



स्त्रीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS), अहमदाबाद AHMEDABAD,
चौधीमंजिल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281
DIN- 20250471MN00005505D4

क	फाइलसंख्या FILE NO.	S/49-152/CUS/MUN/2023-24
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (स्त्रीमाशुल्कअधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-020-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	30.04.2025
	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Bill of Entry No. 8379085, dated 08.10.2023
	अपील आदेश जारी करने की दिनांक *ORDER- IN-APPEAL ISSUED ON:	30.04.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Pioneer Polyleathers Pvt. Ltd., Plot No. 74,75 & 76, Sector-4,IIE, Pant Nagar, Udhampur, Jammu and Kashmir-263153
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.	स्त्रीमाशुल्क 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.				
(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.				
(ब)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.				
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अंदायगी.				
(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>(ब) 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 शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु.1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां। यदि शुल्क, मांगा गया व्याज, 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> <p>4. मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं</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 केन्द्रीय पीठ</td> <td>Customs, Excise & 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, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी केन्द्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी केन्द्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
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5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार 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; पाँच हजार 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 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. Pioneer Polyleathers Pvt. Ltd., Plot No. 74,75 & 76, Sector-4,IIE, Pant Nagar, Udhampur Singh Nagar, Uttarakhand-263153 (hereinafter referred to as the 'appellant') have filed the present appeal under Section 128 of the Customs Act, 1962 challenging the assessment made in Bill of Entry No. 8379085, dated 08.10.2018 (hereinafter referred to as the 'impugned BE') filed at Mundra Port.

2. Facts of the case, in brief, as per appeal memorandum are that the appellant had imported the consignment of Titanium Dioxide Anatase CA- 105 against Advance Authorisation No. 0510407837 dated 19.09.2018 and cleared the same claiming exemption from payment of BCD and IGST under Notification No. 18/2015-Cus dated 1.4.2015 as amended by Notification No. 79/2017-Cus dated 13.10.2017. The impugned BE was duly assessed by the Proper Officer under Section 47 of the Custom Act, 1962, who after due verification, extended benefit under aforesaid Notification and thereafter, the consignment was granted Out of Customs charge by the Proper Officer after examination and verification that the consignment was as declared and assessment was in order. Further, the levy of Goods and Service Tax ("GST") was introduced w.e.f. 01.07.2017, and various Notifications including the Notification No. 18/2015-Cus, dated 01.04.2015 was amended vide Notification No. 79/2017- Customs, dated 13.10.2017, to provide the exemption from payment of IGST and Compensation Cess, subject to the conditions: (i) Discharge of export obligation shall only be by physical exports; and (ii) Exemption shall be subject to Pre-import condition. Further, the DGFT had also issued a Notification No. 33/2015-2020, dated 13.10.2017 amending various provisions of the Foreign Trade Policy 2015-20, whereby the "pre-import condition" was incorporated in paragraph 4.14 thereof with effect from 13.10.2017. The said condition was inserted by the Notification No. 79/2017 dated 13.10.2017 and was further omitted vide Notification No. 01/2019- Customs dated 10.01.2019 issued by the Central Board of Indirect Taxes and Customs (CBIC). In view thereof, for the period between 13.10.2017 to 09.01.2019, the pre- import condition was mandatory for the importer to be entitled to exemption from payment of IGST.



