



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS), अहमदाबाद AHMEDABAD,

चौथीमंजिल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN- 20250571MN0000101204

क	फाइलसंख्या FILE NO.	As per Table-I
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128कके अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-038 to 046-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	30.05.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Bills of Entry as per Table -I
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	30.05.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Electronic Instrumentation 12, Mahesh Nagar, Ambala Cantt-133001

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.
	खेत सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.



(x)	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.	<p>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 :</p> <p>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 :</p> <p>(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।</p> <p>(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.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(b) 4 copies of the Order-in-Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक 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 दोप्रतियां। 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/-</p> <p>(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/-.</p>				
4.	<p>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 शुल्क संलग्न होने चाहिए।</p> <p>In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :</p> <table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
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5.	<p>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।</p> <p>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 -</p> <p>(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 हजार रुपए।</p> <p>(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;</p>				



(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 हजार रुपए
(ब)	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 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. Electronic Instrumentation, 12, Mahesh Nagar, Ambala Cantt-133001 (herein after referred to as the "appellant") have filed nine appeals in terms of Section 128 of the Customs Act, 1962, as per details given in Table – I below, challenging the assessment made in the Bills of Entry mentioned therein.

TABLE – I

S.No.	Appeal No.	Bill of Entry No. & Date
1	S/49-52/CUS/MUN/2024-25	9348160, dated 21.12.2018
2	S/49-53/CUS/MUN/2024-25	8526768, dated 03.05.2022
3	S/49-54/CUS/MUN/2024-25	8199412, dated 25.09.2018
4	S/49-55/CUS/MUN/2024-25	8153725, dated 22.09.2018
5	S/49-56/CUS/MUN/2024-25	8003255, dated 11.09.2018
6	S/49-57/CUS/MUN/2024-25	5563738, dated 05.11.2019
7	S/49-58/CUS/MUN/2024-25	5220401, dated 09.10.2019
8	S/49-59/CUS/MUN/2024-25	2182228, dated 27.08.2022
9	S/49-60/CUS/MUN/2024-25	2175519, dated 30.12.2020

2. As the issue involved is identical in all the nine appeals, they are taken up simultaneously for disposal. Facts of the case, in brief, as per appeal memorandum, are that the appellant, through the submission of the contested Bill of Entry as per Table-I above, imported specific items. The Appellant, possessing a valid Advance Authorization during the importation of the impugned items, availed benefits under Notification No. 18/2015-Customs dated 01.04.2015 and Notification 79/2017 dated 13.10.2017, resulting in the exemption of duties, including IGST. Under GST Law, Rule 96(10) imposes a restriction stipulating that if an individual benefits from Notification 79/2017 dated 13.10.2017, i.e., the IGST exemption, the option to export goods with the payment of IGST under Section 16 of the IGST Act, 2017, is precluded. Notably, through Notification No. 16/2020-CT dated 23.03.2020 (GST), effective from 23.10.2017, an Explanation was introduced. This provision explicitly states that if IGST is paid at the time of import, there shall be no violation of Rule 96(10). Consequently, assesses may export goods with IGST payment even if they have availed exemptions on imports. Consequently, in the context of the Appellant having imported goods while benefiting from the exemption under Notification 79/2017 dated 13th October 2017 and subsequently exporting the goods with IGST, the Appellant opted to forego the IGST exemption.

2.1 In furtherance of this decision, the Appellant submitted the requisite request letter to the learned Authority, who, through the cancellation of Out of Charge, reassessed the Bill of Entry, permitting the Appellant to effect payment. The appellant was required to interest during the payment of IGST as the EDI system automatically computes the total



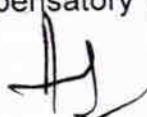

liability. In noisegom all mrt beasurver in t. TMI 829-2014 (4) TMI 1-SUPREME COURT further underscores the compensatory nature of interest payments, distinguishing them from penalties.

