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

DIN-20260271MN000000ABD7

क	फ़ाइल संख्या FILE NO.	F.No. S/49-310/CUS/AHD/2024-25
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-556-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	26.02.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	Order-in-Original No. 04/ADC/AB/Hazira (Import)/ 2024-25 dated 04.01.2025 passed by the Additional Commissioner of Customs, Hazira Port, Surat.
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.02.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. HCP Plastene Bulkpack Ltd. Plot No. 485, Santej-Vadsar Road, At P.O. Santej, Taluka Kalol, Dist. Gandhinagar – 382721.

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

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

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

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

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

ORDER-IN-APPEAL

1. M/s. HCP Plastene Bulkpack Ltd., Plot No. 485, Santej-Vadsar Road, At P.O. Santej, Taluka Kalol, Dist. Gandhinagar – 382721 (hereinafter referred as 'the appellant' or 'the importer') has filed the present appeal under Section 128 of the Customs Act, 1962, against Order-in-Original No. 04/ADC/AB/Hazira (Import)/2024-25 dated 04.01.2025 (hereinafter referred to as 'the impugned order), passed by the Additional Commissioner of Customs, Hazira Port, Surat (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant is engaged in manufacture of Poly-Propylene Woven Fabrics, P.P. Bags/Sacks, etc. For manufacture of such products, the appellant was importing Poly-Propylene Granules by availing exemption from IGST against Advance Authorisation. On the basis of an Analytic Report issued by Directorate General of Analytics and Risk Management, it appeared that some importers have wrongly availed exemption from IGST on the basis of Advance Authorization issued for availing benefit of Notification No. 21/2015-Customs dated 01.04.2015, which does not grant exemption from IGST. The said Notification is applicable for import of goods for use in manufacture of final products, which are to be sold as *deemed export*. Whereas, Notification No. 18/2015-Customs was applicable for *physical exports* and the said Notification was granting exemption from IGST, subject to conditions mentioned therein.

3. During the investigation conducted by SIIB wing of Customs, Surat, it was observed, inter alia, that the appellant was holding Advance Authorisation meant for import of inputs under Notification No. 21/2015-Cus and thus, wrongly availed benefit of exemption from payment of IGST. Particulars of such imports are as follows:

Table-1

Description of goods: P.P. Granules, CTH: 3902

Advance Authorisation License No. 0811000651 dated 15.02.2021

Bill of Entry No. & Date ('impugned Bills of Entry')	Item No. in BoE	Qty. imported (MT)	Assessable Value (Rs.)	IGST payable, but not paid (Rs.)
7652690 dated 26.02.2022	1	150.5	1,49,48,934	29,12,800
9407335 dated 04.07.2022	1	88	97,83,103	19,06,238
Total			2,47,32,037	48,19,038

4. During the investigation, Statements of various persons have been recorded under the provisions of Section 108 of the Customs Act, 1962. On completion of investigation, a Show Cause Notice bearing F.No. CH/Hazira/AR-04/HCP/2023-24 dated 10.01.2024 has been issued to the appellant. The said SCN has been adjudicated vide the impugned Order-in-Original No. 04/ADC/AB/Hazira (Import)/2024-25 dated 04.01.2025.

5. The adjudicating authority observed, inter alia, that the Advance License was issued for importation of goods under Notification No. 21/2015-Cus dated 01.04.2015 and so, the importer was bound to abide by the conditions laid down in the said Notification; that by availing IGST exemption under Notification No. 18/2015-Cus dated 01.04.2015 simultaneously, for which they were not authorised, they have breached settled laws. He further observed that the importer was deliberately and wilfully indulged in mis-statement and suppression of fact by mentioning incorrect Notification No. 18/2015 whereas, the Advance Authorization was issued for availment of duty benefit under Notification No. 21/2015. That therefore, extended period of demand of duty under Section 28(4) is attracted and penalties are imposable in the present case. The adjudicating authority has passed the impugned order to the following effect:

- ✓ Confirmed demand of IGST of Rs. 48,19,038/- under Section 28(8) read with Section 28(4) along with applicable interest under Section 28AA of the Customs Act, 1962. The IGST of Rs.48,19,037/- already paid by the importer appropriated against the demand confirmed.

- ✓ Held that goods imported vide impugned Bills of Entry having assessable value of Rs. 2,47,32,037/- are liable for confiscation under Section 111(o); however, gave an option to redeem the goods on payment of Fine of Rs. 30,00,000/- under the provisions of Section 125.

- ✓ Imposed a penalty of Rs. 48,19,038/- plus penalty equal to interest on the appellant under Section 114A of the Customs Act, 1962.

- ✓ Imposed a penalty of Rs. 25,00,000/- on the appellant under Section 114AA of the Customs Act, 1962.

6. Being aggrieved, the appellant has filed the present appeal, mainly, on the following **GROUNDS OF APPEAL (gist).**

FTP provisions specifically provide for benefit of IGST in case of deemed exports:

7. The Appellant submits that Paragraph 4.14 of the FTP explicitly provides for IGST exemption on imports under Advance Authorisation for both physical exports and domestic supplies (deemed exports). It is a settled principle that Customs notifications cannot be interpreted in a manner that negates the substantive benefits promised under the FTP. Reliance is placed on the Mumbai CESTAT's decision in in the case of *M/s Goldfinch Hotels Pvt. Ltd. & Prakash K. Shetty v. Commissioner of Customs (ACC and Exports), Mumbai*[2015 (6) TMI 185 - CESTAT Mumbai] which was upheld by the Hon'ble Bombay High Court *[2017 (2) TMI 296 - BOMBAY HIGH COURT]*, wherein it was observed by the Hon'ble CESTAT that if the Central Government, in its wisdom, introduces a beneficial scheme or provision under the FTDR Act, the benefit of such legislation is to be made available by another department of the Central Government, namely the Customs Department, for which purpose Notifications and Circulars are issued under the Customs Act, 1962. Such Notifications and Circulars cannot be interpreted in a manner that negates the benefit otherwise available under the FTP and the Handbook of Procedures.

Ld. Additional Commissioner in the impugned order has wrongly interpreted the provisions of NN 18/2015:

8. The Appellant argued that the Adjudicating Authority erred in holding that Notification No. 18/2015-Cus applies only to physical exports. Proviso 2 of Serial No. (viii) of the said notification expressly mentions that export obligations can be fulfilled through domestic supplies to other Advance Authorisation holders. If the notification was limited to physical exports, there would be no reason to include provisions for domestic supplies.

