Bills of Entry as per the procedure prescribed in the said Circular.

2.2 Thereafter, the appellant submitted a claim for refund of Interest of ₹55,61,412/- vide their application for refund dated 29.02.2024, which was received by the office of the adjudicating authority on 06.03.2024.

2.3 The refund of interest of Rs. 55,61,412/- claimed by the appellant under Section 27(1)(a) of the Customs Act, 1962 did not appear admissible to them, therefore, a Show cause Notice dated 10.04.2024 was issued to the appellant as to why the claim for Refund of interest of Rs. 55,61,412/- paid by them along with payment of IGST, should not be rejected under the provisions of Section 27 of the Customs Act, 1962. After considering the written and oral submissions of the appellant, the adjudicating authority has rejected the refund claim vide impugned order dated 24.05.2024. Being aggrieved, the claimant/appellant has filed the present appeal under the provisions of Section 128 of the Customs Act, 1962.

Admission of Appeal:

3. As the present appeal has been filed against rejection of refund claim, pre-deposit for filing the appeal under the provisions of Section 129E of the Customs Act, 1962, is not required. In the Form CA-1 of the Appeal Memorandum, the Date of communication of the impugned order dated 24.05.2024 has been shown as '29.05.2024'. Whereas, the present appeal has been filed on 29.07.2024. As the appeal has been filed within normal period of 60 days from the date of receipt of impugned order, as stipulated under Section 128(1) ibid, it has been admitted and being taken up for disposal on merits.

Grounds of Appeal:

4. The appellant has raised various contentions in their grounds of appeal. They submitted, inter alia, that the present appeal arises out of the rejection of the appellant's refund claim of ₹55,61,412/- representing interest recovered by Customs authorities on payment of Integrated Goods and Services Tax (IGST) in respect of imports made under the Advance Authorization (AA) Scheme during the period from October 2017 to January 2019.

4.1 It is submitted that impugned order is passed in violation of principle of natural justice as binding precents were not even followed by Ld. Adjudicating authority. Further, Ld. Adjudicating authority did not considered various submissions made by appellant.

4.2 Section 3(12) of Customs Tariff Act, 1975 does not borrow interest & penal provisions from the Customs Act, 1962. In absence of machinery provisions, no penalty can be imposed, or interest recovered from Noticee. It is submitted that IGST is levied under Section 3(7) of the Custom Tariff Act 1975. However, the Custom Tariff Act, 1975 has limited provisions and it borrows various provisions from the Customs Act, 1962 for implementation of its provisions. Section 3(12) of the Custom Tariff Act 1975, which is the borrowing provision with regard to IGST, does not borrow provisions of penalty and interest from the Customs Act 1962. Therefore, interest cannot be recovered for non-payment of including IGST which is chargeable under Section 3 of the Custom Tariff Act, 1975.

For reference Section 3 (12) of the Custom Tariff Act 1975 is extracted below:

> *"(12) The provisions of the Customs Act, 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 chargeable under this section as they apply in relation to the duties leviable under that Act".*

4.3 The Hon'ble Supreme Court in India Carbon Ltd. v. State of Assam, (1997) 6 SCC 479, relied upon the earlier five-judge bench decision in the case of J.K. Synthetics Ltd. Ltd. v. CTO, (1994) 4 SCC 276 and held that "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".

This position of law was approved and reiterated by the constitution bench in the case of V.V.S. Sugars v. Govt. of A.P. & Ors., (1999) 4 SCC 192.

4.4 A similar question relating to liability of the plant, machinery etc. to confiscation and liability of the assessee to penalty under Rule 9(2) and Rule 173Q of the Central Excise Rules, 1944, for non-payment of the additional duty in terms of the Additional Duties of Excise (Goods of Special Importance) Act. 1957, by taking recourse to the provisions of the Central Excise Rules, 1944,

came up for consideration before the Hon'ble Delhi High Court in the case of Pioneer Silk Mills Pvt. Ltd. v. UOI, 1995 (80) ELT 507 (Del.). Revenue sought to invoke the provisions of the Central Excise Rules, 1944, relying on the provisions of Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, which read as under:

"(3) The provisions of the Central Excises and Salt Act, 1944, and the rules made thereunder, including those relating to refunds and exemptions from duty, shall, so far as may be, apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in sub-section (1)."