2.1 Further, the Hon'ble High Court of Gujarat, in case of Maxim Tubes Company Pvt. Ltd. V/s. Union of India, reported in 2019 (368) ELT 337 quashed the "pre-import condition" which was inserted vide Notification No. 79/2017-Cus dated 13.10.2017. However, the said judgement was challenged by the Customs department before the Supreme Court. The Hon'ble Supreme Court, by its order and Judgement dated 28.04.2023 in case of Union of India and Ors. Vs. Cosmos Films Limited reported in 2023 (5) TMI 42 -Supreme Court allowed the appeal filed by the Revenue and upheld the validity of the pre-import condition. The Hon'ble Supreme Court further directed the government to clarify the procedure for availing recredit / refund of the taxes that the exporters will be paying pursuant to the judgement. Thereafter, the CBIC had issued the Circular No. 16/2023-Cus dated 07.06.2023 providing the procedures for the payment of IGST and Compensation Cess by the Importers who have violated the pre-import condition and taking ITC of the same. The Joint DGFT by his trade Notice No. 7 of 2023-24 dated 08.07.2023 clarified that all the imports made under Advance Authorization Scheme on or after 13.10.2017 & upto and including 09.01.2019 which could not meet the pre-import condition may be regularized by making payments as prescribed in the Circular No. 16/2023-Cus dated 07.06.2023.

2.2 Further, in view of the said Circular and Trade Notice, the appellant requested to re - assess impugned BE. In view of such request, the concerned Customs authority re - assessed impugned BE and had assessed the amount of IGST interest thereof payable by the appellant which was subsequently paid by the appellant.

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

- That the payment in the present case is of IGST leviable under Section 7 and Section 9 of Customs Tariff Act, 1975 and not of Customs Duty leviable under Section 12 of the Customs Act, 1962 and as per provisions of Section 28AA of the Customs Act, 1962 invoked in the Show Cause Notice for demand and recovery of interest, provides for levy and recovery of interest on Customs Duty leviable under the provisions of the Customs Act, 1962. Thus, in the absence of any machinery provisions for recovery of interest on IGST leviable under Section 7 and Section 9 of the

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Customs Tariff Act, 1975, demand for interest, cannot be countenanced and relied upon the judgment of Hon'ble Supreme Court in the matter of Mahindra & Mahindra Ltd. Vs. UOI - (2023) 3 Centax 261 (Bom.), wherein the Hon'ble Court has since propounded the law as under-

"34. Section 9A(8) of the Customs Tariff Act, 1975 which borrowed provisions from Customs Act, 1962 did not borrow provisions relating to interest and penalty. The Hon'ble Courts, in judgments cited supra, held that in view of no specific borrowing, no interest and penalty can be imposed on anti-dumping duty. Later on, Finance (No. 2) Act, 2004 amended sub-section (8) of Section 9A suitably to include interest and penalty. However, similar amendments have not been made to Section 3(6) of the Customs Tariff Act, 1975 relating to CVD, i.e. additional duty equal to excise duty or Section 3(4) of Customs Tariff Act, 1975 relating to SAD, i.e. special additional duty or surcharge under Section 9(3) of the Finance Act, 2000. 35. Further, Section 12 of the Customs Act, 1962 levies duty on goods imported into India at such rates as may be specified in the Customs Tariff Act, 1975, Section 2 provides the rates at which duties of customs are to be levied under the Customs Act, 1962 are as specified in the first and second schedules of the Customs Tariff Act, 1975. In Section 12 of the Customs Act, 1962, there is no reference to any specific provision of Customs Tariff Act, 1975."



- That the imposition, levy and collection of interest is contrary and ex-facie illegal insofar as the Hon'ble Supreme Court in the judgment dated 28.4.2023 cited supra, did not order for imposition and collection of interest on the Tax. Similarly, in the CBIC's Circular 16/2023-Cus dated 7.6.2023, it is not mentioned anywhere for collection of interest. Thus, on one hand the appellant is obligated to pay duty and on the other hand it is entitled to avail input credit of duty so paid and utilize the credit for payment of GST liability on its supplies in DTA or claim refund of the same as permissible in law.
- That in terms of Hon'ble Supreme Court's aforesaid order, entire exercise being Revenue neutral, imposition of interest is ex-facie bad in law.

