



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
 चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,
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DIN- 20260371MN0000333A91

क	फ़ाइल संख्या FILE NO.	S/49-393/CUS/JMN/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);	JMN-CUSTM-000-APP-469-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.03.2026
	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	OIO No. 54/DC/RD/2024-25 dated 24.10.2024
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Deccan Cans & Printers Private Limited, Survey No.651 & Plot No.22/D, Daman Industrial Estate, Somnath Road, Daman 396210

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 हैं.

	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु किसी 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 दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order - In - Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी. आर. 6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और 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 सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :

	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd 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 हजार रूपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां 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; पाँच हजार रूपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10 % अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10 % अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
	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. Deccan Cans & Printers Private Limited, Survey No.651 & Plot No.22/D, Daman Industrial Estate, Somnath Road, Daman 396210 (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. 54/DC/RD/2024-25 dated 24.10.2024 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner of Customs, Customs Division, Jamnagar (hereinafter referred to as 'the adjudicating authority'). Vide impugned order, the appellant's claim for refund of interest of Rs.1,73,01,145/- 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 ₹3,84,07,486/-, which included

IGST of ₹2,11,06,341/- and interest aggregating to ₹1,73,01,145/- for 51 Bills of Entry filed at Reliance, Jamnagar SEZ. 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 ₹1,73,01,145/- vide their application for refund dated 26.06.2024, which was received by the office of the adjudicating authority on 19.07.2024.

2.3 After considering the written and oral submissions of the claimant, the adjudicating authority has rejected the refund claim vide impugned order dated 24.10.2024. 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 24.10.2024 has been shown as '25.10.2024'. Whereas, the present appeal has been filed on 09.12.2024. 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:

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 ₹1,73,01,145/- 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 after receipt of letter No. F. No. RSEZ/Misc./PRE-IMPORT/90/23-24 dated 28-06-2023 issued by Office of the Development Commissioner, Jamnagar (Reliance) Special Economic Zone. The Appellant paid interest of Rs.1,73,01,145/- on IGST component against import of goods made



under 51 Bill of Entries. The Impugned Order accept that the Appellant paid the Interest of Rs.1,73,01,145/- under Protest.

4.2 It is submitted that the Appellant before the Adjudicating Authority relied upon the Hon'ble CESTAT of Ahmedabad in the case of M/s. Chiripal Poly Films Ltd. Vs Commissioner of Customs, Ahmedabad passed Final Order No.116228-11630/2024 dated 23.07.2024. However, the Impugned Order in para 21 considered the order and mention that the said matter is difference with present case. The impugned order does not mention any reason / grounds for not considering the said Order nor distinguished the Order in the impugned order. Therefore, the Appellant rely on the said CESTAT Order again before this forum.

4.3 It is submitted that the Hon'ble CESTAT of Ahmedabad in the case of M/s. Chiripal Poly Films Ltd. Vs Commissioner of Customs, Ahmedabad passed Final Order No.116228-11630/2024 dated 23.07.2024. The issue before the Hon'ble CESTAT is mention in para 1 of the CESTAT order, which is reproduced as

"The issue involved in these Appeals is whether Appellants is liable to pay duty, Interest, Redemption Fine and penalty for violation of –Pre-Import Condition\ in connection with imports made under Advance Authorization scheme (referred to as the AA scheme) during the period from 13-10-2017 to 09-01-2019"

The Hon'ble CESTAT held that interest is not leviable. The relevant para 5.24 to 7 are reproduced below:

"5.24 In view of the above mentioned provisions of law and judicial pronouncements, it is settled that in the absence of specific provision relating to levy of Interest, Redemption Fine and Penalty in respective legislation for levy duty, the same cannot be demanded or imposed or recovered by taking recourse to machinery provisions relating to recovery of the duty. Therefore, the orders for recovery of –Interest, Redemption Fine and Penalty\ in these cases are not sustainable considering charging provisions of the Customs Act 1962 and relevant provisions under the Customs Tariff Act, 1975 and the decisions rendered thereon as mentioned above. The issue on imposing Interest, Redemption Fine and Penalty is no longer ResIntegra.



5.25 We also note that adjudicating authority has relied upon a few decisions in the impugned orders, which are on different facts and applicable in such facts. The facts and issue in the present cases are not identical to those cases. Therefore, the ratio of the decision is not directly applicable in the present case.

6 Since we decide these Appeals on the multiple counts, on merits and limitation, the other issues raised by the appellant are not taken up or discussed and the same are left open.

