



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,  
चौथी मंज़िल 4th Floor, हड्कोभवनHUDCO Bhavan, ईश्वर भुवन रोड Ishwar Bhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250971MN000000FC76

क	फ़ाइलसंख्या FILE NO.	S/49-185 to 206/CUS/JMN/AUG/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-273 to 294-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
द	दिनांक DATE	02.09.2025
इ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	22 Bills of Entry as per Table-I Cleared at RSEZ, Jamnagar
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	02.09.2025
छ	अपीलकर्ताकानामवप्ता NAME AND ADDRESS OF THE APPELLANT:	M/s Chiripal Poly Films Ltd, Chiripal House, Shivranjani Cross Roads, Satellite, Ahmedabad, Gujarat-380015.
1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।	
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2.	सीमाशुल्क अधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता होतो इस आदेश की प्राप्तिकी 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 आया आतिकोई माल।
(a)	any goods imported on baggage.
(ख)	भारत में आया तकरने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कम हो।
(ब)	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 बना एगएनियमों 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 उसके 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 मद्दसं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रतिमें पचास पैसे की न्यायालय शुल्क टिकट लगाहो ना 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।
(ब)	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 फीसों से जो अन्यरसीद, फीस, दण्ड, जब्ती और विविध मदों के शीष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1,000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांग गया ब्याज, लगाया गया दंड की राशि और रूपए एकलाख या उस से कम होतो ऐसे फीस के रूप में रु. 200/- और यदि एकलाख से अधिक होतो फीस के रूप में रु. 1,000/-।
(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.	मद्दसं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता होतो वे सीमाशुल्क अधिनियम 1962 कीधारा 129 ए (1) के अधीन फॉर्म सी.ए. -3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवाकर 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 :

	<p>सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ</p> <p>दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016</p>	<p><b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b></p> <p>2<sup>nd</sup> Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</p>
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन, सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-	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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहजाररूपए.	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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरूपयेपचासलाखसेअधिकनहोतो; पांचहजाररूपए	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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो; दसहजाररूपए.	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
(c)	इसआदेशकेविरुद्धअधिकरणकेसामने, मांगेगएशुल्कके %10 अदाकरनेपर, जहांशुल्कयाशुल्कएवंदविवादमेहैं, यादंडके %10अदाकरनेपर, जहांकेवलदंडविवादमेहैं, अपीलरखाजाएगा।	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.	शुल्कअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) शुल्कआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरूपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.	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.	(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 Chiripal Poly Films Ltd, Chiripal House, Shivranjani Cross Roads, Satellite, Ahmedabad -380015 (hereinafter referred to as the Appellant) have filed the present appeals challenging Re-Assessment Orders in 22 Bills of Entry (hereinafter referred to as 'the impugned orders') passed by the proper Customs officers [Deputy Commissioner], RSEZ, Jamnagar (hereinafter referred to as 'the adjudicating authority'). Since Appeals relate to Re-Assessment orders in 22 Bill of Entry shown in Table-A below and consequential benefits thereon, the same are taken up for disposal by this single order.

2. Facts of the case, in brief, the appellant had imported goods under Advance Authorization No 0810142447 Dt. 26.04.2018 by availing duty exemption under Notification No. 18/2015-Cus under the following Bills of Entry:-

**Table-I**

CUSTOM Duty & Interest CALCULATION SHEET  
For Advance Authorisation Lic. No 0810142447 Dt. 26.04.2018  
(Deposited vide TR-6 Challan No 1820 on 31.08.2023)



Sr No.	B/E No.	B/E Date	Assessable Value	IGST @18%	No of days for [Interest]	Interest thereon	Total [IGST + Interest]
1.	2010638	25-07-2018	4257482	829570	1864	635474	1465044
2.	2010639	25-07-2018	4257482	829570	1864	635474	1465044
3.	2010640	25-07-2018	5676642	1106094	1864	847298	1953392
4.	2010642	25-07-2018	5676642	1106094	1864	847298	1953392
5.	2010643	25-07-2018	5676642	1106094	1864	847298	1953392
6.	2010641	25-07-2018	2838321	553047	1864	423649	976696
7.	2011160	06-08-2018	5630940	1097189	1852	835066	1932255
8.	2011966	23-08-2018	4295040	836889	1835	631106	1467995
9.	2011965	23-08-2018	4295040	836889	1835	631106	1467995
10.	2012828	07-09-2018	4390080	855407	1820	639798	1495205
11.	2012827	07-09-2018	4390080	855407	1820	639798	1495205
12.	2012984	10-09-2018	5853440	1140543	1817	851657	1992200
13.	2012985	10-09-2018	4390080	855407	1817	638743	1494150
14.	2013114	12-09-2018	4390080	855407	1815	638743	1494150
15.	2013157	12-09-2018	4390080	855407	1815	638743	1494150
16.	2013554	20-09-2018	1029160	200532	1807	148915	349447
17.	2015175	17-10-2018	2008230	391304	1780	286241	677545
18.	2015171	17-10-2018	6024690	1173911	1780	858724	2032635
19.	2015170	17-10-2018	6024690	1173911	1780	858724	2032635
20.	2015172	17-10-2018	6024690	1173911	1780	858724	2032635
21.	2015173	17-10-2018	4016460	782607	1780	572483	1355090
22.	2015174	17-10-2018	4016460	782607	1780	572483	1355090
<b>Total</b>				<b>1,93,97,795</b>		<b>1,45,37,545</b>	<b>3,39,35,340</b>

