# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION



## WRIT PETITION NO.19366 OF 2024

A. R. Sulphonates Private Limited ]
a Company having its office at ]
21, Princep Street, 2nd Floor, ]
Kolkata, West Bengal 700 072. ] .. Petitioner.

**Versus**

1. Union of India ]
through the Secretary, Department ]
of Revenue, Ministry of Finance ]
having its office at North Block, ]
New Delhi 110 001. ]
2. Commissioner of Customs ]
(Adjudication) Mumbai ]
2nd Floor, Old Building, New Customs]
House, Ballard Estate, ]
Mumbai 400 001. ]
3. Commissioner of Customs, ]
(Import-I), New Customs House, ]
Ballard Estate, Mumbai 400 001. ]
4. Commissioner of Customs, ]
Mundra PUB Building, Adani ]
Port, Mundra, Kutch, ]
Gujarat 370 421. ]
5. Commissioner of Customs, Kandla ]
Customs House, Near Balaji ]
Temple, Kandla 370 210. ]
6. The Deputy Commissioner of State ]
Tax, KAL VAT-E-002, Bhiwandi ]
501, GST Bhavan, 3rd Floor, Sai ]
Vihar Building, Above Gurudev ]
Hotel, Shivaji Path, ]
Kalyan (W) 421 301. ] .. Respondents.

**Adv. Jitendra Motwani with Ms. Rinkey Jassuja** *i/b. Economic Laws Practice, for the Petitioner.*

**Adv. Ram Ochani with Adv. Niyati Mankad,** *for Respondent No.3.*

**Ms. S. R. Crasto**, *AGP for Respondent-State.*

**CORAM: B. P. COLABAWALLA &**
**FIRDOSH P. POONIWALLA, JJ.**

**RESERVED ON : MARCH 25, 2025**
**PRONOUNCED ON: APRIL 09, 2025**

**JUDGEMENT (Per FIRDOSH P. POONIWALLA,J):-**

**1.** **RULE.** Rule made returnable forthwith and heard finally by consent of the parties.

**2.** The present Petition is filed challenging the Order dated 1st August, 2024 passed by Respondent No.2 to the extent it seeks to demand 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 (herein after referred to as "the Tariff Act"). The Petitioner has also challenged Circular No.16/ 2023- Customs dated 7th June, 2023 issued by the Central Board of Indirect Tax and Customs (herein after referred to as "CBIC") to the extent it purports to levy interest upon the IGST payment.

**3.** The Petitioner is , *inter alia,* engaged in the manufacture, export and supply of Linear Alkyl Benzene Sulphonic Acid (herein after referred to

as “LABSA”). In order to manufacture LABSA, the Petitioner procures input materials such as Linear Alkyl Benzene (herein after referred to as “LAB”) domestically as well as from foreign vendors. Section 12 of the Customs Act 1962 (herein after referred to as “the Customs Act”) is the charging Section which stipulates that duties of customs shall be levied on all goods imported into India or exported out of India at such rates as may be specified under the Tariff Act. Along with Basic Customs Duty (herein after referred to as “BCD”), Additional Customs duties (“CVD” and “SAD”), Anti-dumping duty and Safeguard duty were also levied by the Customs Act, read with the Tariff Act.

**4.** With the introduction of GST with effect from 1st July, 2017, Additional Customs duties were subsumed into the newly introduced Integrated Goods and Services Tax (herein after referred to as “IGST”) and hence IGST was made payable instead of the Additional Customs duties.

**5.** Duty Exemption Schemes enable duty-free import of inputs required for export production subject to fulfillment of conditions prescribed therein. Advanced Authorization is a pre-export duty exemption scheme which is provided under Chapter 4 of the Foreign Trade Policy – 2015-2020 and is regulated as per Chapter 4 of the Handbook of Procedure 2015 – 2020. An Advance Authorization License is issued by the Directorate General of Foreign Trade (herein after referred to as “DGFT”).

**6.** Notification No.18 of 2015 – Customs dated 1st April 2015 gives effect to the exemption of customs duty on import of inputs against Advance Authorization Licenses. Prior to the GST regime, and in terms of the said Notification, import of input materials under a valid Advance Authorization Licenses were exempted from payment of BCD, CVD, SAD, Anti dumping duty and Safeguard Duty.

**7.** The Petitioner had applied for eleven Advanced Authorization Licenses, which were duly granted by the DGFT.

**8.** Post introduction of GST, Notification No. 18 of 2015- Customs dated 1st April, 2015 was amended by Notification No. 26 of 2017 dated 29th June, 2017, to, *inter alia*, granting exemption from payment of BCD. There was no exemption provided on payment of IGST against the said imports.

**9.** Notification No. 18 of 2015-Customs dated 1st April,2015 was also amended by Notification No. 79 of 2017 – Customs dated 13th October, 2017 to provide exemption from payment of IGST and compensation cess, subject to, *inter alia*, following conditions: (i) discharge of export obligation shall only be by physical exports; and (ii) the exemption shall be subject to pre-import condition.

**10.** The pre-import condition in the said Notification simply meant that the goods should be imported prior to export of finished goods to comply with the actual user condition of exempt goods. In other words, the importer should first import exempt material and use them in the manufacture of finished goods in discharge of export obligation under Advance Authorization.

**11.** Simultaneously, the DGFT had also issued a Notification No. 33/ 2015- 2020 dated 13th October, 2017 amending various provisions of the Foreign Trade Policy 2015-2020 whereby *"pre import condition*" was incorporated in paragraph 4.14 thereof with effect from 13th October, 2017.