Ambiguity in NN 21/2015 should not result in the denial of IGST exemption:

9. The Appellant stated that while the preamble of Notification No. 21/2015 appears to cover their transactions, certain conditions within the notification created ambiguity. In cases of ambiguity in beneficial or promotional exemptions, a liberal interpretation favoring the assessee should be adopted. That there was no clarity under NN 21/2015 on whether the Appellant's transaction is covered or not. This lack of clarity persisted until the issuance of **Policy Circular No. 01/2024**, which explicitly clarified that NN 21/2015

includes the fulfilment of export obligations through deemed exports under para 7.02(a) of the FTP.

IGST demand is unsustainable on the ground of revenue neutrality:

10. The Appellant emphasizes that the entire demand is revenue-neutral. That any IGST paid on imports is immediately available to the Appellant as Input Tax Credit (ITC) under the CGST Act. Consequently, there is no net loss to the exchequer and no financial incentive for the Appellant to evade duty. The Appellant cited the case of *Himadri Speciality Chemical Ltd. v. Principal Commissioner of Customs, Visakhapatnam* [2024 (19) Centax (Tri.-Hyd.)] where the CESTAT set aside similar demands on the grounds of revenue neutrality and lack of mala fide intent. The appellant cited many other Orders of higher forums in which it has been held that the demand is not sustainable in a revenue neutral situation.

Where the demand raised by the revenue is equal to the credit available to the Assessee, then the demand is not maintainable

11. The Appellant further submitted that it has been consistently held by various courts that where the demand raised by the Revenue is equal to the Credit / ITC available to the assessee, such demand is not maintainable. The Appellant stated that in the present case, the IGST payable on imports is available as ITC to the Appellant, which the Appellant has duly availed. Therefore, on this basis as well, the demand is not maintainable. In this regard, reliance is placed on the following judgments:

- *CCE Vs. Narayan Polyplast [2005 (179) ELT 20 (SC)]*
- *CCE Vs. Narmada Chematur [2005 (179) ELT 276 (SC)]*
- *CCE Vs. Coca-Cola India [2007 (213) ELT 490 (SC)]*

Mere clerical error in mentioning the wrong NN 21/2015 in the advance authorization license should not lead to the denial of the substantial benefit

12. The appellant placed reliance on the following judgements to substantiate that mere clerical error in mentioning the wrong NN 21/2015 in the advance authorization license should not lead to the denial of the substantial benefit of exemption that is validly available under the provisions of FTP:

12.1 Uday Shankar Triyar vs Ram Kalewar Prasad Singh and Ors. [MANU/SC/2173/2005] – Supreme Court

> "*17. ... Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. ...*"

12.2 Commr. of Cus. & C. Ex. vs J.S. Gupta and Sons [2015 (318) E.L.T. 63 (All.)] – Allahabad High Court

> *39. ... In fact, it is now a trite law that the procedural infraction of notifications/circulars etc. are to be condoned if exports have really taken place and the law is settled now that substantive benefit cannot be denied for procedural lapses. ...*"

Submission on the Extended Period of Limitation

13.1 The Appellant submits that there is absence of 'Suppression' or 'Fraud' in this case and therefore, the invocation of the extended period of limitation under Section 28(4) is illegal. The issue is purely one of legal interpretation regarding the applicability of two competing notifications.

13.2 That the Appellant maintained a bona fide belief that they were entitled to the exemption. Mere disagreement with the Department's interpretation does not equate to "suppression of facts". As established in **Pushpam Pharmaceuticals Company v. CCE Bombay [1995 (78) E.L.T 401 (S.C)]** suppression requires a "deliberate" act to escape payment, which is absent here. The appellant also relied upon the case of **CCE v. Chemphar Drugs & Liniments [1989 (40) ELT- 276].**

13.3 The Appellant further submitted that, the learned Additional Commissioner in the impugned order to challenge the bonafide belief of the Appellant had stated that in para 12.8 of the impugned order that had the intention of the Appellant was bonafide, they would have approached the DGFT for the modification of the license with the retrospective effect before proceeding to take the benefit of Notification No. 18/2015-Customs. In this regard, the Appellant submitted that they had in fact approached the DGFT authorities for modification of the license with retrospective effect by amending the reference to the notification from NN 21/2015 to NN 18/2015 in the license for availing the IGST exemption. That however, the DGFT authorities did not accepted the application, and no amendment to the advance license took place. This demonstrates that the Appellant's belief was bona fide and that there was no intent to evade the payment of IGST.

Impugned goods are not liable for confiscation and consequently no redemption fine is payable:

14.1 The appellant submitted that where the issue involved is of interpretational issue, the goods are not liable for confiscation and no redemption fine is imposable on the said goods. In this regard, reliance is placed on the case of **John Deere India Private Limited Versus Commr. Of Cus. (Preventive), Amritsar [2018 (363) E.L.T. 509 (Tri.-Chan.)].**

14.2 The appellant further submitted that subject goods which are to be confiscated are unavailable, as it has already been consumed in manufacturing of the finished goods that have been sold by the Appellant. The Appellant submitted that if the subject goods which were imported by the Appellant and are sought to be confiscated by the impugned order are unavailable, then the same are incapable of confiscation in terms of the decision of the Hon'ble Tribunal in **Shiv Kripa Ispat Pvt. Ltd. v. Commissioner of Central Excise, Nasik [2009 (235) E.L.T. 623 (L.B.)]** as was affirmed by the Hon'ble Bombay High Court in **[2015 (318) E.L.T. A259 (Bombay High Court)].**

14.3 Reliance is also placed by the appellant on the judgment in case of **Chinku Exports v. Commissioner of Customs, Calcutta [1999 (112) E.L.T. 400 (Tribunal)]** which was maintained by the Hon'ble Supreme Court in **[2005 (184) E.L.T. A36 (Supreme Court)]** wherein it was held that imposition of redemption fine under Section 125 of the Act is illegal when the goods itself are not available for confiscation.

Submission regarding interest levied under Section 28AA of the Customs Act, 1962:

15.1 The appellant submitted that when the demand of IGST is not maintainable, there is no liability to pay duty, and so, no interest could be charged from the Appellant. That the Hon'ble Supreme Court of India in *Prathibha Processors vs. Union of India, [1996 (88) E.L.T. 12 (S.C.)]*, has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest either.