The provisions of Section 3(3) above, are somewhat similarly worded as the provisions of Section 3(6) of the Customs Tariff Act, 1975. The claim of the petitioners in that case was that under Section 3 of the Additional Duties Act, only those provisions of the Central Excises Act and Rules made thereunder. which pertain to the levy and collection of the duties of excise under the Central Excise Act have been borrowed and therefore, no penalty can be imposed. Relying inter-alia, on the judgment of Khemka & Co. (Agencies) Pvt. Ltd. (supra). the Hon'ble High Court upheld the contention that "there is no provision in the Additional Duties Act which creates a charge in the nature of penalty and that the term "levy and collection" in Section 3(3) of the Additional Duties Act has a restricted meaning in view of the use of the words "including those relating to refund and exemptions from duty", otherwise these words were rather unnecessary. The Hon'ble High Court also rejected the contention of the Revenue that since Chapter II of the Central Excises Act deals with levy and collection of duty, and this Chapter also contains provisions for offences and penalties, all sections under that Chapter would be applicable. This judgment of the Hon'ble Delhi High Court was upheld by the Hon'ble Supreme Court in 2002 (145) ELT A74 (SC).

4.5 Reliance is also placed on the case of Bajaj Health & Nutrition Pvt. Ltd. v. CC, Chennai, 2004 (166) ELT 189, the Hon'ble Tribunal, set aside the interest and penalty on evasion of anti-dumping duties on the reasoning that "the provisions of Customs Act, 1962 relating to non-levy, short-levy, and refunds were borrowed only for the purpose of chargeability to anti-dumping duty under Sec. 9A(8) of Customs Tariff Act, 1975 and the provisions of the Customs Act relating to confiscation, interest and penalty were not borrowed".

The appellant further relied upon the following case laws:

(i) Tonira Pharma Ltd. v. Commissioner, 2009 (237) E.E.T. 65 (Tribunal)

(ii) Siddeshwar Textile Mills Pvt. Ltd. v. Commissioner, 2009 (248) E.L.T. 290 (Trib.)

4.6 Further, no interest is payable on the reassessment of Bill of Entry in view of the law laid down by Hon'ble Bombay High Court in Mahindra & Mahindra Limited v. Union of India, 2022 (10) TMI 2022 since Section 3(12) of Customs Tariff Act, 1975 does not borrow interest leviable under provisions of Customs Act, 1962. Section 3 (12) of the Custom Tariff Act, 1975, does not borrow interest provisions from the Customs Act, 1962. Thus, the interest could not be imposed under Section 28AA of the Custom Act, 1962, for non-payment of duties, including IGST, chargeable under Section 3 of the Custom Tariff Act, 1975. For reference Section 3 (12) of the Custom Tariff Act 1975 is extracted below-

(12) The provisions of the Customs Act, 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 chargeable under this section as they apply in relation to the duties leviable under that Act.

In Mahindra and Mahindra (supra), affirmed by Hon'ble Supreme Court vide Order dated 28.07.2023, Hon'ble High Court held that there is no substantive provision in Section 3 of the Customs Tariff Act. 1975 that provides for payment of penalty or interest on duty other than basic custom duty, and therefore, in absence of such a specific provision for levy of interest or penalty. same cannot be charged.

In view of the above submissions, the noticee submits that to the extent the show cause notice proposing interest on the amount paid towards IGST due to the system not permitting the re-assessment of Bill of Entry without payment of interest, it deserves to be set aside.