3. Being aggrieved with the re-assessment of impugned Bill of Entry to the extent of assessment/recovery of the said amount of interest on the IGST paid, the appellant have filed the present appeals and mainly contended the following:

- The present appeal challenges the order concerning the imposition of "Compulsory Interest." The term "compulsory" is employed here as, during the payment of IGST, the Appellant had no alternative for the "Non-Payment of Interest," as the EDI System automatically computes the total liability. We are aggrieved with charging of interest during payment of IGST which is not in accordance with law.
- Pursuant to Section 47(2)(b) of the Customs Act, 1962, it is mandated that "the importer shall pay the import duty within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment, and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment at such rate."
- The recent CBIC Circular no.16/2023-Cus dated June 7, 2023, delineates the necessity to remit IGST along with interest for contravening the pre-import condition. The Circular prescribes that the bill of entry will undergo reassessment, subsequent to which IGST payment is required. Therefore, compliance with the payment within one day of such reassessment affords a plausible argument against the imposition of interest, consonant with the provisions of Section 47(2)(b).
- The impugned order is not in accordance with law insofar as it charges interest and hence, the same is liable to be quashed and set aside. In alignment with the aforementioned scenario, it is asserted that no interest is exigible, as the Appellant duly discharged the duty within the stipulated timeframe.

Additionally, reference is made to the case of COMMISSIONER OF INCOME TAX III VERSUS KAYPEE MECHANICAL INDIA PVT. LTD. -2014 (4) TMI 829-GUJARAT HIGH COURT, wherein the Gujarat High Court elucidated that interest paid on delayed service tax constitutes a business expenditure exclusively incurred for business purposes. Consequently, such payment should not be construed as a penalty for statutory violation.

- The Supreme Court's pronouncement in MAHALAKSHMI SUGAR MILLS COMPANY VERSUS COMMISSIONER OF INCOME-TAX, DELHI-1980 (4) TMI 1-SUPREME COURT further underscores the compensatory nature of interest payments, distinguishing them from penalties.



- Citing the precedent in INDIA CARBON LTD. VERSUS STATE OF ASSAM-1997 (7) TMI 566-SUPREME COURT, it is underscored that the imposition of interest on delayed tax payments is contingent upon explicit statutory provisions authorizing such imposition.
- Consistent with the ruling of the Supreme Court in BIRLA CEMENT WORKS & JK. SYNTHETICS LTD. VERSUS COMMERCIAL TAXES OFFICER AND STATE OF RAJASTHAN 1994 (5) TMI 233 SUPREME COURT, any provision in a statute authorizing the imposition of interest on delayed tax payments is construed as substantive law, not adjectival law.
- The decision in CCE. & C., SURAT-I VERSUS UKAI PRADESH SAHAKARI KHAND UDYOG MANDLI LTD. - 2010 (12) TMI 996-GUJARAT HIGH COURT is invoked to assert that interest can only be levied on delayed tax payments if the relevant statute explicitly provides for such imposition.
- Noteworthy is the judgment in MAHINDRA & MAHINDRA LTD. (AUTOMOTIVE SECTOR), VERSUS THE UNION OF INDIA, THE SETTLEMENT COMMISSION. ADDITIONAL BENCH, CUSTOMS & CENTRAL EXCISE, MUMBAI. THE COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI, THE ADDITIONAL DIRECTOR GENERAL, DGCEI, MUMBAI 2022 (10) TMI 212 BOMBAY HIGH COURT, affirming that financial benefits derived by an entity cannot form the basis for interest imposition in the absence of statutory provisions.
- In the matter before the Bombay High Court, the petitioner challenges the levy of interest on IGST, relying on the decision in Mahindra & Mahindra Ltd. The Bombay HC grants interim relief and directs the deposit of IGST, keeping open the issues of interest levy and the circular's validity Reference is made to Essem Tecnopinz Pvt Ltd. Vs. Union of India in the WRIT PETITION NO.11988 OF 2023.
- Thus, predicated on the aforementioned grounds, it is contended that the levy of interest is unwarranted. It is contended that the impugned order is not in accordance with law insofar as it charges interest and hence, the same is liable to be quashed and set aside.
- Consequently, a prayer is extended to your esteemed office to facilitate the refund of interest paid.

