सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250671MN0000919219

क	फ़ाइलसंख्या FILE NO.	S/49-163/CUS/JMN/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-022-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	04.06.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	95/DC/RD/2023-24 dated 21.01.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	04.06.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Shri Jagdamba Polymers Ltd., Harmony, 4th Floor, 15/A Shree Vidhyanagar Co-op. Housing Society Ltd., Opposite NABARD, Near Usmanpura Garden, Ahmedabad

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.

	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग,नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.
	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.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो.
(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)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	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)	कोर्टफीएक्ट,1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(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)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.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.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंधमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	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, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016	2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-**	
	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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.**	
(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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए**	
(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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.**	
(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)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहै,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(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.	**उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.**	
	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.	

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 appellants' for the sake of brevity) have filed the present appeal challenging Order-in-Original No. 95/DC/RD/23-24 dated 21.1.24(hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Customs Division, Jamnagar (hereinafter referred to as 'the adjudicating authority').

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

Sr. No.	Bill of Entry No.	Date	IGST Paid	Amount of Interest on IGST
1	2009296	30-Oct-17	239915	208529
2	2009268	30-Oct-17	476727	414361
3	2010172	16-Nov-17	444023	282833
4	2010390	20-Nov-17	474555	408377
5	2010523	22-Nov-17	473625	407188
6	2010682	24-Nov-17	473625	406798
7	2010683	24-Nov-17	473625	406798
8	2010684	24-Nov-17	473625	406798
9	2011426	06-Dec-17	703922	601130
10	2011424	06-Dec-17	703922	601130
11	2011425	06-Dec-17	703922	601130
12	2012053	19-Dec-17	161315	136897
13	2012046	19-Dec-17	469281	398246
14	2012304	25-Dec-17	703922	595634
15	2012305	25-Dec-17	703922	595634
16	2012565	28-Dec-17	161315	136300
17	2000180	05-Jan-18	174489	146858
18	2000226	05-Jan-18	473190	398257
19	2000227	05-Jan-18	53234	44804
20	2000224	05-Jan-18	709785	597386
21	2000230	05-Jan-18	561913	472931
22	2000240	05-Jan-18	183361	154325
23	2000544	11-Jan-18	946380	794181
24	2000629	12-Jan-18	709785	595344
25	2000630	12-Jan-18	709785	595344

26	2001013	19-Jan-18	943809	788921
27	2001014	19-Jan-18	943809	788921
28	2001359	24-Jan-18	389509	324786
29	2001319	24-Jan-18	314603	262327
30	2001358	24-Jan-18	719093	599605
31	2001679	05-Feb-18	744175	616850
32	2001739	06-Feb-18	760009	629662
33	2001750	05-Feb-18	1013345	839549
34	2002313	13-Feb-18	212169	175170
35	2008028	05-Jun-18	120014	93562
36	2008052	05-Jun-18	102869	80196
37	2008541	13-Jun-18	720084	559002
38	2008579	14-Jun-18	822953	638521
39	2008638	14-Jun-18	720084	558706
40	2008675	15-Jun-18	737229	571706
41	2008676	15-Jun-18	891532	691365
42	2008677	15-Jun-18	891532	691365
43	2008815	19-Jun-18	896598	693820
44	2008928	20-Jun-18	896598	693451
45	2009010	21-Jun-18	344846	266570
46	2009282	26-Jun-18	189665	146224
47	2009283	26-Jun-18	448299	345620
48	2009281	26-Jun-18	310361	239276
49	2009284	26-Jun-18	896598	691241
50	2010034	12-Jul-18	361147	276055
51	2010063	12-Jul-18	1083440	828164
52	2010035	12-Jul-18	550319	420655
53	2010621	25-Jul-18	710018	538933
54	2010960	02-Aug-18	150411	113673
55	2013094	11-Sep-18	726794	537330
56	2013227	12-Sep-18	726794	537031
57	2013226	12-Sep-18	726794	537031
58	2013516	19-Sep-18	177041	130307
59	2013616	20-Sep-18	743571	546983
60	2013619	20-Sep-18	743571	546983
61	2013748	24-Sep-18	743571	545761
62	2013915	25-Sep-18	566530	415585
63	2014008	26-Sep-18	743571	545150
64	2014479	05-Oct-18	497824	363139