4.7 Circulars cannot alter or prevail over statutory provision. The Hon'ble Supreme Court ('SC') vide its judgement in the case of Union of India v. Cosmo Films Ltd. [2023] 149 taxmann.com 473/2023 (72) G.S.T.L. 417/[2023] 97 GST 544 (SC) upheld the constitutional validity of the imposition of 'pre-import condition in order to avail the exemption of IGST and compensation cess ('cess') under the Advance Authorisation ('AA') scheme. wherein such condition had

been incorporated in paragraph 4.14 of the Foreign Trade Policy ('FTP') vide Notification No. 33/2015-2020 w.e.f. 13.10.2017. While allowing the appeal of Revenue, the Hon'ble Supreme Court has however directed the Revenue to permit claim of refund or input credit (whichever applicable and/or wherever customs duty was paid). Pursuant to such directions of the SC, the Central Board of Indirect Taxes and Customs ('Board) has issued Circular No. 16/2023-Customs dated 07.06.2023 ('Circular'), wherein, the Board specifically noted that there exists no functionality permitting the payment of Customs duties on a Bill of Entry ('BOE') after giving the Out-of-charge ('OOC') to the goods and thus, such duties are to be paid only vide TR-06 Challan. It is noted in the notice that the cancellation of out of charge of bill of entry, again assessing bill of entry to change charge attacks IGST and cess and making notional out of charge for the bill of entry on the customs EDI system after payment of tax along with the applicable interest. It is submitted that The EDI System permitted in terms of Section 149 of the Customs Act, 1961 cannot curtail the substantive benefit of law in terms of Circular No.16/2023-Cus dated 7th June 2023.

4.8 In the case of M/s. Jindal Saw Limited vs The Chief Commissioner Of Customs on 17 December, 2021, R/SPECIAL CIVIL APPLICATION NO. 7861 of 2021, High Court of Gujarat held as under:-

"No technicality can mar the right of the parties which otherwise accrued under the substantive law. Here when genuineness of the export and entitlement of petitioner otherwise is not in any manner disputed, this technical glitch shall in no manner hamper the request of the petitioner of getting benefit."

4.9 Circulars are issued only to clarify the statutory provision and it cannot alter or prevail over the statutory provision. The appellant relied upon:

(i) Bombardier Transportation India Pvt. Ltd. Vs. DGFT reported in 2021(377) ELT 489 (Guj.)

(ii) Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries [2008(12) S.T.R. 416 (S.C.))

4.10 As submitted in paras supra, as per the case of Mahindra and Mahindra (supra), affirmed by Hon'ble Supreme Court vide Order dated 28.07.2023, Hon'ble High Court held that there is no substantive provision in Section 3 of

the Customs Tariff Act, 1975 that provides for payment of penalty or interest on duty other than basic custom duty, and therefore, in absence of such a specific provision for levy of interest or penalty, same cannot be charged. It is submitted that circulars cannot prevail over the statute.

4.11 Doctrine of merger would apply in the present case as review petition of department is also dismissed against order of Hon'ble supreme court. This decision of the Hon'ble Bombay High Court has been affirmed by the Hon'ble Apex Court in Union of India Vs Mahindra and Mahindra Ltd. [2023 (8) TMI 135-SC ORDER]. Further, the Review Petition filed by the Department has also been dismissed vide order dated 09.01.2024 in Review Petition (Civil) Diary No. 41195/202 in Union Of India & Ors Versus Mahindra & Mahindra Ltd - 2024 (1) TMI 1277. The juristic justification of the 'doctrine of merger' may be sought in the principle that there cannot be, at one and the same time, more than one operative order governing the same subject-matter. Judgment of an inferior court, if subjected to an examination by the superior court, ceases to have existence in the eyes of law and is treated as being superseded by the judgment of the superior court. In other words, the judgment of the inferior court loses its identity by its merger with the judgment of the superior court. The juristic justification of the doctrine of merger may be sought in principle that there cannot be, at one and the same time, more than one operative order governing the same issue. Thus in view of above, since the review petition is rejected by Hon'ble Supreme court, principle of merger would apply in the present case.

4.12 The Tribunal in Acer India Private Ltd. v. CC. Chennai, 2023-VIL-998-CESTAT-CHE-CU, has also affirmed the above view and held that even in cases where differential CVD is payable, there shall be no recovery of interest or confiscation of goods or imposition of fine since the Customs Tariff Act has not borrowed the relevant provisions. Therefore, the imposition of interest, fine and penalty may set aside as being without authority of law.

4.13 In view of the foregoing, the appellant finally prayed to set Aside the impugned Order-In-Original No. 27/DC/ICD/IMP/2024 dated 24.05.2024 passed by the Ld. Deputy Commissioner of Customs, ICD, Khodiyar, Gujarat, in the name of M/s. Shah Industries, and allow the appeal in full with consequential relief if any.

