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

DIN- 20260371MN0000015499

क	फ़ाइल संख्या FILE NO.	S/49-238/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-470-25-26
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. 36/DC/RD/2024-25 dated 14.06.2024
	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. Gujarat Craft Industries Ltd. 431, Santej-V Adsar Road, Santej, Tal-Kalol, Dist-Gandhinagar Gujarat-382721

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

	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order - In - Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :

	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने,मांगे गए शुल्क के 10 % अदा करने पर,जहां शुल्क या शुल्क एवं दंड विवाद में हैं,या दंड के10 % अदा करने पर,जहां केवल दंड विवाद में है,अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

M/s. Gujarat Craft Industries Ltd. 431, Santej-V Adsar Road, Santej, Tal-Kalol, Dist- Gandhinagar Gujarat-382721 (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. 36/DC/RD/2024-25 dated 14.06.2024 (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.19,02,281/- 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 ₹42,52,676/-, which included IGST

of ₹23,50,395/- and interest aggregating to ₹19,02,281/- for 16 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 ₹19,02,281/- vide their application for refund dated 12.02.2024, which was received by the office of the adjudicating authority on 16.02.2024.

2.3 After considering the written and oral submissions of the claimant, the adjudicating authority has rejected the refund claim vide impugned order dated 14.06.2024 on merit as well as on limitation. 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 14.06.2024 has been shown as '26.06.2024'. Whereas, the present appeal has been filed on 30.07.2024. As the appeal has been filed within normal period of 60 days from the date of receipt of impugned order, as stipulated under Section 128(1) ibid, it has been admitted and being taken up for disposal on merits.

Grounds of Appeal:

4. The appellant has raised various contentions in their grounds of appeal. They submitted, inter alia, that the present appeal arises out of the rejection of the appellant's refund claim of ₹19,02,281/- representing interest recovered by Customs authorities on payment of Integrated Goods and Services Tax (IGST) in respect of imports made under the Advance Authorization (AA) Scheme during the period from October 2017 to January 2019.

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

submissions made by appellant. Adjudicating authority has not even issued SCN for rejecting the refund claim.

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

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

> *"(12) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act".*

4.3 The Hon'ble Supreme Court in India Carbon Ltd. v. State of Assam, (1997) 6 SCC 479, relied upon the earlier five-judge bench decision in the case of J.K. Synthetics Ltd. Ltd. v. CTO, (1994) 4 SCC 276 and held that "interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf".

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

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

Pioneer Silk Mills Pvt. Ltd. v. UOI, 1995 (80) ELT 507 (Del.). Revenue sought to invoke the provisions of the Central Excise Rules, 1944, relying on the provisions of Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, which read as under:

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

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

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

The appellant further relied upon the following case laws:

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

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

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

(12) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks. refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.

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

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

4.7 Circulars cannot alter or prevail over statutory provision. The Hon'ble Supreme Court ('SC') vide its judgement in the case of Union of India v. Cosmo Films Ltd. [2023] 149 taxmann.com 473/2023 (72) G.S.T.L. 417/[2023] 97 GST 544 (SC) upheld the constitutional validity of the imposition of 'pre-import condition in order to avail the exemption of IGST and compensation cess ('cess') under the Advance Authorisation ('AA') scheme. wherein such condition had been incorporated in paragraph 4.14 of the Foreign Trade Policy ('FTP') vide Notification No. 33/2015-2020 w.e.f. 13.10.2017. While allowing the appeal of

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

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

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

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

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

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

4.10 As submitted in paras supra, as per the case of Mahindra and Mahindra (supra), affirmed by Hon'ble Supreme Court vide Order dated 28.07.2023, Hon'ble High Court held that there is no substantive provision in Section 3 of the Customs Tariff Act, 1975 that provides for payment of penalty or interest on duty other than basic custom duty, and therefore, in absence of such a specific

provision for levy of interest or penalty, same cannot be charged. It is submitted that circulars cannot prevail over the statute.

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

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

4.13 In view of the foregoing, the appellant finally prayed to set Aside the impugned Order-In-Original No. 36/DC/RD/2024-25. dated 14.06.2024 passed by the Ld. Deputy Commissioner of Customs, Jamnagar, Gujarat, in the name of M/s. Gujarat Craft Industries Ltd., and allow the appeal in full with consequential relief if any.