65	2014478	05-Oct-18	748072	545683
66	2014429	05-Oct-18	374036	272841
67	2014477	05-Oct-18	748072	545683
68	2014428	05-Oct-18	356225	259849
69	2014880	11-Oct-18	338414	246022
70	2016314	16-Nov-18	355173	252951
71	2016409	19-Nov-18	355173	252513
72	2016601	22-Nov-18	678020	481208
73	2016600	22-Nov-18	678020	481208
74	2016602	22-Nov-18	714437	507055
75	2016834	29-Nov-18	309876	219035
76	2016832	29-Nov-18	619752	438071
77	2016836	29-Nov-18	328085	231906
78	2016835	29-Nov-18	328085	231906
79	2016833	29-Nov-18	619752	438071
80	2016878	30-Nov-18	29512	20848
81	2016892	30-Nov-18	249969	176588
82	2016889	30-Nov-18	328085	231771
83	2017127	06-Dec-18	1246050	877185
84	2017276	06-Dec-18	659361	464172
85	2017129	06-Dec-18	934538	657889
86	2017280	06-Dec-18	623025	438593
87	2017331	07-Dec-18	657505	657505
88	2000182	04-Jan-19	107990	107990
TOTAL			49356649	38412952

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 appellants paid interest amounting to Rs. 3,84,12,952/-.

2.2 The appellants filed refund of Rs. 3,84,12,952/- with the Deputy Commissioner, Customs Division, Jamnagar on the ground that there was no provision under Section 3 of Customs Tariff Act for charge of interest in respect of IGST. While claiming the refund, the appellants had placed reliance on the case of M/s Mahindra & Mahindra Ltd. reported at (2023) 3 Centax 261 (Bom) which had been upheld by the Hon'ble Supreme Court.

2.3. The adjudicating authority rejected the refund claim filed by the appellants vide the impugned order.

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

- The refund claim was rejected without issuance of a Show Cause Notice and thereby the principles of natural justice were vitiated. Reliance was placed on the case laws of M/s Sidheshwar SSK Ltd. reported at 2011 (274) ELT 141 (T) and M/s Leister Technologies India P Ltd. reported at 2018 (364) ELT 650 (T) and Circular No. 1053/2/2017-CX dated 10.3.2017.

- No recovery can be affected without the authority of law in terms of Article 246 of the Constitution of India. Reliance was placed on the case laws of M/s Mafatlal Industries Ltd. v/s Union of India reported at 1997 (089) ELT 247 (SC) and M/s Somaiya Organics v/s State of Uttar Pradesh reported at 2001 (130) ELT 03 (SC).

- 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).

- 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 is a

declaration of law by the Hon'ble Supreme Court within the meaning of Article 141 of the Constitution of India.

- 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 16.8.2024 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 16.8.2024 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.

- 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).

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 appellants 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).

5. I have carefully gone through the impugned order, appeal memorandum filed by the appellant, submissions made by the appellant during course of hearing as well as the documents and evidences available on record.

5.1. The limited issue for consideration is whether interest is chargeable in respect of the levy of IGST. It is a well-settled principle of law that interest on delayed payment of tax can be levied only if there is a substantive provision to that effect under the statute that imposes the tax. This view is supported by the decision dated 16.07.1997 in the cases of *M/s Indian Carbon Ltd.* and *M/s Ukai Pradesh Sahakari Khand Udyog Mandli Ltd.*, reported at 2011 (271) ELT 32 (Guj).

5.2 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 within Section 3 of the said Act. The recovery mechanism provided under sub-section (12) of Section 3 does not contain any provision for the levy of interest or penalty. A comparison between the substituted Section 3(12) and the erstwhile provision clearly

establishes this position. The relevant text of both versions is reproduced below for ease of reference:

> *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.]*
>
> *Statue 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 between the substituted and the earlier version of the statute clearly establishes that the provision for charging interest and imposing penalties in respect of IGST levied 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 for the levy of interest or imposition of penalty.

5.3 The amended Section 3(12) of the Customs Tariff Act is prospective in nature; therefore, the provision for charging interest is applicable only with effect from 16.08.2024. This view is supported by the decision 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 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. AmendedSection 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."

5.4 The issue of whether there existed a 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), has categorically held that the imposition of penalty and levy of interest under Section 3(6) of the Customs Tariff Act (now re-numbered as Section 3(12)) is not sustainable in respect of duties leviable under Section 3. This decision was upheld by the Hon'ble Supreme Court by its 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 vide order dated 09.01.2024 in SLP (C) No. 16214/2023.