5. The appellant vide additional submission dated 17.02.2026 submitted that they had made Import of Goods, by availing benefit of exemption from IGST

under Advance Authorization scheme, as per Notification No. 79/2017-Custom Act dated 13.10.2017 during the period from July-2017 till March-2020 from ICD Khodiyar (INKHO), and subsequently such goods have been exported with payment of IGST. Subsequently, the Investigation conducted by the Senior Intelligence Officers of DRI, Kolkata Zonal Unit, that the appellant has imported input materials without payment of custom duty under a cover of AA, but the not complied with the pre-import condition, as demanded under the NN 79/2017-Cus dated 13.10.2017. Therefore, during the course of investigation, the Appellant has made total payment of IGST of Rs. 2,72.95,503/- and also paid total Interest of Rs. 55,61,412/- with respect to 35 Bill of Entries filed at ICD Sabarmati.

5.1 The interest paid on delayed payment of IGST on import of goods is not leviable, since there is no provision in Custom Tariff Act, 1975 to levy interest or penalty on non-payment of IGST on import of goods. In this context reliance is placed on the judgment of Bombay High Court ('HC') in the case of Mahindra and Mahindra Limited v. Union of India, 2022 (10) TMI 2022, wherein it was held that -

It is again made clear that in the absence of specific provisions for levying of interest or penalty due to delayed payment of tax unless the statute makes a substantive provision in this behalf, the same cannot be levied/charged.

Sub-section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Tariff Act, 1975 does not provide for any interest or penalty. Neither Section 90 of the Finance Act, 2000 provides for the same. Therefore, no interest and penalty can be levied on the portion of payment pertaining to surcharge, CVD and SAD.

The Customs Tariff Act. 1975 provides for additional customs duty and special additional duty but creates no liability for penalty or interest for additional duty or special additional duty.

5.2 Therefore, to levy interest on delayed payment of IGST on import of goods, there should be specific provision in Custom Tariff Act, 1975 or any other law for the time being in force. In the absence of specific provision relating to levy of interest in the respective legislation, Interest cannot be recovered by taking recourse to machinery relating to recovery of duty. Therefore, since interest is not leviable, which is already paid, the appellant had filed a refund application

vide letter dated 29.02.2024, to claim the refund of interest of Rs. 55,61,412/- paid, in compliance of provision of Section 27 of Customs Act, 1972, as Appellant has paid the interest on delayed payment of IGST, and borne the incidence of amount, and such incidence is not passed on to any other person, in terms of Section 27 of Customs Act, 1972.

5.3 Now, simultaneously, on the subject matter, and based on the investigation conducted, the DRI, Kolkata Zonal Unit, has issued Show Cause Notice dated 12.09.2019 ("SCN") in the name of M/s. Shah Industries, ("appellant"), in response to which the appellant has filed the Reply and accordingly, the SCN was adjudicated and Order-In-Original (010) No. 36/SJ(36)/PCC(ADJN.)/MUMBAI/2023-24 dated: 28.12.2023. Being aggrieved by the said OIO, the appellant has filed the appeal on 01.04.2024 before the Hon'ble CESTAT, Mumbai, and then in the said matter the Final Order No. FO/C/A/87000-87001/2025-CU [DB], dated 2025-11-19 dated 16.01.2026 has been passed in the favour of the appellant. The OIO to the extent, it was confirmed the demand towards Interest, Redemption Fine and Penalties has been set-aside.

5.4 The key observations and discussion of the said Final Order dated 16.01.2026 is that the Ld. Commissioner of Customs, Adjudication, Mumbai noted that Utilization of Advance Authorization for duty-free import of raw materials used for manufacturing the export products, is the subject matter of the present dispute. In the case in hand, for non-compliance of 'pre-import conditions', a case was booked against the appellants on the ground that the exports were made under the "Advance Authorization scheme" before the corresponding Import of the goods used for such exportation of goods. The show-cause proceedings initiated against the appellants were culminated into the impugned orders, wherein the original authority has confirmed the adjudged demands proposed for recovery in the Show Cause Notices (SCNs). The Bills of Entry referred in the Order dated 16.01.2026 which are also part of the present appeal filed by the Appellants for refund of interest.