5. The appellant vide additional submission dated 24.02.2026 submitted that in the instant case, they further place reliance on the judgement of High Court at Bombay, in the case of A.R. Sulphonates Pvt. Ltd. Versus Union of India

[Writ Petition No. 19366 of 2024. decided on 09.04.2025), which is squarely applicable in the present case, wherein the court held that:

> *Circular No. 16/2023-Cus., dated 7-6-2023, to extent that it purports to levy interest upon IGST payment, is beyond provisions of Customs Tariff Act, 1975 and is bad in law; further amendment made to provisions of section 3(12) of Customs Tariff Act, 1975 by Finance (No. 2) Act, 2024 to apply provisions of Customs Act relating to interest, offences and penalties to integrated tax is prospective in nature and is applicable only from 16-8-2024 onwards.*

The appellant further reproduced the relevant paras of the decision which is as under:

> *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 pari materia to Sections 3 (6) and 3A (4) of the Tariff Act as referred to in the case of Mahindra & Mahindra Limited (supra). In these circumstances, in our view, the said decision is squarely applicable to the facts of the present case.*
>
> *61. Further, we are unable to accept the submissions of the Respondents that the decision in the case of Mahindra & Mahindra Limited (supra) is not applicable to the facts of the present case since it does not interpret Section 3 (12) of the Tariff Act. The provisions under consideration before this Court in the case of Mahindra & Mahindra Limited (supra) were Sections 3 (6) and 3A (4) of the Tariff Act. In Mahindra & Mahindra Limited (supra), this Court interpreted the provisions of Sections 3 (6) and 3 A(4) of the Tariff Act, which are pari materia 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.

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.

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 above, the said Circular, to the extent that it seeks to recover interest, is bad in law.

Hence, in view of above, the levy of interest on payment of IGST, in compliance of Circular No. 16/2023-Cus. dated 07.06.2023 is legally not sustainable and is bad in law, since there is no provision in Custom Tariff Act, 1975 to levy interest or penalty on non-payment of IGST on import of goods

5.1 Further, in the instant case, the appellant has made the payment of Interest for the Bill of Entries, filed during the period Nov-2021 to January-2022. i.e., period before 16.08.2024. Hence, in any case, without prejudice to above submission, the levy of Interest in compliance of Circular No. 16/2023-Cus. dated 7-6-2023 is not applicable in the present case. Hence, the levy of Interest in the instant case is legally not sustainable and therefore the appellant is duly

eligible to claim the refund of Interest of Rs.19,02,281/- paid with respect to 16 Bill of Entries filed at Reliance, Jamnagar SEZ.

5.2 Further, reliance is placed on the order of CESTAT Mumbai, in the case of M/s. Shah Industries vs. Principal Commissioner of Customs. Mumbai, [Final Order No. FO/C/A/87000-87001/2025-CU[DB], dated 2025-11-19 dated 16.01.2026], it was held that "the legal provisions under Section 3(12) of the Customs Tarif Act. 1975 were suitably amended vide Finance (No. 2) Act, 2024, w.e.f. 16.08.2024, so as to specifically include the provision for levy of interest, penalty etc. It is held that it clearly transpires that the amended provisions of sub-section (12) of Section 3 of the Customs Tariff Act, 1975 shall come into force w.e.f. 16.08.2024 and shall not be applicable during the disputed period, which is prior to the date of such amendment". Therefore, Tribunal was of the considered opinion that demand of interest, fine and penalty on the appellants is not legally sustainable.

5.3 Further also, reliance is also placed on the decision of CESTAT Ahmedabad, in the case of CHIRIPAL POLY FILMS LTD vs. COMMISSIONER OF CUSTOMS-CUSTOMS, AHMEDABAD (2024) 22 Centax 245 (Tri.-Ahmd) [23-07-2024], wherein the tribunal held that:

"Section 3(7) is charging section for IGST on goods imported into India -IGST is separate levy independent of Customs Duty under Section 12 of Customs Act, 1962 There is no specific provision for its recovery or charging of interest, fine and penalty under Sections 3(7) or 3(12) of Customs Tariff Act 1975 as compared to similar provisions under Sections 8B(9) and 9A(8) of Customs Tariff Act 1975 for safeguard and antidumping duties - As interest, fine and penalty are separate/ independent financial levies, there must be charging provision for their levy, and in absenc thereof, orders for their recovery were unsustainable CBIC Circular Ne 16/2023-Cus dated 07-06-2023 directing charging of interest was ex-facie contrary to charging interest under Section 3(7) of Customs Tariff Act 1975 - It was also case of revenue neutrality and interpretation of provisions".

The above decision was also followed by CESTAT, Ahmedabad, in the case Sakar Industries Pvt. Ltd. vs Customs Ahmedabad on 22 October 2024.

5.4 In the instant case, the appellant has re-assessed the bill of entries filed Reliance Jamnagar, SEZ, and made the payment of Interest of Rs. 19,02,281,

with respect to 16 Bill of Entries filed at Reliance Jamnagar SEZ. Hence, the appellant is entitled to claim the refund of said excess payment of Interest of Rs. 19,02,281/-. Hence, the finding of the Ld. Deputy Commissioner On this account itself, the denial of refund of interest would go against the Tribunal's order which specifically covers BOE involved in the present case, henceforth, impugned order is liable to be aside.

Personal Hearing:

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

Discussion and findings:

7. One set of the appeal memorandum has been sent to the adjudicating authority, vide this office letter F.No. S/49-238/CUS/JMN/2024-25/2496 dated 20.09.2024 for comments, but no reply thereof has been received. Therefore, I proceed to decide the appeal on basis of documents submitted by the appellant.