4. Personal hearing in the matter was granted following the principles of natural justice held on 27.05.2025 . Shri Naresh Satwani, Consultant , appeared for hearing on



behalf of the Appellant. He reiterated the submissions made at the time of filing of appeals. He also filed additional submissions as under :-

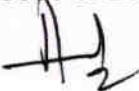
**ADDITIONAL GROUNDS OF APPEAL:** The Appellant, M/s. Electronic Instrumentation, respectfully submits the following grounds of appeal, which are independent and without prejudice to one another:

**1. THE IMPUGNED LEVY OF INTEREST ON IGST IS WITHOUT AUTHORITY OF LAW AS, PRIOR TO 16.08.2024, THE CUSTOMS TARIFF ACT, 1975 LACKED SPECIFIC MACHINERY PROVISIONS FOR THE LEVY AND COLLECTION OF INTEREST ON IGST:**

- 1.1. It is a cardinal principle of fiscal jurisprudence, enshrined in Article 265 of the Constitution of India, that no tax, duty, or any other fiscal imposition, including interest, can be levied or collected except by the authority of law. The constitutional mandate is unambiguous and forms the bedrock of all taxing statutes in India, ensuring that citizens are not subjected to arbitrary exactions by the State. This implies that not only the levy of the primary tax but also any ancillary impositions like interest or penalty must have explicit and unequivocal legislative sanction. Administrative convenience or executive instructions cannot substitute for clear statutory authority.
- 1.2. IGST on imported goods is levied under Section 3(7) of the Customs Tariff Act, 1975 (hereinafter referred to as "CTA"). The machinery for the collection of duties specified under Section 3 of the CTA is borrowed from the Customs Act, 1962, through the provisions of Section 3(12) of the CTA.
- 1.3. Prior to its amendment by the Finance (No. 2) Act, 2024 (which came into effect on 16.08.2024), Section 3(12) of the CTA read as follows:

**Section 3(12) of the Customs Tariff Act, 1975 (pre-amendment)- (prior to 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."

- 1.4. This interpretation—that interest cannot be levied without explicit statutory authority—is firmly supported by the Bombay High Court's decision in *Mahindra & Mahindra Ltd. (Automotive Sector) v. Union of India*, 2022 (10) TMI 212 (Bom.). Although that judgment dealt with interest and penalty on the Additional Duty of Customs (CVD) and Special Additional Duty (SAD) under Sections 3(1) and 3(3) of the Customs Tariff Act, 1975, its ratio decidendi applies equally to interest on IGST under Section 3(7). The Court held that, because Section 3 contains no substantive charging provision for interest or penalty, and the then-existing borrowing clause in Section 3(12) did not expressly incorporate interest or penalty from the Customs Act, there was no legal authority to impose interest on such duties. (Parliament amended Section 3 (12) w.e.f. 16.08.2024 to add "interest, offences and penalties"; the judgment therefore governs liabilities arising **before** that date).
- 1.5. The aforesaid decision of the Hon'ble Bombay High Court in *Mahindra & Mahindra (supra)* has attained finality, as the Special Leave Petition (SLP) filed by the Revenue was dismissed by the Hon'ble Supreme Court on the ground of no merits, and a subsequent Review Petition was also dismissed by the Apex Court vide order dated 09.01.2024 in R.P.(C) Diary No. 41195/2023, holding that "**Having carefully gone through the Review Petition, the order under challenge and the papers annexed therewith, we are satisfied that there is no error apparent on the face of the record or any merit in the Review Petition warranting reconsideration of the order impugned.**"
- 1.6. The same principle was expressly extended to IGST by the Bombay High Court in *A.R. Sulphonates Pvt. Ltd. v. Union of India*, Writ Petition No. 19366 of 2024, (2025) 29 Centax



212 (Bom.), decided on 9<sup>th</sup> April 2025. The Court held that the unamended text of Section 3(12) CTA—pari materia to Sections 3(6) and 3A(4)—did not incorporate the Customs Act, 1962 provisions as to interest, offences or penalties into IGST under Section 3(7). As a result, **demands for interest, redemption fine and penalty in respect of pre-16<sup>th</sup> August 2024 IGST liabilities were quashed**. It further confirmed that the Finance (No. 2) Act 2024 amendment to Section 3(12), effective only from 16<sup>th</sup> August 2024, is purely prospective, and that CBIC Circular No. 16/2023-Cus. dated 7<sup>th</sup> June 2023, insofar as it purports to recover interest on IGST, exceeds the statutory authority. Relevant para is reproduced herein below:

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

- (i) It is declared that Circular No. 16 of 2023-Customs dated 7<sup>th</sup> 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 1<sup>st</sup> 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 16<sup>th</sup> August, 2024 is prospective in nature and is applicable only from 16<sup>th</sup> August, 2024 onwards;*
- (iv) Rule is made absolute in the aforesaid terms;*
- (v) In the facts and circumstances of the case, there will be no order as to costs."*

- 1.7. The jurisprudence that starts with *Mahindra & Mahindra* (CVD/SAD) and is carried forward in *A.R. Sulphonates* (IGST) makes one point unmistakable: **before 16<sup>th</sup> August 2024 no interest, penalty or related consequence could lawfully be imposed on levies under Section 3 of the CTA unless a separate, substantive charging provision expressly authorised it**. The Finance (No. 2) Act 2024 amendment that adds "interest, recovery, appeals, offences and penalties" to Section 3(12)—reads as a legislative acknowledgment of the very gap the courts identified. Had those liabilities been covered implicitly, such an explicit insertion would have been superfluous; and if the change were intended merely as a clarification, the legislature could have declared it retrospective. Instead, it took effect **prospectively** from 16<sup>th</sup> August 2024, confirming that for earlier periods the statutory footing to demand interest or impose penalties simply did not exist.
- 1.8. Each of the Appellant's Bills of Entry—originally imported between 2018 and 2022 and reassessed on 19<sup>th</sup> March 2024—falls squarely within the period governed by the **unamended** Section 3(12) CTA. The Finance (No. 2) Act, 2024 amendment, which for the first time grafted explicit "interest, recovery, appeals, offences and penalties" machinery onto IGST, only took effect on **16 August 2024**; prior to that date there was no statutory authority to levy interest on IGST.
- 1.9. In view of Article 265 of the Constitution, the unamended wording of Section 3(12) CTA, and the binding Bombay High Court decisions in *Mahindra & Mahindra* and *A.R. Sulphonates*—both now final—any demand or recovery of interest on IGST from the Appellant has no statutory basis, is ultra vires the CTA, and must be quashed.

## **2. THE AMENDMENT TO SECTION 3(12) OF THE CUSTOMS TARIFF ACT, 1975, BY THE FINANCE (NO. 2) ACT, 2024, IS PROSPECTIVE IN NATURE AND CANNOT VALIDATE THE IMPUGNED INTEREST DEMAND FOR A PRIOR PERIOD.**

- 1.1. The Finance (No. 2) Act, 2024, brought about an amendment to Section 3(12) of the CTA. The amended provision, effective from 16<sup>th</sup> August 2024, reads as under:

Section 3(12) of the Customs Tariff Act, 1975 (as amended by Finance (No. 2) Act, 2024) (**post 16.08.2024**): **"[(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 duties leviable under that Act or all rules or regulations made thereunder, as the case may be.]*

(11a. Substituted by the Finance (No. 2) Act, 2024, w.e.f. 16-8-2024. **Prior to its substitution, sub-section (12) read as under:**