2.1 Appellant is engaged in Import and manufacture of dutiable goods like BOPP films etc since January, 2009. For manufacturing such goods and its export, Appellant have imported inputs Plastic granules, Additives etc under Advance Authorization under Notification No.18/2015-Cus dated 01.04.2015 issued under Section 25(1) of Customs Act 1962, which was amended on 13.10.2017 by Notification No.79/2017-Cus. granting the duty exemption to import duties subject to "pre-import condition", against producing a valid Advance Authorisation issued by Regional DGFT Authority in terms of the paragraph 4.03 of the Foreign Trade Policy, from the whole of duty of Customs leviable, which is specified in the First Schedule to Customs Tariff Act 1975 and from whole of additional duty of Customs Tariff Act. The Notification No. 18/2015-Cus dated 01-04-2015 was amended on 13.10.2017 by the Notification No.79/2017-Cus, and thereby granted exemption to the import duties in the nature of IGST leviable under sub section 3(7) of Customs Tariff Act 1975 and GST Compensation Cess under section 3(9) of Customs Tariff Act 1975. The exemption for these levies was subject to "pre-import condition" inserted as condition "(xii)" that exemption from integrated tax and the goods and services tax compensation cess leviable under Section 3(7) and Section 3(9) of Customs Tariff Act shall be subject to pre-import condition. Paragraph 4.14 of Foreign Trade Policy of 2015-20 (FTP) and Handbook of Procedures 2015-20 (HBP) through Notification No. 33/2015-20 inserted "Pre-import condition". Thereafter, the Notification No. 1/2019-Cus dated 10-1-2019 stipulated that condition "(xii)" i.e. "pre-import condition" was omitted. Thus, the said "Pre-Import Condition" inserted by Notifications dt. 13-10-2017 was to be complied with from 13-10-2017 upto 09-1-2019.

Appellant have imported various goods which were their raw materials under Advance Authorization scheme for period from 13-10-2017 to 09-01-2019. In such imports in the Customs Stations Reliance SEZ, Specified officers [proper Customs Officers] had allowed exemption of IGST under Notification on final assessment basis. Appellant had not deposited amount towards IGST on imports. Such exemption was not objected or disputed by the specified officers [Customs Officers] at RSEZ, Jamnagar.

2.2 DRI had raised dispute about non-compliance of pre-import condition. Appellant filed SCA No18097/2018 before Hon'ble Gujarat High Court, challenged vires and validity of the Pre-Import Condition. The Hon'ble Gujarat High Court granted stay and allowed SCA with **Maxim Tubes Co Pvt Ltd V/s. UOI 2019 (368) ELT 337 (Guj)**. However, Union of India challenged judgment of the Hon'ble Gujarat High Court before the Hon'ble Apex Court,

wherein orders of Gujarat High Court are over ruled with directions in para 75 by judgment of the Hon'ble Apex Court decision dated 28-04-2023, as reported in as **Union of India vs Cosmo Films Ltd - 2023 (385) E.L.T. 66 (S.C.) and in (2023) 5 Centax 286 (S.C.).**

2.3 As directed by the Hon'ble Supreme Court in para 75 of the judgment, Revenue was directed to permit all importers to claim refund or input credit, whichever is applicable. The direction were issued to make payment of duty with Applicable Interest in CBIC Circular dated 07-06-2023. Appellant had interim stay from Hon'ble Gujarat High Court against such payment till issue was finally decided by the Hon'ble Supreme Court on 28-04-2023. Appellant had not deposited any duty or Interest till 31-08-2023.

2.4 The Circular No. 16/2023-Cus dated 07-06-2023, clarified that in all similar cases the Bills of Entry may be re-called and re-assessed for levy of the IGST. After the Hon'ble Supreme Court's decision dated 28-04-2023 and CBEC Circular dated 07-06-2023, Appellant vide letter dated 09-08-2023 approached the Specified Officers at RSEZ, Jamnagar for the Re-assessment of 22 Bill of Entry. RSEZ, Jamnagar was non EDI Customs Station. RSEZ vide letter dated 14-08-2023 also requested M/s NSDL, Trade World, A Wing, 4h Floor, Kamala Mills Compound, Lower Parel, Mumbai-400013 under intimation to Appellant to enable importers to pay IGST in terms of Trade Notice No.07/2023-24 dt. 08-06-2023. RSEZ, Jamnagar informed Appellant to obtain Bank DD from SBI, Jamnagar for amount to be paid. Then, Appellant vide its letter dated 16-08-2023 informed specified officers that they will pay amount of "Interest" on duty under protest. Accordingly, Appellant obtained Bank DD from SBI on 29-08-2023 and gave it to officers in RSEZ, Jamnagar with TR-6 Challan and it was deposited in State Bank of India on 31-08-2023 by the RSEZ Authorities towards the amount of duty with interest for Re-assessment of 22 Bill of Entry. Appellant has deposited of **duty Rs. 1,93,97,795/- and "Interest" of Rs. 1,45,37,545/-** in respect of 22 Bills of Entry. Appellant desires to claim refund of "Interest" deposited **"Under Protest"** on 31-08-2023, which was intimated vide Appellant's letters dated 16-08-2023. TR-6 Challan 1820 dated 31-08-2023 shows deposit of the due duty with interest.