15.2 Without prejudice to the above, the Appellant contends that the demand for interest under Section 28AA of the Customs Act, 1962 is applicable solely to customs duty leviable under Section 12 of the Customs Act, 1962 and not to IGST leviable under Section 3(7) of the Customs Tariff Act, 1957. That there are no statutory provisions for charging interest on the IGST component under the Customs Act, 1962, for the period under dispute, and accordingly, no interest can be imposed upon the Appellant. In this regard, the Appellant refers to the judgment in the case of *Mahindra and Mahindra v. Union of India and Others, [2022 (10) TMI 212]*, delivered by the Bombay High Court, which addressed a similar dispute concerning the imposition of interest on various Additional Customs Duties and Surcharge collected under the Customs Tariff Act for the import of goods, in the absence of any specific substantive provision. The Hon'ble Bombay High Court set aside the demand for interest and penalty on such levies under the Customs Tariff Act. Against the aforesaid decision, the Revenue filed an SLP before the Supreme Court which was also dismissed by holding that no merit was found [Special Leave Petition (Civil) Diary No(s). 18824/2023]. Further, the Hon'ble Supreme Court also dismissed the review petition filed by the Revenue against the aforementioned order [Special Leave Petition (Civil) No(s). 16214/2023]. Thus, the Appellant stated that the ruling of *Mahindra and Mahindra (supra)* is binding.

15.3 In view of the above, the appellant submitted that refund of amount of **Rs. 6,86,413/-** deposited equivalent to interest should be made available along with the interest.

Submission regarding penalty:

16.1 The appellant submitted that since the demand itself is not tenable, the question of levying penalty does not arise. Appellant further submitted that penalty cannot be imposed in a case pertaining to the interpretation of the law. They relied upon various case law in this regard.

16.2 The appellant further stated that Section 3(7) of the Customs Tariff Act provides for the levy of IGST on a like article on its supply in India. Additionally, Section 3(12) of the Customs Tariff Act for the period under the dispute borrowed the provisions of the Customs Act and the rules and regulations framed thereunder to the extent it applies to 'duty' or 'tax' or 'cess'. That for the period under the dispute there was no provision that borrows 'penalty' provisions from the Customs Act, 1962 or provides a separate substantive provision to levy and collect the same (i.e., penalty). The relevant portion of Section 3(12) of the Customs Tariff Act prevailing under the period of dispute is reproduced below:

"(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."

The appellant submitted that on reading of Section 3(12) of the Customs Tariff Act, it is can be seen that it does not borrow the provision for 'penalty' from the Customs Act, 1962.

16.3 In this regard, among other judicial pronouncements, reliance is placed on the case of *Himadri Speciality Chemical Ltd. v. Principal Commissioner of Customs, Visakhapatnam* [supra)] before the CESTAT, Hyderabad, wherein in the case having similar facts, the department contended that the appellant was only entitled to the exemption of basic customs duty under NN 21/2015 as the advance authorization license is obtained under NN 21/2015, and IGST exemption would not be available. However, Hon'ble CESTAT observed that the case was one of revenue neutrality, as even if IGST had been paid at the time of import, the appellant would have been entitled to input tax credit. Further, the Tribunal found no malafide intent or suppression of facts by the appellant. Considering these facts, the Tribunal ruled that the extended period of limitation under Section 28 of the Customs Act, 1962, was not applicable, as there was no case of willful suppression or fraud. Consequently, the demand for IGST including penalty was set aside, and the appeal was allowed with consequential benefits. Relying on the aforesaid judgement, the Appellant stated that in the present case, penalties should not be leviable.

Additional Submissions

17. The appellant has submitted Additional Submissions dated 08.12.2025, gist of the same is as follows:

17.1 The provisions under the Customs Tariff Act, 1975 as prevalent when the imports where done are inadequate regarding the imposition of interest, penalty and redemption fine (under section 125) on additional duty of integrated tax as levied under Section 3(7) of the Customs Tariff Act, 1975 levied on imports of goods.

17.2 The Appellant drew attention to the Bombay High Court Ruling in the matter of *A. R. Sulphonates Private Limited vs Union of India* on the demand of interest, penalty and redemption fine from the Petitioner in lieu of payment of IGST leviable under Section 3(7) of the Customs Tariff Act, 1975 levied on imports of goods. In that case, the demand was originated on account of non-fulfilment of pre-import condition for imports made against Advance Authorization. The demand for interest, penalty and redemption fine were made under the Customs Act, 1962 as in the present case of the Appellant. Thus, the facts are similar to the above extent in the current matter. Further, the Hon'ble Bombay High Court dropped the demand of interest, penalty and redemption fine and also held that Circular No. 16/2023 -Customs dated 7th June 2023 issued by the Central Board of Indirect Tax and Customs to the extent it purports to levy interest upon the IGST payment is bad in law. That the Hon'ble Court ordered in favour of the petitioner by considering various judicial precedents and holding that the amended **Section 3(12) of the Customs Tariff Act, 1975 is prospective in nature and would apply only with effect from 16th August 2024.**

17.4 The Appellant further submitted that the issue involved in the present appeal is no longer *res integra* and stands decided in favour of the assessee by the order of Commissioner (Appeals), Customs, Ahmedabad, in the matter of M/s. AWL Agri Business Limited (formerly known as Adani Wilmar Limited) Versus Additional Commissioner of Customs, Customs House, Mundra [Order in Appeal No. MUN-CUSTM-000-APP-114-25-26 dated June 30, 2025]. That under the said order, at Para 6.2 relying on the ruling of A. R. Sulphonates Private Limited (*Supra*) the demand of interest levied under Section 28AA and penalty levied under section 114A of the Customs Act, 1962, have been dropped.

18. In view of the above submissions, the appellant requested that by following the principles of judicial discipline, the impugned order is required to be set aside with consequential relief.

ADMISSION OF APPEAL

19. One set of the appeal memorandum has been forwarded to the adjudicating authority for comments vide this office letter No. S/49-310/CUS/AHD/2024-25/363 dated 03.04.2025, but no reply/comments has been received. So, I proceed to decide the appeal on the basis of documents submitted by the appellant.