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

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

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

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

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

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

> *"(12) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act."*

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

> *"(12) The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the*

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

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

7.6 This view was affirmed and applied in the case of ***A. R. Sulphonates Pvt. Ltd. v. Union of India*** [(2025) 29 Centax 212 (Bom.) = 2025 (4) TMI 578 (Bom.)], where the Hon'ble High Court quashed the demand of interest and penalty on IGST levied under Section 3(7) of the Customs Tariff Act, 1975, and also held that CBIC Circular No. 16/2023-Cus, to the extent it seeks to recover interest, is not legally tenable. The relevant paragraphs of the said Order of Hon'ble Bombay High Court are reproduced below:

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

71. As far as Circular No. 16/ 2023-Customs dated 7th June, 2023 is concerned, it seeks to recover interest along with IGST. The relevant part of the said Circular reads as under:-

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

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

73. As far as redemption fine imposed by the impugned Order is concerned, the same is demanded in lieu of confiscation of goods under Section 111(o) *of the Customs Act. As per* Section 111(o) *of the Customs Act, the goods shall be liable for confiscation in the event the condition subject to which the goods are exempted from duty is not observed. As already held by us on the basis of the Judgement of the*

Hon'ble Supreme Court in the case of Orient Fabrics Limited *(supra),* Section 3 (12) *of the Tariff Act, after its amendment by Finance (No.2) Act, 2024, dated 16th August, 2024, makes applicable the provisions relating to interest, offences and penalties of the* Customs Act to the Tariff Act. *As already held by us, Section 3 (12) of the Tariff Act, as amended, is applicable only after 16th August, 2024 and is not applicable to the present case. Accordingly, in the present case, no confiscation could have been imposed.*

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

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

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

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

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

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

... ...".

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

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

8. Further, before adverting to the merits of the present appeal, it is pertinent to note that the adjudicating authority has recorded a finding that the appellant had paid the interest during November 2021/January 2022 without lodging any protest and subsequently filed the refund claim on 16.02.2024, i.e., beyond the prescribed period of one year from the date of payment of such duty/interest as stipulated under Section 27 of the Customs Act, 1962. Accordingly, the adjudicating authority found that the refund claim filed by the appellant is time-barred. The relevant observations of the adjudicating authority in para 16 of the impugned order are reproduced as under:

> *"16. I find that the claimant has paid the interest in month of Nov-2021/Jan-2092 without lodging any protest and filed the refund claim on 16.02.2024 after expiry of time period of one year from the date of payment of such duty/interest as prescribed under Section 27 of Customs Act, 1962. As per Section 27(1) of the Customs Act, 1962, any person claiming refund of any duty or interest, (a) paid by him; or (b) borne by him, may make an application in such form and manner as may be prescribed for such refund to the Deputy/Assistant Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest. The relevant portion of Section 27 of Customs Act, 1962 is reproduced as under:*
>
> *"Any person claiming refund of any duty or interest,*
>
> *(a) paid by him; or*
>
> *(b) borne by him,*
>
> *may make an application in auch form and manner as may be prescribed for sinch refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest."*

8.1 It is further observed that the adjudicating authority at para 21 of the impugned order has held that the refund is barred by limitation. Para 21 of the impugned order is as under:

"21. Therefore, based on the facts and discussion in paras above, I find that in the present case, the refund claim of interest Rs. 19,02,281/- as claimed by the claimant is not admissible to them in respect of aforesaid Bill of Entry being time barred under Section 27(1)(a) of Customs Act, 1962 since, the claimant has filed the refund claim after expiry of time limit prescribed under section 27 (1)(a) of the Customs Act, 1962....."

8.2 In view of the above, I find that the adjudicating authority has rightly held that the refund claim filed by the appellant is barred by limitation under Section 27 of the Customs Act, 1962. It is an admitted fact that the appellant paid the interest during November 2021/January 2022 without lodging any protest and filed the refund claim only on 16.02.2024, i.e., beyond the prescribed period of one year from the date of payment. As per the provisions of Section 27(1) of the Customs Act, 1962, any claim for refund of duty or interest is required to be filed within one year from the date of such payment. In the present case, the appellant has failed to adhere to the statutory time limit. Accordingly, I concur with the findings of the adjudicating authority that the refund claim is time-barred and not admissible as per the existing law. Further in the absence of any substantive grounds challenging rejection on limitation, and in particular as the appellant has not contested the rejection on the ground of limitation either in the appeal memorandum or in the additional submissions, the appeal remains effectively uncontested so far as rejection on limitation is concerned and is therefore liable to be rejected as such. Consequently, the appeal is liable to be rejected on the ground of limitation.

9. Further, it is observed from the records that final assessment of the subject Bills of Entry were done in the month of November 2021/January 2022 and the appellant has paid interest in the same month 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. 19,02,281/- 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).

9.1 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 negatived 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."

9.2 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 re 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.

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

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

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

By Registered Post A.D.

F. No. S/49-238/CUS/AHD/2024-25 Dated –30.03.2026

To,

(i) M/s. Gujarat Craft Industries Ltd.,
431, Santej-V Adsar Road, Santej,
Tal-Kalol, Dist- Gandhinagar Gujarat-382721,

आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

Copy to:

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