2.5 There is no SCN issued in this case. However, it is on record that in Appellant's own case, SCNs were issued on similar cases of alleged violation of "Pre-Import Condition" at Mundra, JNCH and Ahmedabad. These



SCNs were also adjudicated by the Principal Commissioner of Customs, Ahmedabad who had passed 3 O-I-Os dated 18-04-2023 wherein the duty, Interest, fine and penalty were also confirmed and the amount deposited towards duty [IGST] and interest were appropriated.

2.6 Brief details of above 3 O-I-O dt. 18-04-2024 are as under :-

SCN date	Port of Import and O-I-O. dtd 18-04-2024	Duty paid & Confirmed by OIO - Rs.	Interest paid by ppellant- Rs.	Penalty imposed u/s 114A- Rs.	R/Fine imposed - Rs.
20-04-2021	Mundra-OIO-11	1,39,38,827	1,43,38,992	1,39,38,827	23,00,000
17-08-2021	JNCH - OIO-12	1,41,04,014	1,06,36,235	1,41,04,014	23,00,000
16.09.2022	A'bad--OIO-13	11,10,26,373	10,42,86,757	11,10,26,373	1,85,00,000
	Total	<b>13,90,69,214</b>	<b>12,92,61,984</b>	<b>13,90,69,214</b>	<b>2,31,00,000</b>

The said O-I-Os dated 18-04-2024 were challenged by the Appellant in Customs Appeal Nos. C/10228/2024 to C/10230/2024, which were decided by the Hon'ble CESTAT, Ahmedabad vide Final Order No.11628-11630/2024 dated 23-07-2024. Consequential benefits of "No Interest liability" allowed under the Final Order NO. 11628 to 11630/2024 dated 23-07-2024 by the CESTAT Ahmedabad, have also been released as "Refund" under the independent O-I-O dated 24-10-2024 passed by AC, Cus, ACC, Ahmedabad, O-I-O dated 12-11-2024 passed by DC, Customs, Mundra, O-I-O dated 18-12-2024 passed by AC Customs, JNCH, O-I-O dated 04-04-2025 passed by AC Cus, Hazira and by O-I-O dated 09-04-2025 passed by ICD-Khodiyar,

Ahmedabad.

In the mean while during pendency of their Appeals before the Hon'ble CESTAT till 23-07-2024, after deposit of duty & interest in this case 31-08-2023, Appellant vide its 3 separate letters dated 25-01-2024, requested Specified Officers [proper Customs officers] at RSEZ, Jamnagar to provide the followings to Appellant related to their clearances at RSEZ, Jamnagar :-

Speaking Order in terms of Section 17(5) of the Customs Act 1962,

Re-assess said 22 Bill of Entry again under section 149 of Customs Act 1962 to reconsider the Interest and

(3) To provide certified copies of the Re-assessed 22 Bill of Entry.

Then, specified officer, RSEZ, Jamnagar under their letter dated 13-03-2024 provided attested copies of 22 Bill of Entry, received by Appellant on

16-03-2024. Since Appellant had not received Speaking Order on re-assessed Bills of Entry or response on request u/s 149 of Customs Act 1962, with RSEZ's communication dated 13-03-2024, Appellant filed 22 CA-1 Appeals on 01-04-2024. These appeals were filed to challenge the "Re-assessment of duty" wherein payment of Interest of Rs.1,45,37,545/- made on 31-08-2023 for 22 Bills of Entry under protest. The said Appeals were rejected vide O-I-A No. JMN-CUSTM-000-APP-463 to 484-2024-25 dated 31-12-2024, passed by the then Commissioner of Customs(Appeals), Ahmedabad, which rejected Appeals, filed by Appellant, on time limitation, without going into merits of case seeking directions to modify 22 Bill of Entry, in question, where Appellant has paid amount of Interest "under Protest".

