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

DIN – -20250571MN0000777CB0

क	फ़ाइल संख्या FILE NO.	S/49-96/CUS/AHD/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-063-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.05.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. 21/DC/ICD-IMP/REF/2024, dated 29.4.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Shri Jagdamba Polymers Ltd. Harmony, 4th Floor, 15/A Shree Vidhyanagar Co-op. Housing Society Ltd., Opp. NABARD, Nr. Usmanpura Garden, Ahmedabad

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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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 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 अपीलिय अधिकरण, 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 ब्याज 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 ब्याज 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 ब्याज 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 के %10 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 Shri Jagdamba Polymers Ltd. situated at Harmony, 4th Floor,15/A Shree Vidhyanagar Co-op. Housing Society Ltd., Opp. NABARD, Nr. Usmanpura Garden, Ahmedabad (hereinafter referred to as 'the Appellant') have filed the present appeal challenging Order-in-Original No. 21/DC/ICD-IMP/REF/2024, dated 29.04.2024 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Customs, ICD Khodiyar, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, the Appellant had imported goods under Advance Authorisation by availing the exemption under Notification No. 18/2015-Cus vide the following Bills of Entry:

TABLE – I

Sr. No.	Bill of Entry No.	Bill of Entry Date	IGST Paid (In Rs.)	Amount of Interest (In Rs.)	No. of days delayed	Int. payable	Interest on late payment of IGST
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8) = (5) – (7)
01.	3779476	27.10.2017	14,97,954/-	12,75,518/-	02	1231/-	12,74,287/-
02.	4024973	16.11.2017	1,29,340/-	1,09,071/-	02	106/-	1,08,965/-
03.	4024973	16.11.2017	14,02,318/-	11,82,557/-	02	1153/-	11,81,404/-
04.	5359308	26.02.2018	8,26,201/-	6,62,772/-	02	679/-	6,62,093/-
05.	5368524	26.02.2018	12,27,085/-	9,84,356/-	02	1009/-	9,83,347/-
06.	5368524	26.02.2018	4,25,723/-	3,41,512/-	02	350/-	3,41,162/-
07.	4820210	16.01.2018	34,21,439/-	28,02,299/-	02	2812/-	27,99,487/-
08.	9155788	07.12.2018	17,59,103/-	11,78,358/-	02	1446/-	11,76,912/-
TOTAL				**85,36,444/-**		**8786/-**	**85,27,658/-**

2.1 The 'pre-import' condition in respect of all the imports had not been fulfilled and all the above Bills of Entry were re-assessed in terms of Circular No. 16/2023-Cus wherein it was clarified that in all similar cases the Bills of Entry may be re-called and re-assessed for imposition of IGST. Upon re-assessment, the systems created a challan for payment of IGST along with interest and the Appellant paid interest amounting to Rs. 85,36,444/-

2.2 The Appellant filed a refund claim of Rs 85,36,444/- before the Deputy Commissioner of Customs, ICD Khodiyar, Ahmedabad, on the ground that there was no provision under Section 3 of the Customs Tariff Act for the levy of interest on IGST. In support of their claim, the Appellant relied upon the decision of the Hon'ble Bombay High Court in the case of *M/s Mahindra & Mahindra Ltd.*, reported at (2023) 3 Centax 261 (Bom), which was subsequently upheld by the Hon'ble Supreme Court.

2.3 The adjudicating authority rejected the refund claim of Rs. 85,27,658/- claimed by the Appellant vide Order-in-Original No. 21/DC/ICD-IMP/REF/2024, dated 29.4.2024 [hereinafter referred to as the 'impugned order']