20. Along with the appeal memorandum, the appellant had submitted copies of E-Payment Transaction Receipts showing Challan No. 2043709012 dated 18.04.2023 for Rs. 21,13,834/- for BoE No. 9407335 dated 04.07.2022 and Challan No. 2043709022 dated

18.04.2023 for Rs. 33,96,616/- for BoE No. 7652690 dated 26.02.2022 towards payment of duty (with interest), as re-assessed by Customs Department. So, further pre-deposit under the provisions of Section 129E of the Customs Act, 1962, does not require.

21. In the Form No. C.A.-1, the appellant has shown the date of communication of the impugned order dated 04.01.2025, as "10.01.2025". Whereas, the appeal has been received in this office on 04.03.2025. Thus, this appeal has been filed within normal period of 60 days, as prescribed for filing appeal under Section 128(1) of the Customs Act, 1962.

22. In view of the above position, the appeal has been admitted and being taken up for disposal on merits.

PERSONAL HEARING

23. Personal Hearing in respect of the appeal was held on 11.12.2025, which has been attended by Mr. Vaibhav Jajoo, Advocate, on behalf of the appellant. He reiterated the submissions made at the time of filing of appeal. He also submitted Additional Submissions dated 08.12.2025, which have been mentioned hereinabove.

FINDINGS

24. I have carefully gone through the written as well as oral submissions made by or on behalf of the appellant viz. M/s. HCP Plastene Bulk Pack Ltd.

25. The issue involved in the appeal is whether the impugned order passed by the adjudicating authority towards confirmation of demand of IGST under the provisions of Section 28(8) read with 28(4) along with interest under Section 28AA, imposition of redemption fine and penalties on the appellant is legal and proper or not; and whether the appeal filed for setting aside the said order with consequential relief as refund of interest paid by the appellant is maintainable or not.

26. I have seen a copy of the Advance Authorisation License No. 0811000651 dated 15.02.2021 submitted by the appellant. In the said License, Customs Notification No. & date have been cleared mentioned as *"21/2015-Cus dated 1-4-2015 – Advance Authorisation for deemed exports"*. I have also seen a copy of the letter dated 22.12.2022 issued by the appellant to the Additional DGFT, Ahmedabad, in which the appellant has requested to amend the said License with retrospective effect by replacing Customs

Notification No. "21/2015-Cus dated 1-4-2015" with "18/2015-Cus dated 1-4-2015". However, the DGFT office has not amended the said Licence. Thus, it is clear that the impugned Advance Authorisation has been issued for availing benefit under Notification No. 21/2015-Cus dated 1-4-2015, which is meant for deemed export. I do not agree with the contention of the appellant that mention of Notification No. 21/2015-Cus in the Advance Authorisation License was merely a clerical error of office of the Joint DGFT.

27. I have gone through the said Notification No. 21/2015-Cus dated 1-4-2015 and observe that the said Notification does not grant exemption from IGST, which is leviable under Section 3(7) of the Customs Tariff Act, 1975. In this regard, the appellant has relied upon Para 4.14 of the Foreign Trade Policy and contended that exemption from IGST is available for both Physical export as well as Deemed export. I find that the said contention of the appellant is not tenable, because Para 4.14 states, inter alia, that imports under Advance Authorisation are also exempt from whole of Integrated Tax, as may be provided in the notification issued by Department of Revenue. Thus, it is clear that exemption from Customs duties / IGST cannot be claimed merely on the basis of FTP, but it should be claimed on the basis of Notification issued by Department of Revenue. In the case on hand, the Advance Authorisation has been issued for Notification No. 21/2015-Cus dated 1-4-2015, which does not provide exemption from IGST, and therefore, exemption from IGST is not available. Further, I observe that Notification No. 18/2015-Cus dated 1-4-2015 grants exemption from IGST, but in the case of hand, the Advance Authorisation has been issued for availing benefit under Notification No. 21/2015-Cus dated 1-4-2015, not under Notification No. 18/2015-Cus dated 1-4-2015.

28. I have gone through the Policy Circular No. 01/2024 dated 12.04.2024 issued by DGFT, which is heavily relied upon by the appellant. In the said Circular it is nowhere mentioned that there is an exemption from IGST under Notification No. 21/2015-Customs in case of import against Advance Authorisation issued for deemed export. Therefore, I find that the said Policy Circular is not applicable to the present case.

29. In view of the above position, I am of the view that the appellant was required to pay IGST at the time of import, but they have not paid by mentioning wrong Notification No. 18/2015-Cus in the impugned Bills of Entry. Thus, the appellant had erroneously availed the exemption by mentioning wrong Notification No. 18/2015-Cus in the impugned Bills of Entry, for which they are not entitled.

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30. However, I observe that during the investigation in this matter, the appellant has applied for re-assessment of the impugned Bills of Entry, which was allowed. The impugned Bills of Entry have been re-assessed in Customs EDI System on 17-04-2023, which include levy of IGST after re-assessment. During the re-assessment, interest on delayed payment of IGST was automatically calculated by EDI System and therefore, the appellant was required to pay IGST along with interest, in order to get notional 'Out of Charge' in respect of impugned Bills of Entry. The appellant has paid IGST and availed Input Tax Credit in respect of IGST so paid and so, not contested about refund of IGST paid on account of re-assessment, though they contested about levy of IGST in this case. Further, the appellant has contested about levy of interest on IGST so paid and sought refund of interest. In this regard, I find that the interest on IGST, which was automatically calculated in EDI system, is the interest payable under the provisions of Section 47(2) of the Customs Act, 1962, not under the provisions of Section 28AA ibid.

31. The appellant has NOT filed appeal against the re-assessment of impugned Bills of Entry. As per Section 2(2) of the Customs Act, 1962, the term 'assessment' includes 're-assessment' among other things. Assessment of Bill of Entry can be treated as decision or order; and appeal against assessment (including self-assessment and re-assessment) can be filed by importers with appellate authority, as held by Hon'ble Supreme Court in the case of *ITC Ltd. Vs. Commissioner of Central Excise, Kolkata-IV [2019 (368) E.L.T. 216 (S.C.)]*. If the appellant is of the view that IGST was wrongly levied and interest on IGST was wrongly charged during re-assessment, the appellant should have file appeal against re-assessment of impugned Bills of Entry within the period prescribed under Section 128(1) of the Customs Act, 1962. The appellant has availed Input Tax Credit of IGST paid and so, not sought refund of IGST, but sought refund of interest. In this regard, I am of the view that in order to get refund of interest paid under Section 47(2), the appellant should have filed appeals against re-assessment of impugned Bills of Entry with interest. In case levy of interest is set aside by appellate authority, then, the appellant should have filed refund claim for interest so paid. But, this is not done by the appellant. The appellant has neither filed appeal against re-assessment of impugned Bills of Entry not filed refund claim for interest paid by them. The present proceedings are regarding appeal filed against demand of IGST under Section 28, demand of interest under Section 28AA, along with fine and penalties. Under this situation, I cannot order to grant refund of interest paid under Section 47(2) in this order.