Ail

Appellant submits that in the aforesaid judgment, Hon'ble Supreme Court clearly mandated as under -

"However, since the respondents were enjoying interim orders, till the impugned judgments were delivered, the Revenue is directed to permit them to claim refund or input credit (whichever applicable and/or wherever customs duty was paid). For doing so, the respondents shall approach the jurisdictional commissioner, and apply with documentary evidence within six weeks from the date of this judgment. The claim for refund / credit, shall be examined on their merits, on a case-by-case basis. For the sake of convenience, the revenue shall direct the appropriate procedure to be followed, conveniently, through a Circular in this regard."

PERSONAL HEARING

4. Personal hearing in the matter was held on 29.04.2025 in virtual mode. Ms. Jyotika Sharma, Advocate, appeared for hearing on behalf of the Appellant. She reiterated the submissions made at the time of filing of appeal. She submitted judgement of Hon'ble High Court of Bombay in the case of AR Suplhonates Private Ltd Vs. Union of India wherein Circular No. 16 of 2023 Customs dated 07.06.2023 was declared bad in law and submitted that the said judgement is squarely applicable in the present case.

DISCUSSION AND FINDINGS

5. I have carefully gone through the facts of the case and submissions made by the appellant in their appeal memorandum as well as submissions made at the time of personal hearing. I find that the appeal have been filed against re-assessment of Bill of Entry. 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 appeal preferred by the appellant against assessment made in the aforesaid Bill of Entry is maintainable as per the judgment of the Supreme Court in ITC case supra.

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5.1 However, before going into the merits of the case, I find that the appellant have filed the present appeal on 19.12.2023. In the Appeal Memorandum, the date of communication of the decision or order appealed against is mentioned as 07.10.2023, which is mentioned as the Out of Charge date. In the Bill of Entry, the date of re-assessment and Out of Charge date are mentioned as 20.09.2023 and 07.10.2023 respectively. Hence, the date of re-assessment mentioned in the impugned BE is 20.09.2023 which is the actual date of communication of decision or order appealed against. In this regard, I place reliance on the case law of JINDAL DRILLING & INDUSTRIES LTD Versus C.C. (IMPORT), NAVA SHEVA 2014 (314) E.L.T. 457 (Tri. - Mumbai) wherein the Hon'ble Tribunal held as under :-

"5. We have carefully considered the rival submissions. There is no dispute about the fact that the goods have been assessed to duty on 9-6-2009 and the assessment order was passed on that date. It is an entirely different matter that the appellant paid the duty subsequently and got the goods cleared after examination by the Customs and out of charge order was issued on 17-6-2009. As per Section 128 of the Customs Act, "any person aggrieved by any decision or order passed under this Act by an officer of Customs lower in rank than a Commissioner of Customs, may appeal to the Commissioner (Appeals) within 60 days from the date of 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 60 days, allow to be presented within a further period of 30 days". From the provisions of law stated above, it is clear that the appeal has to be filed within 60 days from the communication of the assessment order. In the present case it is not in dispute that the assessment order was passed and communicated on 9-6-2009. Therefore, the time limit for computing the appeal period has to be counted from 9-6-2009 which is the date of communication of the assessment order and not from 17-6-2009 when the out of charge order was passed.

5.2 In view of the above, I find that there is delay of 30 days in filing of appeal beyond the prescribed time limit of 60 days as stipulated under Section 128(1) of the Customs Act, 1962. 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

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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.

5.3 It is observed that there is delay of 30 days in filing of appeal beyond the statutory time limit of 60 days. The appellant vide their appeal memorandum submitted the application of condonation of delay wherein they submitted that CHA forwarded the impugned BE to the appellant on 04.12.2023 and thereafter, appellant forwarded the same to the counsel's office on 06.12.2023 and drafting of the appeal took some time, resulting in 12 days delay. They requested to condone the delay and decide the case on merits. However, there is actual delay of 30 days beyond the period of 60 days which is condonable in terms of proviso to Section 128(1) of the Customs Act, 1962. In the interest of justice, I take a lenient view and allow the said appeal filed by the appellant as admitted by condoning the delay of 30 days in filing appeal under the proviso to Section 128(1) of the Custom Act, 1962.