7. In view of our above discussion and findings, the impugned orders on confirmation of demands for interest and appropriation thereof, order of confiscation of goods, imposition of Redemption fine and penalty are not sustainable and the same are set aside. The appeals are allowed with consequential reliefs in the above terms.”

In view of above, the Hon'ble CESTAT order is squarely applicable in the present matter. Therefore, the Appeal should be allowed by granting the Refund and Order is liable to be set aside.

4.4 The Impugned Order at para 17 stated that letter F. No. NIL dated 01-08-2024 has been issued to the Specified Officer, RSEZ, Jamnagar requesting them to verify the refund claim. The Specified Officer, RSEZ, Jamnagar vide letter F. RSEZ/MISC/01/2024-25 Dated 12-08-2024 wherein inter alia stated the GST and Interest amount were rightly paid by the Applicant in terms of CBIC Circular No.16/2023-Cus dated 07-06-2023. The appellant submitted that Principle of Natural Justice has been violated in as much as copy of verification report given by Specified Officer, RSEZ, Jamnagar was not provided to the Appellant for the purpose of rebutting the findings against the Appellant. It is submitted that copy of the verification report has not been provided to the Appellant. Therefore, the Appellant could not rebut any of the adverse finding in the verification report. Thus, this tantamount to denial of Natural Justice to the Appellant as relied upon documents has not been provided to the Appellant. Hence the Order shall be set aside on this ground itself and Appeal should be allowed by granting the Refund.



4.5 It is submitted that the Verification Report stated that Interest amount was rightly paid by the Appellant in terms of CBIC Circular No.16/2023-Cus dated 07-06-2023. The appellant further submitted that the Circulars are issued only to clarify the statutory provisions and it cannot alter or prevail the statutory provisions. Therefore, the Circular stated that interest shall be paid as per applicable interest. The Circular does not mention that interest is leviable but it only states interest shall be paid as per applicable rate. Thus, the interest will be applicable when only interest is leviable as per statutory provisions and not otherwise. It is submitted that the Appellant has filed the Refund claim on the ground that there is no machinery provisions for levy of interest on IGST component against import of goods. The Circular cannot alter or prevail the statutory provisions to levy interest without machinery provisions.

4.6 It is submitted that the levy of IGST on import of goods is made in accordance with the proviso of Section 5(1) of the IGST Act, 2017 which is reproduced below:

***“Provided** that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.”*

It will be evident that IGST is levied and collected on import of goods as per the provisions contained in Section 3 of the Customs Tariff Act, 1975. The provisions of Section 3(7) of the said Act provides for levy of IGST on import of goods which is reproduced below:

(7) “Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) 9/or sub-section (8A), as the case may be.”

The Customs Act, 1962 provides for the manner in which levy, non-levy, short levy and interest thereon, penalty, with respect to custom duty payable under the Customs Tariff Act read with the Customs Act, 1962.

The IGST is a tax and not a custom duty, it required separate provisions for levy, short levy, recovery, penalty, interest, etc. Accordingly, certain provisions of the Customs Act, 1962 are made applicable to the IGST under Section 3(12) which is reproduced below:

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."

It will be evident from the above provisions that the provisions of Section 3(12) of the said Act does not provide with provisions of interest and penalty of Customs Act, 1962. It is also applicable to the IGST levied under section 3(7) of Customs Tariff Act 1975. Therefore, on plain reading of the above provisions it can be said that interest and penalties cannot be imposed on the IGST component payable under section 3(7) of Customs Tariff Act, 1975 against import of goods.

4.7 The Custom Tariff Act, 1975 in addition to the custom duty prior to introduction of GST also levied taxes i.e., CVD under section 3(1), SAD u/s. 3A of the said Act. The above taxes were not custom duty and thus certain provisions of the Custom Act, 1962 were also made applicable with respect to tax as mentioned above. The same is reproduced below:

Section - 3(6)-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 chargeable under this section as they apply in relation to the duties leviable under that Act.

Section 3A(4) -The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties shall, so far as my be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.



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The above provisions did not provide for applicability of provisions with respect to interest and penalty under the Customs Act, 1962 to taxes levied under section 3(1) and 3(A) of Customs Tariff Act, 1975. Therefore, on plain reading of the above provisions it can be said that interest and penalties cannot be imposed on the taxes payable under section 3 & 3A of Customs Tariff Act, 1975.