*"(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."*

- 1.2. This amendment explicitly incorporates provisions of the Customs Act, 1962—particularly those relating to "interest, recovery, appeals, offences, and penalties"—and makes them applicable to duties, taxes, or cesses chargeable under Section 3 of the CTA, including IGST levied under Section 3(7).
- 1.3. Crucially, this amendment was made effective from **16<sup>th</sup> August 2024**, which is the date the Finance (No. 2) Act, 2024, received Presidential assent and was notified. The amending Act does not contain any provision stipulating that this particular amendment to Section 3(12) of the CTA is to be applied retrospectively [User provided article].
- 1.4. It is a trite law that substantive amendments to fiscal statutes, particularly those which impose a new fiscal liability or perfect the machinery for an existing one (such as providing for the levy of interest where it was previously not clearly provided for), are presumed to operate prospectively unless the legislature has, in express terms or by necessary and distinct implication, indicated a retrospective operation. The very act of specifying an effective date for an amendment, without a corresponding clause for retrospective application, is a strong indicator of the legislative intent for prospective operation. Courts are generally circumspect in giving retrospective effect to fiscal statutes that impose new burdens or alter substantive rights, as doing so can lead to unfairness, unpredictability, and potential constitutional challenges.
- 1.5. The Hon'ble Bombay High Court in **A.R. Sulphonates (supra)** has directly addressed the nature of this amendment and has unequivocally held that the amendment to Section 3(12) of the CTA by the Finance (No. 2) Act, 2024, is prospective in its application (PARA 1.6 ABOVE).
- 1.6. In *Phillips India Ltd. v. CC (Import)*, CESTAT Mumbai (Final Order No. A/86879/2024, dated 18<sup>th</sup> November 2024), the Tribunal expressly held that the amendment to Section 3(12) of the CTA only came into force on 16<sup>th</sup> August 2024 and therefore could not apply to imports made between 29<sup>th</sup> July 2017 and 26<sup>th</sup> February 2022. Accordingly, the levy of interest on the differential IGST for that prior period was quashed.
- 1.7. The transactions under challenge—imports effected between 2018 and 2022 and reassessed on 19<sup>th</sup> March 2024—fall entirely within the pre-amendment period. Since the amendment to Section 3(12) of the CTA only took effect on 16<sup>th</sup> August 2024, its newly-enacted machinery provisions cannot be applied retrospectively to validate the IGST interest demand. Any such retroactive application would contravene settled rules of statutory interpretation and the clear judicial findings on the amendment's strictly prospective operation
3. **CBIC Circular No. 16/2023-Cus. dated 07.06.2023, insofar as it directs collection of "applicable interest" on IGST for pre-amendment periods, is ultra vires the Customs Tariff Act, 1975 and cannot supply a non-existent statutory charging provision.**

- 1.1. Circular No. 16/2023-Cus., issued in the wake of the Supreme Court's decision in *Union of India v. Cosmo Films Ltd.*, sets out a procedure for importers who failed the "pre-import condition" to pay IGST (and Compensation Cess) "along with applicable interest" against an electronic customs-EDI challan. In particular **Para 5.2(a):**

"...importer...may...approach...the POI...for.... payment of the tax and cess along with applicable interest.", **Para 5.2(c):** "...payment of tax and cess, along with applicable interest, shall be made against the electronic challan..."

- 1.2. It is settled that CBIC circulars bind departmental officers on questions of procedure, but they cannot create or expand substantive liabilities. The power to levy a tax—or interest on a tax—derives exclusively from a statutory charging provision. No administrative instruction can override the clear absence of any pre-16 August 2024 machinery in Section 3(12) CTA for charging interest on IGST.
- 1.3. The Bombay High Court in *A.R. Sulphonates Pvt. Ltd. v. Union of India* (2025-TIOL-592-HC-MUM-CUS) examined Circular No. 16/2023-Cus. and held it to be "bad in law" to the extent it purports to recover interest on IGST for a period when Section 3(12) contained no such provision. In its words: "...It is declared that Circular No.16 of 2023-Customs dated 7<sup>th</sup> 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...."
- 1.4. Accordingly, the phrase "applicable interest" in the Circular must be read in harmony with the statute. Since—prior to 16<sup>th</sup> August 2024—no interest could lawfully be levied on IGST under Section 3(12) CTA, the only "applicable interest" for that period is nil.
- 1.5. Therefore to invoke CBIC Circular No. 16/2023-Cus. as authority to demand interest on IGST for imports made before the statutory amendment is therefore legally untenable, directly contrary to the CTA's text and the High Court's binding ruling in *A.R. Sulphonates*.

**4. EVEN IF ANY INTEREST PROVISION APPLIED, NONE IS OWED BY THE APPELLANT BECAUSE THE REASSESSED IGST WAS PAID WITHIN THE ONE-DAY PERIOD PRESCRIBED BY SECTION 47(2)(b) OF THE CUSTOMS ACT, 1962.**

- 4.1. Without prejudice to Grounds 1–3, assume arguendo that the interest provisions of the Customs Act, 1962 could apply to IGST reassessed under Section 28 of that Act. In that event, the statutory timetable for payment post-reassessment, set out in Section 47(2)(b), governs when interest begins to run.