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FINDINGS REG. DEMAND OF IGST U/S 28

32. In the present case, IGST has been demanded by invoking extended period of limitation under Section 28(4) of the Customs Act, 1962. This has been invoked by observing that the importer has mis-declared a wrong / incorrect Notification No. 18/2015 in the Bills of Entry with sole intension to evade the payment of IGST (Para 13.1 & 13.2 of the impugned order refers).

33. On the issue of invoking extended period of limitation on account of claiming wrong exemption Notification, I rely upon the Order of Hon'ble Supreme Court in the case of NORTHERN PLASTIC LTD. Versus COLLECTOR OF CUSTOMS & CENTRAL EXCISE [1998 (101) E.L.T. 549 (S.C.)] [Civil Appeal No. 4196 of 1989 with C.A. No. 3325 of 1990, decided on 14-7-1998] (gist):

> Exemption - Description of goods given correctly and fully in bill of entry/classification declaration - Laying claim to some exemption, whether admissible or not, is a matter of belief of assessee and does not amount to mis-declaration - Sections 25(1) and 111(m) of Customs Act, 1962.

In view of the above order, there cannot be said any mis-declaration of appellant in this case.

34. Further, in the self-assessment regime, following decisions of higher forums are squarely applicable to the present case.

34.1 SIRTHAI SUPERWARE INDIA LTD. Versus COMMR. OF CUSTOMS, NHAVA SHEVA-III [2020 (371) E.L.T. 324 (Tri. - Mumbai)] [Final Order No. A/86791/2019-WZB, dated 10-10-2019 in Appeal No. C/85603/2017] (gist):

> Demand - Limitation - Extended period - Misdeclaration of facts - By giving correct description on the documents relating to import clearance, burden of making correct declaration on the Bill of Entry discharged by appellants - Any error in classification or exemption claimed on Bill of Entry cannot be misdeclaration with the intention to evade payment of duty - Extended period of limitation not invocable - Demand which falls within the normal period of limitation only needs to be upheld - Matter remanded back to Commissioner for re-determination and re-quantification of demand which can be made by denying the exemption under

Notification No. 46/2011-Cus. to the appellants within the normal period as provided by Section 28(1) of Customs Act, 1962. *[paras 5.5, 5.1]*

Confiscation and penalty - Customs - Fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of Sections 111(m) and 111(o) of Customs Act, 1962 - Confiscation of goods and imposition of penalty under Section 112(a) ibid cannot be sustained - appellant not having made any mis-declaration with intent to evade payment of duty, penalty not imposable under Section 114A of Customs Act, 1962. *[paras 4.9, 4.10]*

34.2 MIDAS FERTCHEM IMPEX PVT. LTD. Versus PRINCIPAL COMMISSIONER OF CUSTOMS, ACC (IMPORT), NEW DELHI [(2023) 4 Centax 73 (Tri.-Del.)] [Final Order Nos. 50027-50031 of 2023 in Appeal Nos. C/52239/2021 with C/52240-52243/2021, decided on 13-1-2023] (gist):

Self-assessment - Scope of - There is no separate mechanism - It is also a form of assessment - As importer is not expert in assessment and can make mistakes, there is provision for reassessment by officer - Although Bill of Entry requires importer to make true declaration and confirm its contents as true and correct, columns for classification, exemption notifications claimed and valuation are matters of self-assessment and are not matters of fact - Claim of wrong classification, ineligible exemption or valuation not fully as per law, or wrong self-assessment by importer will not amount to mis-declaration, mis-statement or suppression - Section 17 of Customs Act, 1962. *[para 50]*

34.3 LEWEK ALTAIR SHIPPING PVT. LTD. Versus COMMISSIONER OF CUS., VIJAYAWADA [2019 (366) E.L.T. 318 (Tri. - Hyd.)] [Final Order Nos. A/30053-30056/2019, dated 9-1-2019 in Appeal Nos. C/30608-30609/2017, C/30230 & 30234/2016] (gist):

Confiscation and penalty – Mis-description of goods - Mention of wrong tariff or claiming benefit of an ineligible exemption notification cannot form the basis for confiscation of goods under Section 111(m) of Customs Act, 1962 - Therefore, confiscations and redemption fines set aside - Consequently no penalties imposable under Section 112(a) of Customs Act, 1962. *[para 7]*

Penalty under Section 114AA of Customs Act, 1962 - Claiming an incorrect classification or the benefit of an ineligible exemption notification not amounts to making a false or incorrect statement, it being not an incorrect description of goods or their value but only a claim made by assessee - Thus, even if the appellant makes a wrong classification or claims ineligible exemption, he will not be liable to penalty under Section 114AA of Customs Act, 1962. *[para 7]*

Further, I find that the Civil Appeal Diary No. 19639 of 2019 filed by Commissioner of Customs, Vijayawada against the above-mentioned Order of Hon'ble CESTAT has been dismissed by the Hon'ble Supreme Court on 05.07.2019 by holding that there is no legal infirmity in the impugned judgment and order warranting Supreme Court's interference under Section 130E(b) of the Customs Act, 1962. [**Commissioner v. Lewek Altair Shipping Pvt. Ltd. - 2019 (367) E.L.T. A328 (S.C.)**].

34.4 I also rely upon the order of Hon'ble jurisdictional CESTAT, Ahmedabad, in the case of **Hindustan Unilever Ltd. Vs. Commissioner of Customs, Mundra [(2023) 12 Centax 171 (Tri-Ahmd)]**, wherein it has observed and held as follows (underline supplied):

"4.4 We also find that no conduct or intent of the appellant is found to be malafide as they submitted all the information and also the information required during assessment. Hence the demand raised for the period 26-11-2013 to 4-8-2015 covered under 106 Bill of Entry out of 886 are barred by limitation and considered to be assessed finally. The goods were not found to be different than declared and the value was based on transfer pricing and hence provisions of Section 111 (m) is also not applicable. The remaining BEs were cleared by the customs after verification and scrutiny of goods and import documents and hence the same also do not come under the purview of Section 111 (m)."