4.8 The above interpretation is also supported from the fact that with respect to levy of anti-dumping duty on dumped goods u/s. 9A of the Customs Tariff Act, 1975 specifically provides that the provisions of Custom Act, 1962 with respect to date of determination of rate of duty, assessment, non-levy, short levy, refund, interest, appeals, offences, and penalty are applicable to the said duty. The provisions of Section 9A (8) as amended vide Finance Act, 2004 is reproduced below:

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

The provisions of Section 9A(8) were amended by the Finance Act, 2004. The provision prior to above amendment reads as under:

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

Thus, prior to the amendment the provisions were also identically worded to the provisions contained u/s. 3(6), Section 3A(4) of the Customs Tariff Act, 1944 which do not contain any provision for levy of interest and penalty. Therefore, the amendments carried out in 2004 only to Section 9A(8) also supports the view that the legislature consciously amended only Section 9A(8) which suggest that interest and penalty is not required to be levied for the duties or taxes u/s. 3(6) and Section 3A(4) of the Customs Tariff Act, 1975.

4.9 The issue with respect to recovery of interest and penalty on duties levied under section 3 (CVD), Section 3A (SAD) of Customs Tariff Act, 1975 has dealt by the Hon'ble Bombay High Court in the case of M/s Mahindra & Mahindra reported in (2023) 3 Centax 261 (Bom). In the said case, the Hon'ble Court considered the provisions contained in Section 3(6), 3A (4) and the amended as well as in the amended provisions of Section 9A(8) of the Customs Act, 1975.

The High Court in para 35 to 39 held that interest and penalty cannot be imposed in absence of specific provisions for levying and recovering the same. Further, the High Court has also observed that levy of interest and penalty is substantive provision which requires clear authority of law and cannot be imposed in absence of specific provisions. Further, the Court has also observed that the provisions of Section 28AB of the Customs Act, 1962 cannot be borrowed for imposing it on CVD or SAD. The department filed an SLP against the said order and said was dismissed on merits by Supreme Court in case of UNION OF INDIA & ORS. VERSUS MAHINDRA AND MAHINDRA LTD reported in 2023 (386) ELT 11 (SC). Thus, the said issue has attained finality vide the said judgment of Supreme Court.

The provisions interpreted by the High Court/Supreme Court are identically verdict to the provisions contained in Section 3(12) of the Customs Tariff Act, 1975. Therefore, the ratio of the said judgment is also squarely applicable in interpreting the provisions of Section 3(12) of the Customs Tariff Act, 1975.

10 Based on the above legal analysis duly supported by the High Court of Bombay which is also affirmed by Supreme Court, Interest and penalty under section 3(12) cannot be imposed on IGST levied u/s. 3(7) of the Customs Tariff Act, 1975. Therefore, the Section 28AA and Section 47(2) are not applicable in the present case for levy of Interest. Thus, the interest paid by the Appellant is liable to be refunded consequence to the said judgment of Supreme Court. Hence, the Appeal should be allowed by granting Refund and order should be set aside.

4.11. Interest on delay refund, the Appellant has filed the refund claim before the Deputy Commissioner of Customs, Jamnagar, to grant the refund along with applicable interest on such refund amount. The Appellant is entitle for interest on such Refund of Interest amount for the delay period.

Personal Hearing:

5. Personal Hearing in this case was held on 13.01.2026, which was attended by Shri Jagdish Surti, Advocate and Shri Asit Shah, Accountant of the appellant. They reiterated the written submissions made by them. They submitted compilation of circular and case laws during hearing which are as under:


- i. Customs Circular No.16/2023-Cus dated 07-06-2023.
- ii. Mahindra & Mahindra Ltd Vs Union of India, (2023) 3 Centax 261 (Bom).
- iii. Union of India Vs Mahindra & Mahindra Ltd., 2023 (386) ELT 11 (SC).
- iv. Union of India Vs Mahindra & Mahindra Ltd., 2025 (392) ELT 675 (SC).
- v. Chiripal Poly Films Ltd. Vs Commissioner of Customs, Ahmedabad, (2024) 22 Centax 245 (Tri Ahmd).
- vi. A.R. Sulphonates Private Limited Vs Union of India, 2025 (4) TMI 578-BOMBAY HIGH COURT.
- vii. Order in Appeal No.1591 (CRC-I)/2025(JNCH)/Appeals dated 10-12-2025 passed by Commissioner of Customs (Appeals), Mumbai - II

Discussion and findings:

6. One set of the appeal memorandum has been sent to the adjudicating authority, vide this office letter F.No. S/49-393/CUS/JMN/2024-25/985 dated 03.06.2025 for comments, but no reply thereof has been received. Therefore, I proceed to decide the appeal on basis of documents submitted by the appellant.

6.1 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.