5.4 As regards the merits of the case, it is observed that the Appellant had imported the impugned goods vide Bill of Entry No. 8379085, dated 08.10.2018 under Advance Authorisation No. 0510407837 dated 19.09.2018, claiming exemption from BCD and IGST under Notification No. 18/2015-Customs as amended by Notification No. 79/2017-Customs. Further, Notification No. 79/2017-Cus dated 13.10.2017 cited a pre-import condition for exemption, applicable from 13.10.2017 to 09.01.2019. which was set aside by Hon'ble Gujarat High Court, but the Supreme Court upheld the pre-import condition in the Judgment cited in the matter of *Union of India v. Cosmos Films* (2023), and further directing the government to clarify procedures for re-credit/refund of taxes, to which the CBIC issued Circular No. 16/2023-Cus, allowing



regularization of imports made during this period by paying IGST and Compensation Cess. Further, it observed that the appellant, after their request of re-assessment of the Bill of Entry which resulted in a demand IGST and interest, paid the entire amount of IGST along with interest of Rs. 5,03,115/-. However, the appellant has contended that the recovery of interest is contrary to the Bombay High Court's ruling in *Mahindra & Mahindra*. Therefore, the issue to be decided in the present appeal is whether the re-assessment made by the proper officer in the impugned Bill of Entry levying the interest, in the facts and circumstances of the case, is legal and proper or otherwise.

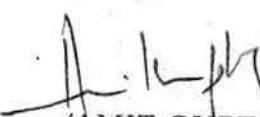
5.5 It is observed that that no speaking order has been passed for the re-assessment of impugned Bill of Entry. Hence, I find that entire facts are not available on records to verify the claims made by the appellant. Copy of appeal memorandum was also sent to the jurisdictional officer for comments. However, no response have been received from the jurisdictional office. Therefore, I find that remitting of the case to the proper officer for passing speaking order becomes sine qua non to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the proper officer by following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004(173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. - [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri. - Del)] holding that Commissioner (Appeals) has power to remand the case under Section-35A (3) of the Central Excise Act, 1944 and Section-128A (3) of the Customs Act, 1962.

5.6 It is observed that Hon'ble High Court of Bombay in case of M/s A.R. Sulphonates Pvt. Ltd. vs Union of India in WP No. 19366 of 2024 has passed a judgment dated 09.04.2025 in a similar matter which has also been relied upon by the appellant. In view of the same, the proper officer shall also examine the facts and the applicability of the said judgment in the instant case while deciding the above matter. Further, the decision of Hon'ble Tribunal Ahmedabad in case of M/s. Chiripal Poly Films Ltd V/s. Commissioner of Customs, Ahmedabad reported at 2024(9)TMI 940-CESTAT Ahmedabad (Final Order No.11628-11630/2024 dated 23.07.2024 in Appeal No. 10228 of 2024)

on the same issue shall also be examined by the proper officer while deciding the above matter.

6. In view of the above, I allow the appeal by way of remand and remit the matter pertaining to this appeal to the proper officer, who shall ascertain the facts, examine the documents, submissions made by the appellant including the submissions made in the present appeal proceedings and pass speaking order under Section 17(5) of the Customs Act, 1962, after following principles of natural justice as per the legal provisions. While passing this order, no opinion or views have been expressed on the merits of the dispute or the submissions by the appellant in this regard, which shall be independently examined by the proper officer.




 (AMIT GUPTA)
 Commissioner (Appeals)
 Customs, Ahmedabad

F.No. S/49-152/CUS/MUN/2023-24
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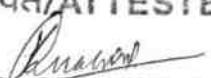
Date: 30.04.2025

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सत्यापित/ATTESTED


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

Copy to :-

- 1. The Chief Commissioner of Customs, Ahmedabad zone, Customs House, Ahmedabad.
- 2. The Pr. Commissioner of Customs, Customs House, Mundra
- 3. The Dy/Assistant Commissioner of Customs, Customs House, Mundra
- 4. Guard File.