*Section 47(2)(b) reads (emphasis added):*

*"(2) The importer shall pay the import duty—*

*...  
(b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or;*

*...  
and if he fails to pay the duty within the time so specified, he shall pay interest on the duty... till the date of its payment....."*

- 4.2. In the instant case, all the Bills of Entry under appeal were reassessed by the Learned Respondent on 19.03.2024. The Appellant submits that upon the reassessed Bills of Entry being returned/made available for payment in the Customs EDI system, the IGST amounts so determined were paid promptly, within the one-day window (excluding holidays) as prescribed under Section 47(2)(b) of the Customs Act, 1962.
- 4.3. Once the reassessed bill is returned, Section 47(2)(b) resets the interest clock: interest only accrues if duty remains unpaid beyond that one-day window. Any hypothetical delay before reassessment is governed by other interest provisions—which, as shown in Grounds 1–3, did not cover IGST under the unamended CTA.
- 4.4. The fact that the reassessment was initiated at the Appellant's own request, made to facilitate compliance with Rule 96(10) of the CGST Rules for future exports, does not negate the applicability of the statutory timeline provided under Section 47(2)(b) of the Customs Act, 1962, once the Bill of Entry is formally reassessed and returned for payment. The trigger for the payment window under Section 47(2)(b) is the act of "return

*of the bill of entry...by the proper officer for payment of duty in the case of...reassessment,"* irrespective of the reasons leading to such reassessment.

4.5. Therefore, even on this alternative hypothesis, no interest falls due: the Appellant honored the statutory one-day payment period after reassessment, and under Section 47(2)(b) no interest can lawfully be charged.

**5. EVEN ON ITS OWN TERMS, INTEREST IS COMPENSATORY—AND SINCE NO IGST WAS “WITHHELD” AT IMPORT, CHARGING INTEREST FROM THAT DATE IS UNJUSTIFIED.**

5.1. It is settled that interest under India's fiscal laws is strictly compensatory, intended to make good the Government's loss when tax, then actually due, is withheld. It is *not* a punishment—but rather an “accessory” to a principal liability that has fallen into arrears.

5.2. In *Pratibha Processors v. Union of India* (1996) 11 SCC 101, this Court explained that Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to the actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty, which is penal in character. Interest is a mere ‘accessory’ of the principal, and if the principal is not payable, so is the interest.

5.3. Likewise, in *Mahalakshmi Sugar Mills Co. v. C/I/T, Delhi* (1980) 4 TMI 1, the Court reaffirmed that interest can only compensate the exchequer for genuine deprivation of funds—and not be treated as an independent levy.

5.4. Here, at the time of import the Appellant lawfully enjoyed an IGST exemption under a valid Advance Authorisation notification. No IGST was “due and payable” then, and the Appellant did *not* withhold any tax that the statute required at import. The sole occasion on which IGST became payable was the Appellant's *own* request for reassessment under Rule 96(10) of the CGST Rules (to facilitate IGST-paid exports), culminating in reassessment on 19.03.2024.

5.5. Charging “compensatory” interest from the original import date would treat as a loss to the revenue what the revenue never in law surrendered: the IGST was never legally due until reassessment, and no statutory machinery existed under the unamended Customs Tariff Act, 1975 to levy interest on IGST.

5.6. Moreover, even if IGST had been collected at import, the importer could immediately claim it as input tax credit under the GST regime—applying it against output-tax liabilities on subsequent supplies—so the exchequer never suffered any cash shortfall (the credit would simply flow through the importer's cash ledger or account current). In these circumstances—even ignoring Grounds 1–3's argument that no interest-levying provision existed—the compensatory principle itself forbids interest from running on a tax that was neither payable nor in fact withheld.

5.7. In short, department cannot conjure a substantive obligation to pay interest where (a) the principal IGST liability was extinguished by exemption at import, and (b) the legal framework to levy interest on IGST was missing until August 2024. Retrospective interest from the date of import thus flies in the face of settled law on compensatory interest.