5.5 Hon'ble Tribunal, Mumbai observed in the order dated 16.01.2026 that the Hon'ble High Court of Bombay, in the case of Mahindra and, Mahindra Ltd., 2022 (10) TMI 2022, upon examination of the issue regarding payment of interest on the demand of CVD, SAD and surcharge, being recovered under Section 28 of the Customs Act, 1962, have held that since Section 3(1) of the Customs Tariff Act, 1975, which is the charging section for levy of CVD, has not borrowed the

aspect of levy or demand of such interest, penalty etc. from the Customs Act, 1962, the same is not applicable to the CVD, SAD etc. and the same is confirmed by the Hon'ble Supreme Court by rejecting the appeal filed by the Department of Customs. It was observed by the Hon'ble Tribunal that in the Special Leave Petition (Civil) Diary No. 18824/2023 filed by the Revenue against the above judgement of the Hon'ble High Court of Bombay, the Hon'ble Supreme Court had dismissed the SLP, being. devoid of any merits. Further, in the Review Petition Diary No. 41195/2023 preferred by the department, the Hon'ble Supreme Court had also held that there is no error apparent on the face of the record or any merit in the Review Petition, warranting reconsideration of the order impugned. Therefore, the Hon'ble Supreme Court dismissed the Review Petition. It was held that the legal provisions under Section 3(12) of the Customs Tarif Act, 1975 were suitably amended vide Finance (No. 2) Act, 2024. w.e.f. 16.08.2024, so as to specifically include the provision for levy of interest, penalty etc. It is held that it clearly transpires that the amended provisions of sub-section (12) of Section 3 of the Customs Tariff Act, 1975 shall come into force w.e.f. 16.08.2024 and shall not be applicable during the disputed period, which is prior to the date of such amendment. Therefore, Tribunal was of the considered opinion that demand of interest, fine and penalty on the appellants is not legally sustainable.

Personal Hearing:

6. Personal Hearing in this case was held on 10.03.2026, which was attended in virtual mode by Shri Abhishek Chopra, CA. He reiterated the submissions made at the time of filing appeal.

Discussion and findings:

One set of the appeal memorandum has been sent to the adjudicating authority, vide this office letter F.No. S/49-130/CUS/AHD/2024-25/2457 dated 18.09.2024 for comments, but no reply thereof has been received. Therefore, I proceed to decide the appeal on basis of documents submitted by the appellant.

7.1 I have gone through the written as well as oral submissions made by the appellant. The issue to be decided in present appeal is whether the impugned order rejecting refund of interest, paid towards delayed payment of IGST, under the provisions of Section 27 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

7.2 The appellant has contended that payment 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. In other words, Section 3(12) of the Customs Tariff Act, 1975 (as stood prior to its amendment w.e.f. 16.08.2024) did not borrow the provision for charging interest from the Customs Act, 1962. Further, Section 3(12), as it stood during the period of import and payment of IGST, did not extend the provisions of the Customs Act, 1962, relating to interest on delayed payment of IGST levied under Section 3(7) of the Customs Tariff Act, 1975. The issue pertains to legal interpretation of the 'pre-import condition', which was ambiguous and subsequently clarified only after the Supreme Court's ruling in ***Cosmo Films Ltd.*** [(2023) 5 Centax 286 (S.C.)] and issuance of the CBIC Circular No. 16/2023-Cus dated 07.06.2023.

7.3 As regards, non-levy of interest on IGST, the appellant has relied upon various judicial pronouncements to support their claim. I have perused the Final Order No. 11628-11630/2024 dated 23.07.2024 passed by Ahmedabad Bench of Hon'ble CESTAT in the case of ***Chiripal Poly Films Ltd. vs. Commissioner of Customs, Ahmedabad*** [(2024) 22 Centax 245 (Tri.-Ahmd) = 2024 (9) TMI 940 - CESTAT AHMEDABAD]. In the said Final Order, it has been held that interest is not leviable on IGST paid under the procedure prescribed by Circular No. 16/2023-Cus., as there was no statutory provision authorizing such levy of interest of IGST.