2.8 The O-I-A dated 31-12-2024 passed by the then Commissioner of Customs(Appeals), Ahmedabad was challenged by Appellant in Customs Appeal No **C/10206/2025-DB**, which is decided by the Hon'ble CESTAT, Ahmedabad vide **Final Order No. 10643/2025 dated 12-08-2025**. The Hon'ble CESTAT, Ahmedabad, While allowing appeal on the issue on fact that date of receipt of Re-assessed Bill of Entry was on 16-03-2024 as date of communication of Order u/s 153 of Customs Act 1962. Therefore, CA-1 appeals filed on 01-04-2024 were held to be within time limit of 60 days. However, the Hon'ble CESTAT has remanded the matter to give a reasoned speaking order in light of case laws on the subject. As per CESTAT Order dated 12-08-2025, the decision of the Hon'ble Bombay High Court in case of M/s A R Sulphonates which dealt with the issue and it is of a later date deserves to be given due respect as per the doctrine of Judicial precedent. Appeal is allowed by way of remand in above terms, by the Hon'ble CESTAT.

2.9 Appellant's eligibility/entitlement for Refund of "Interest amount" deposited on 31-08-2023 is based on prevailing provisions of Customs Tariff Act 1975 as on 31-08-2023, decisions on the issue by various judicial forums and as concluded by Hon'ble CESTAT order dated 23-07-2024 allowing Applicant's Appeals against recovery of "Interest" for imports at ports of Ahmedabad, Mundra and JNCH for the year 2018.

2.10 The consequential benefits of "No Interest Liability" allowed is claimed by the Appellant during this proceedings for the said amount of "Interest" Rs. **1,45,37,545/-** deposited on 31-08-2023.



2.11 The appellant has placed reliance on various decisions including the decision of the Hon'ble Bombay High Court in M/s A R Sulphonates, the case of M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom) which is upheld by the Hon'ble Supreme Court, as reported in case of UOI v/s Mahindra & Mahindra Ltd. — 2023 (386) E.L.T. 11 (S.C.) = (2023) 9 Centax 361 (S.C.)

2.12. The proper officers of Customs have not passed any speaking order on the Re-assessment of said 22 Bills of Entry filed by the appellants.

3. Being aggrieved with Re-assessment of 22 Bills of Entry, the appellant have filed the present appeals. They have, *inter-alia*, raised various contentions and filed submissions as given below in support of their view:

- The principles of natural justice were vitiated. Reliance was placed on the case laws of M/s Sidheshwar SSK Ltd. reported at 2011 (274) ELT 141 (T) and M/s Leister Technologies India P Ltd. reported at 2018 (364) ELT 650 (T) and Circular No. 1053/2/2017-CX dated 10.3.2017.
- No recovery can be affected without the authority of law in terms of Article 246 and 265 of the Constitution of India. Reliance was placed on the case laws of M/s Mafatlal Industries Ltd. v/s Union of India reported at 1997 (089) ELT 247 (SC) and M/s Somaiya Organics v/s State of Uttar Pradesh reported at 2001 (130) ELT 03 (SC).

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

➤ Interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. Reliance was placed on the case law of M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom), M/s Ukai Pradesh Sahakari Khand Udyog Mandli Ltd. reported at 2011 (271) ELT 32 (Guj) and order dated 16.7.1997 of the Hon'ble Supreme Court in the case of M/s India Carbon Ltd.



- There were no provisions under Section 3(12) of the Customs Tariff Act for charge of interest and as such no interest could have been charged in the case. Reliance was placed on the case laws of M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom) and M/s A R Sulphonates Pvt. Ltd. reported at (2025) 29 Centax 212 (Bom) =2025 (4) TMI 578 - BOMBAY HIGH COURT
- The order dated 28.7.2023 of the Hon'ble Supreme Court in Special Leave Petition Diary No. 18824/2023 in the case of M/s Mahindra & Mahindra is a declaration of law by the Hon'ble Supreme Court within the meaning of Article 141 of the Constitution of India.
- The substitution of Section 3(12) of the Customs Tariff Act vide Section 106 of the Finance (No. 2) Act which has been enacted on 16.8.2024 in itself establishes that prior to 16.8.2024 there was no provision for charging of interest. In the instant case, the matter pertains to a period prior to 16.8.2024 and as such the interest collected by the department is without authority of law and is simply in the nature of deposit which is required to be returned forthwith.
- In absence of any provision to charge interest on the levies under Section 3 of the Customs Tariff Act, the interest recovered from them assumes the nature of collection without the authority of law. It is a settled matter of law that any amount collected without the authority of law cannot be retained and has to be returned forthwith. Reliance was placed on the case laws of M/s G B Engineers reported at 2016 (43) STR 345 (Jhar) and M/s KVR Construction reported at 2012 (26) STR 195 (Kar) as affirmed by the Hon'ble Supreme Court as reported at 2018 (14) GSTL J70 (SC).

#### **PERSONAL HEARING**

4. Personal hearing in above Appeals is waived by the appellants, as intimated vide Appellant's letter dated 19-08-2025. Appellant reiterated the submissions made in appeal memorandum and submissions filed. Appellant has relied upon decisions dt 23-07-2024 and 12-08-2025 in their own case & placed on record. Appellant has placed on record, the case law of M/s A R Sulphonates Pvt. Ltd, reported at (2025) 29 Centax 212 (Bom)-2025 (4) TMI 578 - Bombay High Court. Appellant has requested to allow



Appeals and modify 22 Bills of Entry under Section 149 of Customs Act 1962, with directions to the proper officers to allow consequential relief to Appellant as refund for amount of "Interest" Rs. 1,45,37,545/-, deposited on 31-08-2023.