Against the above-mentioned Final Order, the Commissioner of Customs, Mundra, had filed a Civil Appeal Diary No. 32747 of 2023 with Hon'ble Supreme Court. Vide Order 22.09.2023, reported as **Commissioner of Customs, Mundra Vs. Hindustan Unilever Ltd. [(2023) 12 Centax 172 (SC)]**, Hon'ble Supreme Court has dismissed the said Civil Appeal by observing that they are not inclined to interfere with the order impugned in that appeal.

34.5 In view of the above-mentioned Orders of higher forums, I find that the provisions of Section 28(4) of the Customs Act, 1962, for raising demand on account of collusion or wilful mis-statement or suppression of facts are not invokable for the case on hand.

35. In the case on hand, the appellant has declared and submitted all the information required for assessment and there is no allegation that any of the said information declared by the appellant, including description and value, were false, fabricated or misleading. The appellant has submitted the Advance Authorisation License No. 0811000651 dated 15.02.2021 at the time of filing impugned Bills of Entry. The said License was registered in EDI system and debited. There is no allegation to the effect that the said License was forged or obtained by fraud. If at the time of imports, Customs Department was of the view that exemption from IGST was not available against the said License and the appellant has claimed exemption under wrong Notification, the Bills of Entry could have been re-assessed at the time of import under the provisions of Section 17(4) of the Customs Act, 1962, as amended w.e.f. 08.04.2011, which are as under:

> *"(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the Proper Officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods."*

In view of the above statutory provision, I find that the proper officer could have re-assessed the duty under Section 17(4) of the Customs Act, 1962, but it was not done before clearance of goods.

36. Though invocation of extended period of limitation under Section 28(4) is not sustainable in the present case, demand of duty to the extent it relates to the Bills of Entry filed within previous two years from the date of SCN, is not time-barred by applying provisions of Section 28(10B) of the Customs Act, 1962. The said Section 28(10B) states that a notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held as not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful misstatement or suppression of facts to evade duty has not been established, the amount of duty and the interest thereof shall be computed accordingly, i.e. as per provisions of Section 28(1). In the present case, Bill of Entry No. 7652690 was filed on 26.02.2022 and Bill of Entry No. 9407335 was filed on 04.07.2022 and

the Show Cause Notice has been issued on **10.01.2024**. Thus, the SCN has been issued within the normal period of limitation, i.e. within two years from the date of 'Out of charge' order in respect of both Bills of entry. So, though the demand of duty under the provisions of Section 28(4) is not sustainable, it can be considered to have been issued under Section 28(1) read with Section 28(10B) of the Customs Act, 1962.

37. However, I find that in the present case, the appellant has already paid the duty/IGST on **18.04.2023** as re-assessed by Customs Department under the provisions of Section 17(4) of the Customs Act, 1962, before issuance of the SCN dated **10.01.2024**. Thus, there was no short-payment or non-payment of duty at the time of issuance of SCN. Further, the duty/IGST was reassessed and paid against reassessment. Therefore, such payment of IGST cannot be treated as 'Deposit', which is required to be appropriated against demand. I find that Provisions of Section 28(2) prescribes that the person who has paid the duty along with interest under Section 28(1)(b) shall inform the proper officer regarding such payment in writing, who, on receipt of such information shall not serve any notice under Section 28(1)(a) of the Customs Act, 1962. In view of the above position, I am of the view that demand of IGST with interest under the provisions of Section 28 and Section 28AA are not sustainable in this case, inasmuch as the appellant had already paid the duty/IGST with interest as reassessed under the provisions of Section 17(4) of the Customs Act, 1962, prior to issuance of SCN.

38. In view of the above, I hold that demand of IGST under the provisions of Section 28 is not sustainable in this case; however, the appellant will not be entitled to get refund of IGST, which has been paid by them as per re-assessment under Section 17(4) of the Customs Act, 1962.

FINDINGS REG. DEMAND OF INTEREST U/S 28AA

39. The appellant has claimed refund of interest of **Rs. 6,86,413/-** through this appeal. In this regard, I observe that the present appeal is against the impugned order by which demand of IGST has been confirmed along with applicable interest under the provisions of Section 28 and Section 28AA of the Customs Act, 1962. I have already held that demand IGST under Section 28 is not sustainable. Interest under Section 28AA is leviable when the appellant is liable to pay duty under Section 28. When demand of duty under Section 28 is not sustainable, demand of interest under the provisions of Section 28AA is also not sustainable in this case. However, this finding does not affect the interest paid by the appellant under the provisions of Section 47(2).

40. The appellant has NOT filed appeal against the re-assessment of impugned Bills of Entry. As per Section 2(2) of the Customs Act, 1962, the term *'assessment'* means determination of dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under the Customs Act, 1962 or under the Customs Tariff Act, 1975 or under any other law for the time being in force. Further, the term 'assessment' includes 're-assessment' among other things. Assessment of Bill of Entry can be treated as decision or order; and appeal against assessment (including self-assessment and re-assessment) can be filed by importers with appellate authority, as held by Hon'ble Supreme Court in the case of *ITC Ltd. Vs. Commissioner of Central Excise, Kolkata-IV [2019 (368) E.L.T. 216 (S.C.)]*. If the appellant is of the view that interest on IGST was wrongly charged under the provisions of Section 47(2) during re-assessment, the appellant could have file appeal against re-assessment of impugned Bills of Entry within the period as prescribed under Section 128(1) of the Customs Act, 1962. In order to get refund of interest paid under Section 47(2), the appellant should have filed appeal against re-assessment of Interest; and in case levy of interest is set aside by appellate authority, then, the appellant should have filed refund claim for interest so paid. But, this is not done by the appellant. Under this situation, I cannot order to grant refund of interest paid under Section 47(2) in this proceedings.

FINDINGS REGARDING IMPOSITION OF PENALTIES

41. In the Judgments/Orders of higher forums, as cited hereinabove, it has been held that penalty cannot be imposed due to wrong claim of ineligible exemption Notification, when description, value and other particulars of goods are correctly declared by the importer.