7.4 It is further observed that in the decision of the Hon'ble Bombay High Court in ***Mahindra and Mahindra Ltd. v. Union of India*** [2022-VIL-690-BOM-CU = (2023) 3 Centax 261 (Bom.)], wherein Hon'ble High 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. Against this Judgment, Customs Department had filed an SLP (C) Diary No. 18824/2023 with Hon'ble Supreme Court. Vide Order dated 28.07.2023, the said SLP has been dismissed by Hon'ble Supreme Court by observing, *"We do not find any merit in the Special Leave Petition."*. Against this dismissal, Customs Department has filed a Review Petition (C) Diary No. 41195/2023 with Hon'ble Supreme Court; however, the same has also been dismissed vide Order dated 09.01.2024. Thus, the decision of the Hon'ble Bombay High Court in the case of *Mahindra and Mahindra Ltd. (supra)* became final.

7.5 Further, I find that the statutory provisions of Section 3(12) of the Customs Tariff Act, 1975, have been substituted by the Finance (No. 2) Act, 2024 and which came into effect from 16 August 2024. The said provisions, prior to amendment and after amendment, are reproduced below:

Prior to amendment/substitution vide the Finance (No.2) Act, 2024:

> *"(12) 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."*

With effect from the amendment/substitution vide the Finance (No.2) Act, 2024:

> *"(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 the duties leviable under that Act or all rules and regulations made thereunder, as the case may be."*

It is nowhere mentioned that the above-mentioned amendment to Section 3 of the Customs Tariff Act, 1975, is retrospective in nature. Therefore, interest on delayed payment of IGST is leviable w.e.f. 16.08.2024, but not for the period prior to 16.08.2024.

7.6 This view was affirmed and applied in the case of ***A. R. Sulphonates Pvt. Ltd. v. Union of India*** [(2025) 29 Centax 212 (Bom.) = 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, 1975, and also held that CBIC Circular No. 16/2023-Cus, to the extent it seeks to recover interest, is not legally tenable. The relevant paragraphs of the said Order of Hon'ble Bombay High Court are reproduced below:

> *"70. In our view, for all the reasons stated hereinabove, the impugned Order, to the extent that it levies interest and penalty, is without the authority of law and is liable to quashed and set aside.*
>
> *71. As far as Circular No. 16/ 2023-Customs dated 7th June, 2023 is concerned, it seeks to recover interest along with IGST. The relevant part of the said Circular reads as under:-*

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

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

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

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

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

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

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

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

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

... ... ".

In view of the above Order, the amended Section 3(12) of the Customs Tariff Act, 1975 is prospective in nature and would apply only with effect from 16th August 2024.

7.7 Thus, the decisions in the cases of ***Chiripal Poly Films Ltd. (supra), Mahindra & Mahindra (supra)*** and ***A. R. Sulphonates Pvt. Ltd. (supra)*** establish that Section 3(12) of the Customs Tariff Act, prior to its amendment effective from 16.08.2024, did not extend the provisions of the Customs Act, 1962, for charging interest to IGST.

8. Further, before adverting to the merits of the present appeal, it is pertinent to note that the appellant had paid the interest on from July 2018 to Sept 2021 in respect of the subject 35 Bills of Entry and filed the refund claim on 06.03.2024, i.e., beyond the prescribed period of one year from the date of payment of such duty/interest as stipulated under Section 27 of the Customs Act, 1962. In this regard, Section 27(1) of the Customs Act, 1962 provides that any person claiming refund of any duty or interest paid or borne by him shall make an application in the prescribed form before the expiry of one year from the date of such payment. Accordingly, as the refund application has been filed beyond the statutory time limit, the same is hit by limitation and is, therefore, not maintainable.

9. The appellant vide additional submission dated 17.02.2026 submitted that, simultaneously, on the subject matter, and based on the investigation conducted, the DRI, Kolkata Zonal Unit, has issued Show Cause Notice dated 12.09.2019 ("SCN") in the name of M/s. Shah Industries, ("appellant"), and the SCN was adjudicated and Order-In-Original (OIO) No. 36/SJ(36)/PCC(ADJN.)/MUMBAI/2023-24 dated: 28.12.2023. Being aggrieved by the said OIO, the appellant has filed the appeal on 01.04.2024 before the

Hon'ble CESTAT, Mumbai, and then in the said matter the Final Order No. FO/C/A/87000-87001/2025-CU [DB], dated 2025-11-19 dated 16.01.2026 has been passed in the favour of the appellant. The OIO to the extent, it was confirmed the demand towards Interest, Redemption Fine and Penalties has been set-aside.