5. Before going into the merits of the case, I find that as per appeal memorandum, all the 9 have not been filed within statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. The details of the date of communication of the order appealed against and date of filing of the present appeals as per appeal

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memorandum are mentioned against each, as under:-

TABLE-II

Sr. No.	Appeal No.	Date of Communication of order appealed against	Date of filing Appeal	Delay in filing appeal beyond the 60 days period
1	S/49-52/CUS/MUN/2024-25	19.03.2024	20.05.2024	2
2	S/49-53/CUS/MUN/2024-25	19.03.2024	20.05.2024	2
3	S/49-54/CUS/MUN/2024-25	19.03.2024	20.05.2024	2
4	S/49-55/CUS/MUN/2024-25	19.03.2024	20.05.2024	2
5	S/49-56/CUS/MUN/2024-25	19.03.2024	20.05.2024	2
6	S/49-57/CUS/MUN/2024-25	19.03.2024	20.05.2024	2
7	S/49-58/CUS/MUN/2024-25	19.03.2024	20.05.2024	2
8	S/49-59/CUS/MUN/2024-25	19.03.2024	20.05.2024	2
9	S/49-60/CUS/MUN/2024-25	19.03.2024	20.05.2024	2

5.1 The relevant legal provisions governing filing an appeal before the Commissioner (Appeals) and his powers to condone the delay in filing appeals beyond 60 days as contained in Section 128 of the Customs Act, 1962 are reproduced below for ease of reference:

**SECTION 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.]

Section 128 of the Customs Act, 1962 makes it clear that the appeal has to be filed within 60 days from the date of communication of order. Further, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days.

5.2 It is observed that in 9 Appeals in Table-II above, there is delay of 2 days in filing of appeals. In their application for condonation for delay, the appellant have inter alia submitted; that the delay was caused due to the unavailability of key staff members who were integral to the appeal preparation process. These individuals were indisposed due to medical reasons, resulting in an unavoidable disruption of normal business operations; that they had urgent year closing commitments with statutory authorities during the crucial period when the appeal needed to be compiled and submitted; that the pressing nature of these audit engagements, coupled with the unanticipated medical



absences, posed substantial challenges in adhering to the prescribed timeline for appeal submission.

5.3 It is observed that the delay upto 30 days in filing of appeal beyond the time limit of 60 days is condonable as stipulated under Section 128(1) of the Customs Act, 1962. Therefore, in the interest of justice, I take a lenient view and allow the said appeals filed by the appellant as admitted by condoning the delay of 2 days in filing appeal under the proviso to the Section 128(1) of the Customs Act, 1962.

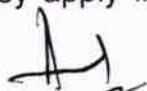
5.4 Now coming to the merits of the case, the issue to be decided in the present appeals is whether the assessment made in the Bills of Entry mentioned at Table - I above to the extent of assessment/recovery of the said amount of interest on the IGST paid, in the facts and circumstances of the case, is legal and proper or otherwise.

5.5 I find that the appeals have been filed against re-assessment of Bills of Entry wherein interest on the IGST has been levied. It is observed that the Hon'ble Supreme Court in case of ITC Ltd Vs CCE Kolkata [2019 (368) ELT216] has held that any person aggrieved by any order which would include self-assessment, has to get the order modified under Section 128 or under relevant provisions of the Customs Act, 1962. Hence, the appeals preferred by the appellant against re-assessment in the impugned Bills of Entry are maintainable as per the judgment of the Supreme Court in ITC case supra.

5.6 It is well-settled principle of law that interest on delayed payment of tax can only be levied if there is a substantive provision authorizing such imposition under the relevant statute. This position is supported by the order dated 16.07.1997 in the case of M/s Indian Carbon Ltd. and M/s Ukai Pradesh Sahakari Khand Udyog Mandli Ltd., reported in 2011 (271) ELT 32 (Guj.). There is no dispute that IGST is leviable under Section 3(7) of the Customs Tariff Act. However, for the purpose of charging interest or imposing a penalty, there must be corresponding provisions under Section 3 of the said Act. The recovery mechanism provided under sub-section (12) of Section 3 does not contain any specific provisions authorizing the levy of interest or imposition of penalties. A comparison between the substituted and the erstwhile versions of Section 3(12) of the Customs Tariff Act clearly establishes this position. For ease of reference, both versions are reproduced below:

#### Statute prior to substitution i.e. before 16.8.2024

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.