5.5 The Hon'ble High Court of Bombay, in the case of *M/s A.R. Sulphonates Pvt. Ltd.*, reported at (2025) 29 Centax 212 (Bom), has followed the above-mentioned ruling. The facts of the case were analogous, centering on whether interest and penalty could be levied for delayed payment of IGST. The Hon'ble Court held that neither interest is chargeable nor penalty imposable in respect of such IGST demands. This judgment conclusively settles the legal position on the matter, dispelling any ambiguity that previously existed. The relevant portion of the judgment, which is self-explanatory, is reproduced below for ready reference:

***"60.** In Mahindra & Mahindra Limited (supra), this Court, after going through the provisions of Section 3 (6) of the TariffAct and Section 3 A (4) of the Tariff Act as applicable at the relevant time, held that no specific reference was made to interestand penalties in Sections 3 (6) and 3A (4) of the Tariff Act, which are substantive provisions and, therefore, imposing interestand penalty would be without the authority of law. In the present case, the levy of IGST is under Section 3 (7) of the TariffAct, 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 saiddecision 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 theTariff Act. The provisions under consideration before this Court in the case of Mahindra & Mahindra Limited (supra) wereSections 3 (6) and 3A (4) of the Tariff Act. In Mahindra & Mahindra Limited (supra), this Court interpreted the provisions ofSections 3 (6) and 3 A(4) of the Tariff Act, which are parimateria to the unamended 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 nospecific reference was made to interest and penalties in the said provisions, imposing interest and penalty would be without theauthority 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 beseen from the Judgement of this Court in Mahindra & Mahindra Limited (supra), Sections 3(6) and 3A(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 cameto the conclusion that, since there was no specific reference to interest and penalties, imposing interest and penalties would bewithout the authority of law.*

63. *In these circumstances, in our view, the submissions of the Respondent, based on the use of the word "including" inSection 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 effectfrom 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 atall.

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 ruled that interest is not chargeable in cases involving the levy of IGST, leaving no room for doubt in relation to the facts under consideration.

5.6 In view of the foregoing, the issue is no longer *res integra*, and it is now settled that interest cannot be levied in cases involving IGST payable under Section 3(7) of the Customs Tariff Act.

6. In light of the judicial principles enunciated by the Hon'ble Supreme Court in *M/s Kamlakshi Finance Corporation Ltd.* [1991 (55) ELT 433 (SC)], I am duty-bound to follow the decisions 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 in the absence of any stay on the operation of these judgments or their being overruled as on date.

7. Furthermore, I respectfully submit that the order dated 28.07.2023 passed by the Hon'ble Supreme Court in the case of *M/s Mahindra & Mahindra Ltd.* [SLP (Civil) Diary No. 18824 of 2023], as reported in (2023) 9 Centax 361 (SC), constitutes the law of the land under Article 141 of the Constitution of India, for the following reasons:

(a) The Special Leave Petition (SLP) filed by the Department was dismissed by the Hon'ble Supreme Court through a reasoned order, thereby constituting a speaking order. This legal position has been clarified in Instruction F. No. 276/114/2015-CX.8A dated 09.02.2016, the relevant portion 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 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 28.7.2023 was dismissed by the Hon'ble Supreme Court vide order dated 9.4.2024

d) The order dated 28.7.2023 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 28.7.2023 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 9-2-2016.

8. Furthermore, I find that the Department had exercised its statutory right of appeal under Section 130E of the Customs Act. Accordingly, the dismissal of the appeal whether by a speaking or non-speaking order would attract the doctrine of merger. This view is supported by the following judicial precedents:

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.

9. In view of the foregoing, I find that interest cannot be levied on the IGST in the absence of any enabling provision under the Customs Tariff Act. Consequently, the interest recovered in the present case is without authority of law and cannot be retained by the Department; it is liable to be returned/refunded. Accordingly, the impugned order rejecting the refund applications filed by the appellants is unsustainable in law and is, therefore, liable to be set aside.

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

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

By Registered Post A.D.

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Harmony, 4th Floor,15/A
Shree Vidhyanagar Co-op. Housing Society Ltd.,
Opp. NABARD, Nr. Usmanpura Garden, Ahmedabad,

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2. The Principal Commissioner of Customs, Customs, Jamnagar.
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सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.