### **DISCUSSION AND FINDINGS**

5. I find that the Appellant submit that Specified proper officers in SEZ have not passed any speaking order u/s 17(5) or modified the said 22 Bill of Entry u/s 149 of the Customs Act 1962 despite their specific requests dated 25-01-2024. However, views by the proper officers of SEZ Jamnagar are unacceptable Assumptions and Presumptions of officers at Jamnagar Port. Appellant submit that in the cases of imports, in post GST regime, IGST is being levied as Customs duty, under section 3(7) of Customs Tariff Act 1975 and there was no provision in Customs Tariff Act, like Section 28AA of Customs Act 1962 for levy of interest on any non payment, short payment or delayed payment of the Customs Duty. Section 28AA of Customs Act 1962 is a charging section for interest on delayed payment of customs duty levied u/s 12 of Customs Act 1962. However, IGST on goods imported into India is not duty leviable under Section 12 of the Customs Act 1962. Till 16-08-2024, there was no statutory provision made applicable under the section 3(7) or 3(12) of Customs Tariff Act, 1975 for such recoveries on delayed payment of

duty [IGST] in Imports in facts of this case at that relevant time. Interest is separate and independent financial levy. Hence charging provision must be there in statute to charge interest is mandate of the settled law by decisions by the Tribunals, the Hon'ble High courts and the Hon'ble Supreme Court.

The orders for recovery of interest on late payment of IGST during Reassessment of Bill of Entry for 13-10-2017 to 09-01-2019 are without authority of law. Section 3(7) of Customs Tariff Act, 1975 is charging section for IGST on goods imported into India. It is separate levy in addition to Customs Duty leviable under Section 12 of Customs Act 1962. Charge of interest on import prior to 16-08-2024 is contrary to law for charging interest u/s 3(7) of Customs Tariff Act and decisions of Hon'ble Supreme Court, Punjab & Haryana High Court, Gujarat High Court, Bombay High Court and other decisions relied upon. Charge of additional financial liability of interest prior to 16-08-2024 is not sustainable in law, particularly when there was no statutory provision for imposing, charging and recovery of "Interest" u/s 3(7) or 3(12) of the Customs Tariff Act, 1975. There is no justification in facts of this case or any authority in law to charge interest during Re-assessment and

collection or recovery of Interest on 31-08-2023 for the imports in year 2018 from this Appellant for the period in question. I find force in the contentions.

5.1 I find that Appellant has also relied upon the following judgments to support the view on levy of Interest on IGST :-

- a) CCE v/s UKAI PRADESH SAHAKARI KHAND UDYOG MANDLI LTD- 2011 (271) ELT 32 (Guj.)
- b) Mahindra & Mahindra Ltd-(2023) 3 Centax 261(BOM.) and 2022 (10) TMI 212 - Bombay High Court. Revenue's SLP against judgment of the Hon'ble Bombay High Court was dismissed by the Hon'ble Apex Court and review petition was rejected. Relied 2023 (386) E.L.T. 11 (S.C.) - UOI vs Mahindra & Mahindra Ltd.
- c) DEVI DASS GOPAL KRISHAN LTD vs UOI - 2002 (140) E.L.T. 56 (P & H)
- d) Acer India (Pvt.) Ltd. vs CC(Audit) - Chennai CESTAT's FINAL ORDER No.40534/2024 dated 08-05-2024
- e) Khemka and Co. (Agencies) Pvt. Ltd. v. State of Maharashtra — 1975 (2) SCC 22
- f) Pioneer Silk Mills Pvt. Ltd. v. U.O.I. — 1995(80)ELT-507(Del) [approved by Apex Court in Union of India v. Pioneer Silk Mills Pvt. Ltd. – 2002(145)ELT-A74(SC)]
- g) CCE, Ahmedabad vs ORIENT FABRICS PVT. LTD-2003 (158) E.L.T. 545 (S.C.)
- h) Indo Swiss Embroidery Industries Ltd vs CCE, Vapi-2017 (356) E.L.T. 226 (Bom.)
- i) 2002 (143) E.L.T. 482 (S.C.) - Karnataka Power Corporation Ltd vs Commissioner Cus(Appeals)
- j) *Sony India Pvt. Ltd. v. UOI [2022(379)ELT-588]* has considered the decision in case of
- k) ITC Ltd v/s Commissioner 2019(368)ELT-216(S.C.)
- l) M/s A. R. Sulphonates Pvt Ltd vs UOI by Bombay High Court reported at (2025) 29 Centax 212 (Bom) = 2025 (4) TMI 578 .