**Statute after substitution i.e. after 16.8.2024**

"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 of the substituted statute with the earlier version clearly demonstrates that the provision for charging interest and imposing penalties in relation to the levy of IGST under Section 3(7) of the Customs Tariff Act was introduced only with effect from 16.08.2024. Prior to this amendment, there was no statutory provision under Section 3(12) of the Customs Tariff Act that authorized the levy of interest or the imposition of penalties.

5.7 The amended Section 3(12) of the Customs Tariff Act is prospective in nature, and therefore, the provision for charging interest is applicable only with effect from 16.08.2024. This position is supported by the judgment of the Hon'ble Bombay High Court in the case of *M/s A R Sulphonates Pvt. Ltd.*, reported in (2025) 29 Centax 212 (Bom), wherein the Court observed as follows:

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

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

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

5.8 The issue of whether there existed a provision for charging interest and imposing penalties on levies 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 charge of interest under the then 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. This ruling 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 department's review petition against the said order was also dismissed by the Hon'ble Supreme Court on 09.01.2024 in SLP (C) No. 16214/2023.

5.9 The Hon'ble Bombay High Court reaffirmed the above legal position in the case of *M/s A R Sulphonates Pvt. Ltd.*, reported at (2025) 29 Centax 212 (Bom). In that case, which involved similar facts concerning the chargeability of interest and imposition of penalty for delayed payment of IGST, the Court categorically held that neither interest can be levied nor penalty imposed in respect of such IGST demands.

5.10 In view of the above, the matter is no longer *res integra*, and it is now settled that neither interest can be charged nor penalty imposed in cases involving IGST leviable under Section 3(7) of the Customs Tariff Act.

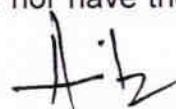
5.11 From the ICEGATE Portal, it is observed that the appellant has already paid the interest on the IGST in all 9 Bills of Entry as shown in Table-III below:-

TABLE –III



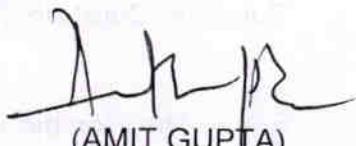
S.No.	Appeal No.	Bill of Entry No. & Date	Interest paid on IGST
1	S/49-52/CUS/MUN/2024-25	9348160, dated 21.12.2018	621427
2	S/49-53/CUS/MUN/2024-25	8526768, dated 03.05.2022	184012
3	S/49-54/CUS/MUN/2024-25	8199412, dated 25.09.2018	574005
4	S/49-55/CUS/MUN/2024-25	8153725, dated 22.09.2018	383247
5	S/49-56/CUS/MUN/2024-25	8003255, dated 11.09.2018	387571
6	S/49-57/CUS/MUN/2024-25	5563738, dated 05.11.2019	169755
7	S/49-58/CUS/MUN/2024-25	5220401, dated 09.10.2019	400981
8	S/49-59/CUS/MUN/2024-25	2182228, dated 27.08.2022	78242
9	S/49-60/CUS/MUN/2024-25	2175519, dated 30.12.2020	94674
<b>TOTAL</b>			<b>28,93,914</b>

5.12 In light of the judicial principles established by the Hon'ble Supreme Court in *M/s Kamlakshi Finance Corporation Ltd.* (1991 (55) ELT 433 (SC)), I am bound to follow the judgment 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.*, especially since there is no stay on the operation of these orders nor have they been overruled to date.



5.13 Moreover, the law laid down by the Hon'ble Supreme Court is the binding law of the land under Article 141 of the Constitution of India and is mandatory for all lower authorities to follow. Accordingly, I hold that interest is not chargeable on the IGST amount paid in the facts of the present case.

6. In view of the view, all the nine appeals filed by the appellant as per Table-I above are allowed with consequential relief, if any, as per law.

  
 (AMIT GUPTA)  
 Commissioner (Appeals)  
 Customs, Ahmedabad

Date: 30.05.2025

F.No. S/49-52 to 60/CUS/MUN/2024-25

1170

सत्यापित/ATTESTED

अधिकारी/SUPERINTENDENT  
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 CUSTOMS (APPEALS), AHMEDABAD.

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