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

- IGST was leviable under Section 3 (7) of the Customs Tariff Act and not under Section 12 of the Customs Act. Reliance was placed on the case laws of M/s Hyderabad Industries Ltd. reported at 1999 (108) ELT 321 (SC) and M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom);
- Interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. Reliance was placed on the case law of M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom), M/s Ukai Pradesh Sahakari Khand Udyog Mandli Ltd. reported at 2011 (271) ELT 32 (Guj) and order dated 16.7.1997 of the Hon'ble Supreme Court in the case of M/s India Carbon Ltd;
- There were no provisions under Section 3 (12) of the Customs Tariff Act for charge of interest and as such no interest could have been charged in the case. Reliance was placed on the case laws of M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom) and M/s A R Sulphonates Pvt. Ltd. reported at (2025) 29 Centax 212 (Bom);
- Even if the SLP is dismissed, it is a declaration of law by the Hon'ble Supreme Court within the meaning of Article 141 of the Constitution of India if a speaking order has been passed;
- The order dated 28.07.2023 of the Hon'ble Supreme Court in Special Leave Petition Diary No. 18824/2023 in the case of M/s Mahindra & Mahindra is a speaking order and is a declaration of law by the Hon'ble Supreme Court within the meaning of Article 141 of the Constitution of India. Reliance was placed on the case of Kunhayammed V/s State of Kerala reported at 2001 (129) ELT 11 (SC) and Instruction F. No. 276/114/2015-CX.8A dated 9-2-2016;
- The order dated 15.09.2022 of Hon'ble High Court of Bombay stood merged with the order dated 28.7.2023 of the Hon'ble Supreme Court in Special Leave Petition Diary No. 18824/2023 in the case of M/s Mahindra & Mahindra since the reason for dismissal of SLP had been assigned and the same was a speaking order attracting the doctrine of merger. Reliance was placed on Hon'ble Supreme Court in order dated 8.3.2011 in the case of Gangadhara Palo V/s The Revenue Divisional Officer &Anr (C.A. No. 5280/2006), M/s Caryaire Equipments India Ltd. reported at 2005 (179) ELT 522 (All) and M/s Pernod Ricard India (P) Ltd. reported at 2010 (256) ELT 161 (SC);
- The ratio of the case of M/s Atul Kaushik reported at 2015 (330) ELT 417 (T) is not applicable to the facts of the case at hand;
- Reliance on the case laws of M/s Bangalore Jute Factory reported at 1992 (57) ELT 3 (SC), M/s Indian Oil Company Ltd. reported at AIR 2019 Supreme Court 3173, M/s J K Synthetics Ltd. reported at (1994) 4 SCC 276 and M/s Indian Carbide Ltd. reported at (1997) 6 SCC 479 by the adjudicating authority was mis-placed in as much as the said case laws dealt with different statutes than the statute under consideration. The fact of the case at hand is that the present case deals with interpretation of Section 3 of the Customs Tariff Act with regard to applicability of interest and the Hon'ble High Court of Bombay has already interpreted the said

provision in the same context in the case of M/s Mahindra & Mahindra Ltd. in Writ Petition No. 1848 of 2009. The appeal filed by the department against the said judgment stands dismissed by the Hon'ble Supreme Court and also the Review Petition filed by the department against such dismissal stands dismissed;

- Civil Appeal No. 1022 of 2014 filed by M/s Valecha Engineering Ltd. against the order of the Hon'ble High Court of Bombay was dismissed by the Hon'ble Supreme court vide order dated 04.11.2019 only on the ground of non-prosecution and as such the order dated 04.11.2019 of the Hon'ble Supreme Court is not a law declared within the meaning of Article 141 of Constitution as opposed to that in the case of M/s Mahindra & Mahindra Ltd;
- It is no longer *res integra* that the levies under Section 3 of the Customs Tariff Act cannot be considered as a levy under Section 12 of the Customs Act. The said position of law is enunciated by the Hon'ble Supreme Court in the case of M/s Hyderabad Industries Ltd. reported at 1999 (108) ELT 321 (SC) and further reiterated by the Hon'ble High Court of Bombay in the case of M/s Mahindra & Mahindra Ltd. in Writ Petition No. 1848 of 2009 reported at (2023) 3 Centax 261 (Bom.);
- The substitution of Section 3 (12) of the Customs Tariff Act vide Section 106 of the Finance (No. 2) Act which has been enacted on 16.08.2024 in itself establishes that prior to 16.8.2024 there was no provision for charging of interest. In the instant case, the matter pertains to a period prior to 16.08.2024 and as such the interest collected by the department is without authority of law and is simply in the nature of deposit which is required to be returned forthwith;
- The powers emanating from Section 25 (1) of the Customs Act are restricted to the act of exempting a part or whole of the duty. There is nothing in the said statute which empowers the department to create the liability of interest by virtue of a notification especially in light of the fact that no statutory provision for interest has been made with respect to the levies under Section 3 of the Customs Tariff Act. In such circumstances, the interest referred to in the said notification and resultantly in the Bond under Section 143 of the Customs Act is only for the purpose of Basic Customs Duty leviable under Section 12 of the Customs Act read with Section 2 of the Customs Tariff Act and not with respect to the levies under Section 3 of the Customs Tariff Act;
- In absence of any provision to charge interest on the levies under Section 3 of the Customs Tariff Act, the interest recovered from them assumes the nature of collection without the authority of law. It is a settled matter of law that any amount collected without the authority of law cannot be retained and has to be returned forthwith. Reliance was placed on the case laws of M/s G B Engineers reported at 2016 (43) STR 345 (Jhar) and M/s KVR Construction reported at 2012 (26) STR 195 (Kar) as affirmed by the Hon'ble Supreme Court as reported at 2018 (14) GSTL J70 (SC)