9.1 The appellant further submitted that the Hon'ble Tribunal, Mumbai observed in the order dated 16.01.2026 that the Hon'ble High Court of Bombay, in the case of Mahindra and, Mahindra Ltd., 2022 (10) TMI 2022, upon examination of the issue regarding payment of interest on the demand of CVD, SAD and surcharge, being recovered under Section 28 of the Customs Act, 1962, have held that since Section 3(1) of the Customs Tariff Act, 1975, which is the charging section for levy of CVD, has not borrowed the aspect of levy or demand of such interest, penalty etc. from the Customs Act, 1962, the same is not applicable to the CVD, SAD etc. and the same is confirmed by the Hon'ble Supreme Court by rejecting the appeal filed by the Department of Customs. It was observed by the Hon'ble Tribunal that in the Special Leave Petition (Civil) Diary No. 18824/2023 filed by the Revenue against the above judgement of the Hon'ble High Court of Bombay, the Hon'ble Supreme Court had dismissed the SLP, being devoid of any merits. Further, in the Review Petition Diary No. 41195/2023 preferred by the department, the Hon'ble Supreme Court had also held that there is no error apparent on the face of the record or any merit in the Review Petition, warranting reconsideration of the order impugned. Therefore, the Hon'ble Supreme Court dismissed the Review Petition. It was held that the legal provisions under Section 3(12) of the Customs Tarif Act, 1975 were suitably amended vide Finance (No. 2) Act, 2024. w.e.f. 16.08.2024, so as to specifically include the provision for levy of interest, penalty etc. It is held that it clearly transpires that the amended provisions of sub-section (12) of Section 3 of the Customs Tariff Act, 1975 shall come into force w.e.f. 16.08.2024 and shall not be applicable during the disputed period, which is prior to the date of such amendment. Therefore, Tribunal was of the considered opinion that demand of interest, fine and penalty on the appellants is not legally sustainable.

9.2 In view of the foregoing, it is observed that the refund application has been filed beyond the prescribed statutory time limit and is, therefore, prima facie hit by limitation and not maintainable in law. However, it is also noted that at the time of passing the impugned Order-in-Original dated 24.05.2024, the

Final Order No. FO/C/A/87000-87001/2025-CU [DB] dated 16.01.2026 passed by the Hon'ble CESTAT, Mumbai was not available for consideration, and hence the adjudicating authority did not have the benefit of examining the present matter in light of the said judicial pronouncement. It is further observed that the aforesaid order of the Hon'ble Tribunal was passed in an appeal filed by the appellant against Order-in-Original No. 36/SJ(36)/PCC(ADJN.)/MUMBAI/2023-24 dated 28.12.2023, arising out of Show Cause Notice dated 12.09.2019 issued to M/s. Shah Industries based on investigations conducted by DRI, Kolkata Zonal Unit, as contended by the appellant. While the findings of the Hon'ble Tribunal have a bearing on the issues involved, the present proceedings pertain specifically to the rejection of the refund claim, which appears to be barred by limitation under the statute. In these circumstances, I am of the considered view that, in the interest of justice, the matter deserves to be remanded to the adjudicating authority for fresh consideration. The adjudicating authority shall re-examine the facts of the case and decide the issue afresh in the light of the aforesaid order of the Hon'ble Tribunal and in accordance with law.

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

10. In view of the above, the appeal filed by the appellant is allowed by way of remand.

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

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

By Registered Post A.D.

F. No. S/49-130/CUS/AHD/2024-25 Dated –31.03.2026

To,

(i) M/s Shah Industries Ltd,
C1/270, GIDC estate Naroda,
Ahmedabad-382 330,

Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs House, Ahmedabad.
3. The Deputy/Assistant Commissioner of Customs, ICD, Khodiyar.
4. Guard File.