6.2 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.

6.3 As regards, non-levy of interest on IGST, the appellant has relied upon various judicial pronouncements to support their claim. The appellant has relied upon 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.

6.4 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.

6.5 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.

6.6 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.

6.7 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.

7. Further, it is observed from the records that final assessment of the subject Bills of Entry were done and the appellant has paid interest in the month of December 2023 being consequence of reassessment of the Bills of Entry and from the records it also appears that no appeal has been filed against the finally assessed Bills of Entry. The appellant has filed the subject refund claim for an amount of Rs. 1,73,01,145/- in respect of interest payment made by them being consequence of re-assessment of Bills of Entry. It is observed that the appellant is challenging assessment made in the Bills of Entry by way of refund. It is settled law that an assessment made in the Bill of Entry is an appealable order as held by the Hon'ble Supreme Court in the case of ITC Limited v. Commissioner [2019 (368) E.L.T. 216 (S.C.)]. The Hon'ble Supreme Court held that the revenue, as well as assessee, can prefer an appeal aggrieved by an order of assessment made in the Bill of Entry and can file an appeal. The Hon'ble Supreme Court further held that the order of assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. The Hon'ble Supreme Court further held that while processing a refund application, re-assessment is not permitted nor conditions of exemption can be adjudicated. The relevant paras of the decision is reproduced as under:

41. *It is apparent from provisions of refund that it is more or less in the nature of execution proceedings. It is not open to the authority which processes the refund to make a fresh assessment on merits and to correct assessment on the basis of mistake or otherwise.*



42. It was contended that no appeal lies against the order of self-assessment. The provisions of Section 128 deal with appeals to the Commissioner (Appeals). Any person aggrieved by any decision or order may appeal to the Commissioner (Appeals) within 60 days. There is a provision for condonation of delay for another 30 days. The provisions of Section 128 are extracted hereunder :

“128. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order :

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

[(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]

(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.”

43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression ‘Any person’ is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to



pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra).

44. The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, re-assessment is not permitted nor conditions of exemption can be adjudicated. Re-assessment is permitted only under Section 17(3)(4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or re-assessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In Hero Cycles Ltd. v. Union of India - 2009 (240) E.L.T. 490 (Bom.) though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in Priya Blue Industries Ltd. (supra).

7.1 It is further observed that Hon'ble Supreme Court in the case of PRIYA BLUE INDUSTRIES LTD Vs COMMISSIONER OF CUSTOMS (PREVENTIVE) [2004 (172) E.L.T. 145 (S.C.)] held that once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable



as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering the refund claim cannot also review an assessment order. It was further held that without the Order of Assessment having been modified in Appeal or reviewed a claim for refund cannot be maintained. Thus Refund claim contrary to assessment order is not maintainable without order of assessment having been modified in Appeal or reviewed under Section 28 of Customs Act, 1962. The relevant paras are as under:

"6. We are unable to accept this submission. Just such a contention has been negated by this Court in Flock (India)'s case (supra). Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order.

.....

8. The words "in pursuance of an Order of Assessment" only indicate the party/person who can make a claim for refund. In other words, they enable a person who has paid duty in pursuance of an Order of Assessment to claim refund. These words do not lead to the conclusion that without the Order of Assessment having been modified in Appeal or reviewed a claim for refund can be maintained."

7.2 In view of the above, I am of the considered view that the refund claim filed by the appellant, without challenging the assessment made in the Bills of Entry, is not legally maintainable. It is a settled position of law that so long as the assessment order remains unchallenged and in force, a refund claim seeking to indirectly alter the assessment cannot be entertained. In the present case, the assessment made in the relevant Bills of Entry has neither been appealed against nor modified by a competent authority. Consequently, the interest paid pursuant to such re assessment retains its legal character, and the refund claim, in effect, seeks to circumvent the finality attached to the assessment. Accordingly, the present appeal filed against the impugned order rejecting the refund claim is itself not maintainable in law and is therefore liable to be rejected.

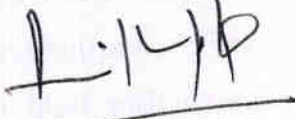


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8. In view of the foregoing discussion, the appeal filed by the appellant is rejected.

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद,
CUSTOMS (APPEALS), AHMEDABAD


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

By Registered Post A.D.

F. No. S/49-393/CUS/AHD/2024-25

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2. The Principal Commissioner of Customs, Customs (Prev), Jamnagar.
3. The Deputy/Assistant Commissioner of Customs, Customs Division, Jamnagar.
4. Guard File.