5.2 I find force in the contentions of Appellant that this question of levy of "Interest" has been elaborately considered and finally decided in Applicant's own case for similar imports at Mundra, JNCH and Ahmedabad by the Hon'ble CESTAT vide its **Final Order No. 11628-11630/2024**



**dated 23-07-2024.** The Hon'ble CESTAT Ahmedabad considering various provisions of Customs Tariff Act 1975 including section 3(7) and 3(12) has given their finding in para 5.10 and 5.20 in Final Order dt. 23-07-2024 as under :-

**"5.10** We find from above provisions that for recovery of IGST on import of goods, provisions are made under section 3(7) of Customs Tariff Act 1975. However, no specific provision is made for recovery or charging of Interest, Fine and Penalty u/s 3(7) or 3(12) of Customs Tariff Act 1975 as compared to such similar provisions made under the Section 8B(9) and Section 9A(8) of Customs Tariff Act 1975. Such provisions u/s 9A(8) were introduced in Statute by The Finance (No. 2) Act, 2009 way back on 19-08- 2009. However, while introducing similar provisions post GST Regime under Section 3(7) or 3(12) of the Customs Tariff Act 1975, Government of India has not incorporated such provisions for recovery of the Interest, Fine and Penalty under Section 3(7) or Section 3(12) of Customs Tariff Act 1975. We are of the view that Interest, Fine & Penalty are separate/independent financial levies, and hence charging provision must be there in statute levying interest, fine, penalty is the mandate of settled law established by provisions for such separate and independent levy and decisions by the courts. Accordingly, we do not find and revenue has also not been able to show us such charging provision for levy and collection of —interest, Fine and Penalty for late payment of IGST leviable under Section 3(7) or under Section 3(12) of Customs Tariff Act 1975. Therefore, the orders for recovery of interest, fine and Penalty on late payment of the IGST during Reassessment process of Bill of Entry for the period from 13-10-2017 to 09-01-2019 are without authority of law and the same are unsustainable."

.....

**"5.20** We find that interest is recovered as per Para 5.2(c) of Circular No. 16/2023-Cus dated 07-06-2023, Appellant had no option, but, to pay —Interest along with IGST, if they wish to avail option to pay IGST in compliance to para 75 of decision dt. 28-04-2023 by Apex Court. We find that in this case, issue is IGST leviable under Section 3(7) of Customs Tariff Act 1975. Section 3(7) is charging section for IGST on goods imported into India, and it is a separate levy independent of Customs Duty leviable under Section 12 of Customs Act. Thus, the Circular No. 16/2023-Cus dated 07- 06-2023 directing to charge applicable interest is ex-facie, contrary to provision for charging —interest u/s 3(7) of Customs Tariff Act 1975 and decisions of the Hon'ble Supreme Court, Punjab & Haryana High Court, Gujarat High Court, Bombay High Court and other decisions, as mentioned

above. We observe that any Circular issued by CBIC would reflect only the views of Officers on any issue, but, law is also settled that decision by Court will always prevail over the views expressed in a CBIC Circular. The decisions of Hon'ble Supreme Court in the cases of 2002 (139) ELT-3(SC) - CCE, Vadodara vs Dhiren Chemical Industries and 2008 (12) STR-416(SC) - CCE,

BolpurvsRatan Melting & Wire Industries shows that circular contrary to the statutory provisions has really no existence in the law."

The Hon'ble CESTAT's Final Order has set aside demands for "interest", Redemption Fine and Penalty imposed on Appellant. This interest amount [paid under protest] claimed as consequential relief, after the Hon'ble CESTAT's Final Order dated 23-07-2024, is allowed as consequential relief to Appellant, in the interest of justice. I agree with this contention and held that the interest amount of Rs. **1,45,37,545/-** [paid under protest] is admissible as a consequential Refund in this case also, after the Hon'ble CESTAT's Ahmedabad's Final Order dated 23-07-2024 and Order dated 12-08-2025, as consequential relief to Appellant, considering various decisions relied upon by Appellant. The case law dated 09-4-2025 by Hon'ble Bombay High Court in M/s A. R. Sulphonates Pvt Ltd vs UOI is the latest decision, which has settled all issues, which arise in this case.

5.3 The field officers in Customs are bound to follow the judicial indiscipline and unreservedly implement orders of their higher authorities. CBEC Circulars also mandate/reiterate this view and repeatedly clarified that unnecessary burden on exchequer towards interest which is direct result of inaction on the part of Revenue authorities in implementing orders of Tribunal or appellate forums. Once, Revenue loses its right to retain sums of the assessee, as per order of appellate forums, Revenue must refund the amount back to assessee first, if there is no stay obtained by the Revenue from competent higher forums. The issue has also been fully settled and it is no more Res-integra. There is no stay against the Final Order dated 23-07-2024 and dated 12-08-2025 from any higher Competent Courts like the Hon'ble Gujarat High Court. There is no stay on Order dt. 09-04-2025 of Hon'ble Bombay High Court from the Hon'ble Supreme Court.