PERSONAL HEARING:-

4. Personal hearing in the matter was held on 08.05.2025, wherein Shri John Christian and Shri Ashish Jain, Consultants appeared for hearing on behalf of the Appellant

and they reiterated the submissions made in appeal memorandum and placed on record the case law of *M/s A R Sulphonates Pvt. Ltd. reported at (2025) 29 Centax 212 (Bom).*

DISCUSSION & FINDINGS:-

5. The Appellant have filed the present appeal on 19.06.2024. The date of communication of the impugned order dated 29.04.2024 have been shown as 30.04.2024. Thus, the appeals have been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. As the appeal has been filed against refund of interest on the IGST amount, pre-deposit under the provisions of Section 129E is not required. As the appeal have been filed within the stipulated time-limit, the said appeal have been admitted and being taken up for disposal on merits.

6. I have carefully examined the impugned order, the appeal memorandum submitted by the Appellant, the submissions made during the course of the hearing, as well as the documents and evidence available on record. The core issue for consideration in the present matter is whether interest is chargeable on the levy of IGST.

7. It is a well-settled principle of law that interest on delayed payment of tax can be levied and charged only when there is a substantive provision in the statute expressly authorizing such levy. This position finds support in the order dated 16.07.1997 in the case of *M/s Indian Carbon Ltd.* and the judgment in *M/s Ukai Pradesh Sahakari Khand Udyog Mandli Ltd.*, reported at 2011 (271) ELT 32 (Guj).

7.1 There is no dispute that IGST is leviable under Section 3 (7) of the Customs Tariff Act. However, for the purposes of charging interest or imposing a penalty, there must be specific enabling provisions within Section 3 of the Customs Tariff Act itself. Sub-section (12) of Section 3, which provides the recovery mechanism, does not contain any provision authorizing the levy of interest or the imposition of penalties. A comparison between the substituted Section 3 (12) and the erstwhile Section 3 (12) clearly illustrates this point. The relevant text of both versions is reproduced below for ease of reference:

Statute prior to substitution i.e. before 16.08.2024

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.]

Statue after substitution i.e. after 16.08.2024

"The provisions of the Customs Act, 1962 and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as

may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be.".

A comparison between the substituted statute and the earlier version clearly demonstrates that the provisions enabling the levy of interest and imposition of penalty in respect of IGST under Section 3 (7) of the Customs Tariff Act were introduced only with effect from 16.08.2024. Prior to this amendment, there was no statutory basis under Section 3(12) of the Customs Tariff Act for charging interest or imposing penalties in relation to IGST.

7.2 The amended Section 3 (12) of the Customs Tariff Act is prospective in nature; accordingly, the provision for charging of interest is applicable only with effect from 16.08.2024. This view finds support in the judgment of the Hon'ble Bombay High Court in the case of *M/s A R Sulphonates Pvt. Ltd.*, reported at (2025) 29 Centax 212 (Bom), wherein the Court observed as under:

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

> *"12:- The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be."*

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

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

7.4 The Hon'ble High Court of Bombay reaffirmed the above legal position in *M/s A R Sulphonates Pvt. Ltd.*, reported at (2025) 29 Centax 212 (Bom). The issue in that case

similarly concerned the chargeability of interest and imposition of penalty for delayed payment of IGST. The Court unequivocally held that interest is not chargeable, nor is penalty imposable, in respect of IGST demands in the absence of a specific statutory provision. In delivering this judgment, the Hon'ble High Court conclusively settled the legal controversy surrounding the matter. The relevant portion of the judgment, which is self-explanatory, is reproduced below:

> ***"60.*** *In Mahindra & Mahindra Limited (supra), this Court, after going through the provisions of Section 3 (6) of the Tariff Act and Section 3 A (4) of the Tariff Act as applicable at the relevant time, held that no specific reference was made to interest and penalties in Sections 3 (6) and 3A (4) of the Tariff Act, which are substantive provisions and, therefore, imposing interest and penalty would be without the authority of law. In the present case, the levy of IGST is under Section 3 (7) of the Tariff Act, and Section 3 (12) of the Tariff Act which is applicable to the said levy is parimateria to Sections 3 (6) and 3A (4) of theTariff 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 parimateria to the un amended Section 3 (12) of the Tariff Act, which isin consideration in the present case. On interpreting Sections 3 (6) and 3A (4) of the Tariff Act, this Court held that when no specific reference was made to interest and penalties in the said provisions, imposing interest and penalty would be without the authority of law. In these circumstances, in our view, the ratio of the decision in the case of Mahindra & Mahindra Limited (supra), would be squarely applicable to the facts of the present case.*
>
> ***62.*** *We are also not able to accept the submission of the Respondents that the provisions of Section 3 (12) use the term "including" and the same implies that the provisions of the Customs Act will be made applicable to the Tariff Act. As can be seen from the Judgement of this Court in Mahindra & Mahindra Limited (supra), Sections 3(6) and 3 A(4) of the Tariff Act, which were considered by this Court in the said Judgement, also use the word "including". Despite the same, this Court came to the conclusion that, since there was no specific reference to interest and penalties, imposing interest and penalties would be without the authority of law.*
>
> ***63.*** *In these circumstances, in our view, the submissions of the Respondent, based on the use of the word "including" in Section 3 (12) of the Tariff Act, cannot be accepted.*
>
> ***67.*** *In our view, the amended Section 3 (12) of the Tariff Act is prospective in nature and would apply only with effect from 16th August, 2024.*

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

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

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

The Hon'ble High Court of Bombay has unequivocally held that interest is not chargeable in cases involving the levy of IGST, leaving no scope for doubt in the facts of the present case.

7.5 In view of the above, the matter is no longer *res integra* and interest cannot be charged in cases pertaining to IGST leviable under Section 3 (7) of the Customs Act.

7.6 From the ICEGATE Portal, it is observed that the Appellant has already paid the interest on the IGST in respect of all eight (08) Bills of Entry.

8. In light of the judicial principles laid down by the Hon'ble Supreme Court in the case of *M/s Kamlakshi Finance Corporation Ltd.*, reported at 1991 (55) ELT 433 (SC), I am bound to follow the rulings of the Hon'ble Supreme Court in *M/s Mahindra & Mahindra Ltd.* (supra) and the Hon'ble High Court of Bombay in *M/s A R Sulphonates Pvt. Ltd.*, particularly as there is no stay on the operation of these judgments and they have not been overruled as on date.

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

a) The SLP filed by the department was dismissed by the Hon'ble Supreme Court with detailed reasons, thus constituting a speaking order. This position has been further clarified in Instruction F. No. 276/114/2015-CX.8A dated 9-2-2016, the relevant excerpt of which is reproduced below:

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

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

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

c) The Review Petition Diary No. 41195/2023 filed by the department against order dated 28.07.2023 was dismissed by the Hon'ble Supreme Court vide order dated 09.04.2024

d) The order dated 28.07.2023 of the Hon'ble Supreme Court is not *in limine* stands established from the very fact that the department had filed Review Petition Diary No. 41195/2023 against the said order. If the order dated 28.07.2023 was *in limine*, no review petition could have been filed against the said order in light of the Board's Instruction F. No. 276/114/2015-CX.8A dated 09.02.2016.

10. Further, I find that since the department exercised its statutory right of appeal under Section 130E of the Customs Act, the dismissal of the appeal whether by a speaking or non-speaking order invokes the doctrine of merger. My views are supported by the following case laws:

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

> *In our opinion, once a statutory right of appeal is invoked, dismissal of appeal by the Supreme Court, whether by a speaking order or non-speaking order, the doctrine of merger does apply, unlike in the case of dismissal of special leave to appeal under Article 136 of the Constitution by a non-speaking order.*
>
> ***24.*** *In the present case, the appellant preferred statutory appeal under Section 130E of the Act against order of the Tribunal dated 25th March 2003 and, therefore, the dismissal of appeal by this Court though by a non-speaking order, was in exercise of appellate jurisdiction, wherein the merits of the order impugned were subjected to judiciary scrutiny. In our opinion, in the instant case, the doctrine of merger would be attracted and the appellant is estopped from raising the issue of applicability of Rule 6 in their case.*

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

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

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

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

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

11. In view of the foregoing, I find that interest cannot be charged on the levy of IGST in the absence of any statutory provision under the Customs Tariff Act. Consequently, the interest recovered in the present case is without legal authority and must be refunded to the Appellant. Therefore, the impugned order rejecting the Appellant's refund application is unsustainable and are hereby set aside.

12. Accordingly, I set aside the impugned order and allow the appeal filed by the Appellant by way of grant of refund as claimed by the Appellant

(Amit Gupta)
Commissioner (Appeals)
Customs, Ahmedabad

Date: 30.05.2025

F. No. S/49-96/CUS/AHD/2024-25

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15/A Shree Vidhyanagar
Co-op. Housing Society Ltd.,
Opp. NABARD,
Nr. Usmanpura Garden,
Ahmedabad

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