42. As per the statutory provisions of Section 114A, penalty under this Section can be imposed where duty has not been paid by reason of collusion or wilful mis-statement or suppression facts and which is determined under Section 28(8) of the Customs Act, 1962. In the case on hand, I have already discussed that the appellant has already paid the duty as re-assessed under Section 17(4) and therefore, demand and determination of duty under Section 28 is not sustainable. Further, there are no ingredients of collusion or wilful mis-statement or suppression facts in this case. So, I hold that penalty imposed on the appellant under the provisions of Section 114A is not sustainable.

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43. Further, penal provisions of Section 114AA are invocable, if a person knowingly or intentionally sign false declaration, document etc. In the case on hand, no false document has been signed or produced by the appellant. The only issue involved is that the Advance Authorisation produced by them was meant for availing benefit of Notification No. 21/2015-Cus, whereas, they have availed benefit of Advance Authorisation Notification No. 18/2015-Cus. There no allegation to the effect that the Advance Authorisation produced by the appellant was false, forged or fabricated. Under this situation, I hold that penalty imposed under Section 114AA is also not sustainable.

44. Further, I agree with the submission of the appellant to the extent that there was no provision under the Customs Tariff Act, 1975, prior to 16.08.2024, which borrows penalty provisions from the Customs Act, 1962, due to non-payment of IGST leviable under the provisions of Section 3(7) of the Customs Tariff Act, 1975. In other words, Section 3(12) of the Customs Tariff Act, 1975 (as stood prior to its amendment w.e.f. 16.08.2024) did not borrow the provision for charging penalty from the Customs Act, 1962. Thus, Section 3(12) of the Customs Tariff Act, 1975, as it stood during the period of imports and payment of IGST, did not extend the provisions of the Customs Act, 1962, relating to penalty on non-payment of IGST levied under Section 3(7) of the Customs Tariff Act, 1975.

45. In this regard, the appellant has relied upon various judicial pronouncements to support their claim. However, particular attention is drawn to the decision of the Hon'ble Bombay High Court in ***Mahindra and Mahindra Ltd. v. Union of India*** [2022-VIL-690-BOM-CU = (2023) 3 Centax 261 (Bom.)], wherein the Court categorically held that in the absence of a specific charging provision under the Customs Tariff Act, the levy of interest and penalty on IGST is unsustainable. Against this Judgment, Customs Department had filed an SLP (C) Diary No. 18824/2023 with Hon'ble Supreme Court. Vide Order dated 28.07.2023, the said SLP has been dismissed by Hon'ble Supreme Court by observing, *"We do not find any merit in the Special Leave Petition."*. Against this dismissal, Customs Department has filed a Review Petition (C) Diary No. 41195/2023 with Hon'ble Supreme Court; however, the same has also been dismissed vide Order dated 09.01.2024. Thus, the decision of the Hon'ble Bombay High Court in the case of *Mahindra and Mahindra Ltd. (supra)* became final. This view was reaffirmed and applied in the case of ***A. R. Sulphonates Pvt. Ltd. v. Union of India*** [(2025) 29 Centax 212 (Bom.) = 2025 (4) TMI 578 (Bom.)], where the Hon'ble High Court quashed the demand of interest and penalty on IGST levied under Section 3(7) of the Customs Tariff Act, 1975. The relevant para of

the Judgment of Hon'ble Bombay High Court in the case of *A.R. Sulphonates Pvt. Ltd. vs. Union of India* are reproduced below (emphasis supplied):

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

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

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

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

73. As far as redemption fine imposed by the impugned Order is concerned, the same is demanded in lieu of confiscation of goods under Section 111(o) *of the Customs Act. As per* Section 111(o) *of the Customs Act, the goods shall be liable for confiscation in the event the condition subject to which the goods are exempted from duty is not observed. As already held by us on the basis of the Judgement of the Hon'ble Supreme Court in the case of* Orient Fabrics Limited *(supra),* Section 3 (12) *of the Tariff Act, after its amendment by Finance (No.2) Act, 2024, dated 16th August, 2024, makes applicable the provisions relating to interest, offences and penalties of the* Customs Act to the Tariff Act. *As already held by us, Section 3 (12) of the Tariff Act, as amended, is applicable only after 16th August,2024 and is not applicable to the present case. Accordingly, in the present case, no confiscation could have been imposed.*

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

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

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

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

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

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

… … … … … ".

46. Both the above-mentioned decisions, i.e. ***Mahindra and Mahindra (supra)*** and ***A. R. Sulphonates Pvt. Ltd. (supra),*** hold that Section 3(12) of the Customs Tariff Act, prior to its amendment effective from 16.08.2024, did not extend the provisions for charging penalty to IGST, thereby rendering imposition of penalty devoid of legal authority.

47. In view of the above position, I hold that penalties imposed on the appellant under the provisions of Section 114A and Section 114AA are liable to be set aside.

FINDINGS REGARDING CONFISCATION AND REDEMPTON FINE

48. In the present case, the imported goods were cleared without payment of IGST, as per the assessed Bills of Entry and for which 'Out of Charge' order was also given by

Customs officer. There is no charge of 'collusion' in this case. The goods were never seized by Customs Department under the provisions of Section 110 of the Customs Act, 1962. So, no Bond towards provisional release of goods is available with Customs Department. It is to be decided that whether in this situation any order towards confiscation of goods under Section 111(o) can be passed and whether option to pay fine in lieu of confiscation can be given under Section 125 of the Customs Act, 1962.

49. In the case on hand, the goods were neither seized under Section 110 nor any Show Cause Notice has been issued under Section 124 of the Customs Act, 1962, before confiscation of goods. Further, the Show Cause Notice dated 10.01.2024 proposes to hold the subject goods *'liable for confiscation under Section 111(o)'*, not for actual confiscation of goods. I am of the view that holding of goods '*liable for confiscation*' is different from ordering confiscation of goods. In first situation, after holding the goods *'liable for confiscation'* under Section 111, penalty under Section 112 can be imposed. Whereas, for imposing redemption fine under Section 125, there must be order towards confiscation of goods, i.e. actual confiscation. In the case on hand, the goods were neither seized under Section 110 nor there is any proposal in the SCN for actual confiscation of goods. In this situation, no order towards confiscation of goods can be passed and no option to pay fine in lieu of confiscation can be given under Section 125 of the Customs Act, 1962. Option to pay redemption fine in lieu of confiscation under Section 125(1) is to be given to the owner or the person from whose possession or custody such goods have been sized, which is not this case. Under this situation, I am of the view that the adjudicating authority erred in giving option to the appellant 'to redeem the goods' on payment of fine of Rs. 30,00,000/- when the goods were never seized, not available for confiscation and no Bond towards provisional release of the goods has been submitted by the appellant.