5.4. I find that Appellant has submitted that it is settled in law by plethora of judicial decisions by the competent Courts that amendment in provision which is likely to increase liability of citizens, amendment has to be normally

treated as prospective amendment only, unless otherwise provided in amendment itself that it is effective retrospectively or from other prior date, as reflected in amendment itself. Thus, amendment w.e.f. 16-08-2024 has now covered what was not existing in Section 3(12) ibid before it was amended on 16-08-2024. Thus, effect of amendment can not be considered as retrospective to increase liabilities of citizens what was not existing before 16-08-2024 in the said section 3(12) ibid. Appellant submit that the amendment made on 16-08-2024 to Section 3(12) of the Customs Tariff Act, 1975 being prospective in nature w.e.f 16-08-2024, it cannot be applied for period of imports of goods prior to such amendment and it will not apply to the cases of imports of goods made prior to 16-08-2024. I find that imports by Applicant, payments of interest on 31-08-2023 and the Hon'ble CESTAT's, Final Order No. 11628-11630/2024 dated 23-07-2024 are all prior to 16-08-2024. Further, this prospective amendment has also established that there was no such provision prior to 16-08-2024 in the said section 3(12) of the Customs Tariff Act, 1975 to charge interest. Appellant submit that this amendment in section 3(12) w.e.f. 16-08-2024 can not be made applicable in case of imports in 2018 as Re-assessment of duty deposited on 31-08-2023.

This is a substantive change to charge interest for delayed payment of customs duty[IGST] in cases of import in post GST Regime, brought about with the said amendment to Section 3(12) of Customs Tariff Act, 1975 w.e.f. 16-08-2024. Therefore, Appellant submits to implement the Hon'ble Tribunal, Ahmedabad's Final order dated 23-07-2024 first by releasing eligible consequential benefit of Refund. The Final order dated 23-07-2024 has so far not been over ruled or stayed by the Hon'ble Gujarat High Court apart from unstayed decision dated 09-04-2025 by Hon'ble Bombay High Court in case of M/s A R Sulphonates Pvt Ltd v/s UOI. Hence, the adjudicating authority at RSEZ and Jamnagar is directed to unreservedly follow CESTAT order dated 07-07-2024 and decision dated 09-04-2025 in M/s A R Sulphonates Pvt Ltd v/s UOI and to implement them by first allowing the eligible consequential relief of a Refund of the interest amount deposited on 31-08-2023.

5.5 I have carefully gone through the impugned orders of Re-assessment of 22 Bill of Entry and submissions by the Appellant against recovery of "Interest", deposited "Under Protest" on 31-08-2023 by Appellant, Appeal memorandums filed by the appellant, submissions made by the appellant during course of hearing as well as the documents and evidences available on record. I find that the Consequential benefits of "No Interest liability" allowed



under the Final Order NO. 11628 to 11630/2024 dated 23-07-2024 by the Hon'ble CESTAT Ahmedabad, in the Appellant's own case have also been released as "Refund" under the independent O-I-O dated 24-10-2024 by AC, Cus, ACC, Ahmedabad, O-I-O dated 12-11-2024 by DC, Customs, Mundra, O-I-O dated 18-12-2024 by AC Customs, JNCH, O-I-O dated 04-04-2025 by AC Cus, Hazira and by O-I-O dated 09-04-2025 by ICD-Khodiy, Ahmedabad. It is settled that decision of the higher forum in the Appellant's own case becomes final for both the sides as binding a precedent. Appellant in this case, seeks directions to Re-assess the said 22 Bill of Entry u/s 149 of Customs Act 1962 and to allow consequential refund of "Interest" amount to the Appellant. I have also carefully considered the findings and observations in Hon'ble CESTAT, Ahmedabad's Final Order No. 10643/2025 dated 12-08-2025 for considering the issue on merits and follow the judicial discipline considering the decision of Hon'ble Bombay High Court in the case of A R Sulphonates (supra) which dealt with the issue which is of later date, deserves to be given due respect as per doctrine of Judicial precedent.

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

5.7 There is no dispute that IGST is leviable under Section 3(7) of the Customs Tariff Act. However, for the purpose of charging interest or imposing a penalty, there must be corresponding provisions within Section 3 of the said Customs Tariff Act 1975. The recovery mechanism provided under section 3(7) or 3(12) of Customs Tariff Act 1975 does not contain any provision for the levy of interest or penalty. A comparison between the substituted Section 3(12) and the erstwhile provision clearly establishes this position. The relevant text of both versions of Section 3(12) of Customs Tariff Act 1975 *before 16.8.2024* and 3(12) of Customs Tariff Act 1975 *before 16.8.2024* is reproduced as under reference:-

Section 3(12) before amendment	Section 3(12) after amendment
"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.]"	"3(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.". "

A comparison between the Section 3(12) of the Customs Tariff Act 1975 before and after amendment w.e.f. 16-08-2024 clearly establishes that the provision for charging interest and imposing penalties in respect of IGST levied under Section 3(7) of the Customs Tariff Act was introduced only with effect from 16.08.2024. Prior to this amendment, there was no statutory provision under Section 3(7) or 3(12) of the Customs Tariff Act 1975 for the levy of interest or imposition of penalty.

5.8. The amended Section 3(12) of the Customs Tariff Act 1975 is prospective in nature; therefore, the provision for charging interest is applicable only to the clearances of goods have been made with effect from 16.08.2024. This view is supported by the decision of the Hon'ble Bombay High Court in the case of *M/s A R Sulphonates Pvt. Ltd.*, reported at (2025) 29 Centax 212 (Bom), wherein the Court observed as follows:

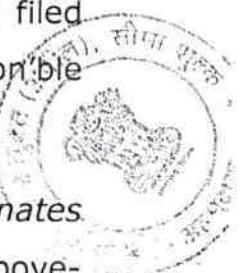
"66. Further, as far as the applicability of Section 3 (12), after its amendment by Finance (No. 2) Act, 2024, dated 16th August, 2024, is concerned, it would be appropriate to first refer to the provisions of the amended Section 3 (12) of the Tariff Act. Amended Section 3 (12) of the Tariff Act reads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

"12:- The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy,

*short levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be."*

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

5.9 The issue of whether there existed a provision for charging interest and imposing penalty under Section 3 of the Customs Tariff Act is no longer *res integra*. The Hon'ble Bombay High Court, in the case of *M/s Mahindra & Mahindra Ltd.*, reported at (2023) 3 Centax 261 (Bom), has categorically held that the imposition of penalty and levy of interest under Section 3(6) of the Customs Tariff Act (now re-numbered as Section 3(12)) is not sustainable in respect of duties leviable under Section 3. This decision was upheld by the Hon'ble Supreme Court by its order dated 28.07.2023 in Special Leave Petition (Civil) Diary No. 18824/2023. Furthermore, the Review Petition filed by the department against the said order was also dismissed by the Hon'ble Supreme Court vide order dated 09.01.2024 in SLP (C) No. 16214/2023.



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



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

which is applicable to the said levy is *parimateria* to Sections 3 (6) and 3A (4) of the Tariff Act as referred to in the case of *Mahindra & Mahindra Limited (supra)*. In these circumstances, in our view, the said decision is squarely applicable to the facts of the present case.

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

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

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

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



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

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

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

The Hon'ble High Court of Bombay has unequivocally ruled that interest is not chargeable in cases involving the levy of IGST, leaving no room for doubt in relation to the facts under consideration.

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

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

7. I find that Hon'ble High Court of Bombay in *M/s A.R. Sulphonates Pvt. Ltd.* considering all facts and circumstances has passed the following Order:

"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 Customs Tariff Act, 1975 by Finance 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;"

Thus, I find that all the issues to be decided in these Appeals have already been decided by the Hon'ble Bombay High Court in the above decision. Considering the issue on merits in these Appeals, I follow the judicial discipline and I consider the decision dt. 09-04-2025 of the Hon'ble Bombay High Court in case of A R Sulphonates (supra) which has dealt with the issue in hand and it is being of later date, deserves to be followed as per the doctrine of Judicial precedent.

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

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

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

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

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



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

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

9. Furthermore, I find that the Department had exercised its statutory right of appeal under Section 130E of the Customs Act, 1962. Accordingly, the dismissal of the appeal whether by a speaking or non-speaking order would attract the doctrine of merger. This view is supported by the following judicial precedents:

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

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

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

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

22. It may be mentioned that dismissal of an SLP without giving reasons does not amount to merger of the judgment of the High Court in the order of the Supreme Court vide *Kunhayammed v. State of Kerala*, 2001 (129) E.L.T. 11 (S.C.) = (2000) 6 SCC 359. However, in our opinion dismissal of an appeal under Section 35L(b) by the Supreme Court would amount to a merger even if

*the Supreme Court does not give reasons. This is because Article 136 of the Constitution is not a regular forum of appeal at all. It is a residuary provision which entitles the Supreme Court to grant at its discretion Special Leave to Appeal from any judgment,*

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

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

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

*judgment of the Supreme Court dismissing the appeal against the order of the CEGAT is binding on us.*

10. In view of the foregoing, I find that interest cannot be levied on the IGST in the absence of any enabling provision under the Customs Tariff Act 1975. Consequently, the interest recovered in the present case is without authority of law and cannot be retained by the Department in terms of Article 265 of the Constitution of India; it is liable to be returned/refunded to the Appellant. Accordingly, the impugned Re-assessment orders for such recovered Interest on 31-08-2023 are unsustainable in law and, therefore, its recovery of such Interest is liable to be set aside.

11. Accordingly, I allow the appeals filed by the appellant, set aside the impugned Re-assessment orders to the extent they have recovered interest on 31-08-2023 and modify 22 Bills of Entry u/s 149 of Customs Act 1962, with directions to the proper officers to allow consequential relief to Appellant as refund for amount of "Interest" Rs. 1,45,37,545/-, deposited on 31-08-2023, which was not payable and paid on 31-08-2023 for 22 Bills of Entry, as shown in the Table-I in Para 2 above.



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

F.Nos. S/49-185 to 206/CUS/JMN/AUG/2025-26

3292

Dated: 02.09.2025

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 सीमा चुल्क (अपील), अहमदाबाद.  
 CUSTOMS (APPEALS), AHMEDABAD.