50. As regards imposition of redemption fine, the adjudicating authority relied upon the Judgment of Hon'ble Supreme Court in the case of *Weston Components Ltd.* [2002-TIOL-176-SC-CUS = 2000 (115) E.L.T. 278 (S.C.)]. I find that in the said case of *Weston Components Ltd.* the goods were released on executing a bond and so, it was held by Hon'ble Supreme Court that if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the Customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the Customs authorities to levy redemption fine. Whereas, in the case on hand, the goods had been neither seized nor

released on bond. So, the reliance placed on the Judgment of ***Weston Components Ltd.*** in the impugned order is misplaced.

51. On this issue of **Redemption Fine**, I also rely upon following orders of higher forums:

51.1 I refer the Judgment dated 25.08.2009 of Hon'ble High Court of Bombay in the case of *COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI Vs. FINESSE CREATION INC.* [2009 (248) E.L.T. 122 (Bom.)]. Para 5 of the said Judgment is as under (underline supplied):

> *"5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. <u>Such an order can only be passed if the goods are available, for redemption</u>. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter."*

I find that Hon'ble Supreme Court on 12-5-2010 after condoning the delay dismissed the Petition for Special Leave to Appeal (Civil) No. CC 7373 of 2010 filed by Commissioner of Customs (Import) against the Judgment and Order dated 25-8-2009 in C.A No. 66 of 2009 of the High Court of Bombay in the case of Commissioner Vs. *Finesse Creation Inc.* The said Order of Hon'ble Supreme Court has been reported as ***2010 (255) E.L.T. A120 (S.C.).*** Thus, the Judgment of Hon'ble Bombay High Court has attained finality.

51.2 I also rely upon the decisions of Larger of Bench of Hon'ble CESTAT in the case of *Shiv Kripa Ispat Pvt. Ltd.* [2009-TIOL-388-CESTAT-MUMB-LB = 2009 (235) E.L.T. 623 (Tri-LB)], wherein it has held that when the goods are allowed to be cleared without execution of Bond/Undertaking, redemption fine is not imposable. This Order of Larger Bench has been upheld by Bombay High Court in the case of *Commissioner vs. Rishi Ship Breakers* [2015 (318) ELT A259 (Bom.)].

51.3 I also rely upon the Final Order passed by Hon'ble CESTAT, New Delhi in the case of *ATUL KAUSHIK vs. COMMISSIONER OF CUSTOMS (EXPORT), NEW DELHI* [2015 (330) E.L.T. 417 (Tri. - Del.)] holding that ***redemption fine cannot be imposed in respect of goods which had already been cleared and were not available for seizure/confiscation.*** Against the said Order, Custom Department had filed a Civil Appeal No. D 14366 of 2016 with Hon'ble Supreme Court. Vide Order dated 29.07.2016, Hon'ble Supreme Court has dismissed the appeal by observing that they find no reason to interfere with the impugned judgment [*Commissioner v. Oracle India Pvt. Ltd. - 2016 (342) E.L.T. A40 (S.C.)*].

52. In the present case, the goods were never seized by Customs Department. The goods are not available for confiscation and no Bond towards provisional release of the goods has been filed by the importer. Therefore, I hold that no order towards confiscation of goods can be passed in this case and no redemption fine can be imposed.

53. Further, in view of Orders of Hon'ble Bombay High Court and Hon'ble Supreme Court in the case of *Mahindra and Mahindra Ltd. (supra)* and Order of Hon'ble Bombay High Court in the case of *A. R. Sulphonates Pvt. Ltd. (supra),* impugned order towards holding the goods liable for confiscation under Section 111(o) and giving option to pay redemption fine under the provisions of Section 125 of the Customs Act, 1962, for non-payment of IGST for the period prior to 16.08.2024, is not sustainable inasmuch as there was no provision under the Customs Tariff Act, 1975, prior to 16.08.2024, which borrows provisions towards seizure and redemption fine from the Customs Act, 1962.

54. In addition to the above discussion, I note that vide Para 17(ii) of the impugned order, an OPTION to REDEEEM the goods on payment of Fine of Rs. 30,00,000/- has been given under the provisions of Section 125 of the Customs Act, 1962. As payment of redemption fine is optional, no goods are available for redemption and no Bond towards provisional release of goods has been submitted by the appellant, I hold that Redemption Fine cannot be recovered in this case.

55. In view of the above facts, discussion and findings, I pass the following order:

Order

I partly allow the appeal filed by M/s. HCP Plastene Bulkpack Ltd. by setting aside the impugned Order-in-Original No. 04/ADC/AB/Hazira (Import)/ 2024-25 dated 04.01.2025. However, the IGST amounting to Rs. 48,19,037/- paid under Section 17(4) and Interest thereon paid under Section 47(2) of the Customs Act, 1962, by the appellant on account of re-assessment of impugned Bills of Entry will not be refundable as a consequence of this order, as discussed hereinabove.

The appeal is partly allowed to the above extent.

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F.No. S/49-310/CUS/AHD/2024-25 Date: 26.02.2026

By E-mail (As per Section 153(1)(c) of the Customs Act, 1962)

To
M/s. HCP Plastene Bulkpack Ltd.
Plot No. 485, Santej-Vadsar Road,
At P.O. Santej, Taluka Kalol,
Dist. Gandhinagar – 382721.
(email: info@champalalgroup.com , gstho@champalalgroup.com)

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
(email: ccoahm-guj@nic.in)

2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
(email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)

3. The Additional Commissioner of Customs (In-charge: Hazira Port), Surat/Ahmedabad.
(email: patoadc-cushazira@gov.in adjcus-surat@gov.in cus-ahmd-adj@gov.in)

4. The Deputy/Assistant Commissioner of Customs (Import), Hazira Port.
(email: cusport.hazira@icegate.gov.in haziracustoms@gmail.com)

5. Shri. Vaibhav Jajoo, Advocate, Ahmedabad.
(email: vaibhav.jajoo@dhruvaadvisors.com parth.shah@dhruvaadvisors.com)

6. Guard File.

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