**12.** Subsequently, the said condition inserted by Notification No. 79/ 2017 dated 13th October, 2017 was omitted by Notification No. 1 of 2019 - Customs dated 10th January, 2019 issued by CBIC.

**13.** Thus, for the period from 13th October, 2017 to 9th January, 2019, the pre- import condition was to be mandatorily complied by the importer to be entitled to exemption from payment of IGST.

**14.** During the period 13th October, 2017 to 9th January, 2019, in terms of the aforesaid Advanced Authorizations, the Petitioner and most of the similarly placed Advanced Authorization holders had imported various

exempt materials claiming the benefit of Notification No. 18 of 2015 – Customs dated 1st April, 2015 (as amended) without payment of IGST leviable under Section 3 (7) of the Tariff Act, albeit in contravention of the pre-import condition.

**15.** During the period 27th October, 2017 to 27th March, 2018, the Petitioner had imported input materials, namely – LAB, amounting to Rs.39,93,06,014/- under the cover of eleven Advanced Authorization Licenses. Out of the total input materials amounting to Rs.39,93,06,014/- imported under valid Advanced Authorization Licenses, input materials worth Rs.33,05,86,230/- were imported at Mumbai Port, input materials worth Rs.3,85,58,608/- were imported at Mundra Port and input materials worth Rs.3,01,61,176/- were imported at Kandla Port.

**16.** An investigation was initiated by the Directorate of Revenue Intelligence ( herein after referred to as "DRI") for alleged wrong availment of exemption from payment of IGST in respect of imports undertaken against Advanced Authorization Linceses. In the course of the investigation, the Petitioner submitted the details of the said imports. Further, the Statement of Mr. Sunil Mundhra, the General Manager (Commercial) of the Petitioner, was recorded on 31st July, 2018, under Section 108 of the Customs Act.

**17.** Pending the investigation, the Petitioner, by letter dated 23rd July, 2018, requested the Deputy Commissioner of Customs working under the Office of Respondent No.3 to permit re-assessment of the bills of entry to enable it to make payment of IGST.

**18.** Further, by letter dated 29th August, 2018, the Petitioner again requested the Deputy Commissioner of Customs working under the Office of Respondent No.3 that the bills of entry be re-assessed to enable it to make payment of IGST.

**19.** In response to the aforesaid request, by a letter dated 12th September, 2018, the Deputy Commissioner of Customs working under the Office of Respondent No.3 informed the Petitioner that, due to technical issues, the out of charge for the bills of entry could not be cancelled in the EDI System. Accordingly, Petitioner's request could not be processed.

**20.** Thereafter, by a letter dated 31st December, 2018, hoping that the technical issues may have been resolved, the Petitioner again requested to re-assess the bills of entry to enable it to make payment of IGST. The Petitioner did not receive any response to the said letter dated 31st December, 2018.

**21.** The Gujarat High Court, by its Judgement dated 4th February, 2019, in the case of ***Maxim Tubes Company Pvt. Ltd., v/s. Union of India –***

***2019 (368) ELT 337*** struck down the *"pre import"* condition in paragraph 4.14 of the Foreign Trade Policy as being ultra vires the Advance Authorization Scheme as contained in the Foreign Trade Policy as well as the provisions of the Handbook of Procedure.

**22.** The said Judgement of the Gujarat High Court was challenged by the Revenue before the Hon'ble Supreme Court. Pending the decision of the Hon'ble Supreme Court, a Show Cause Notice dated 10th October, 2019 was issued to the Petitioner, calling upon it to show cause as to why:

(i) Cumulative Duty of Customs amounting to Rs.7,18,75,084/- in the form of IGST, saved in course of imports of the goods through ports of Mumbai, Mundra and Kandla under Advance Authorization licenses should not be demanded and recovered under Section 28 (1) of the Customs Act for the period 27.10.2017 to 27.03.2018.

(ii) The goods having assessable value of Rs.33,05,86,230/- should not be held liable for confiscation under Section 111 (m) of Customs Act.

(iii) Interest should not be held liable to be demanded and recovered under Section 28AA of the Customs Act.

(iv) Penalty should not be imposed under Section 112(a) of the Customs Act

(v) Bonds executed at the time of import should not be enforced in terms of Section 143 (3) of the Customs Act for the recovery of Customs duty of Rs.7,18,75,084/- and interest thereon.

**23.** The Petitioner filed its reply to the show cause notice by a letter dated 12th December, 2019 and denied all the allegations made therein.

**24.** Thereafter, a personal hearing opportunity was granted to the Petitioner on 7th January, 2020 whereby the authorized representative of the Petitioner prayed that the show cause notice be kept in abeyance till the final decision of the Hon'ble Supreme Court.

**25.** The Hon'ble Supreme Court, by its Judgement dated 28th April,2023, in the case of ***Union of India v/s. Cosmos Films – 2023 (5) TMI 42 - Supreme Court,*** allowed the Appeal of the Revenue and upheld the validity of the pre-import condition. Further, the Hon'ble Supreme Court directed the following:-

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

**26.** Pursuant to the said Judgement of the Hon'ble Supreme Court in the case of **Cosmos Films (supra),** the CBIC issued Circular No. 16/2023-

Customs, dated 7th June, 2023, providing the procedures for payment of IGST and compensation cess by the importers who had violated the pre-import condition and and had taken input tax credit of the same. By the said Circular dated 7th June, 2023, CBIC provided that the importer may approach the concerned assessment group at the Port of Import with relevant details for purposes of payment of the tax and cess along with applicable interest. The assessment group at the Port of Import shall cancel the Out of Charge and indicate the reason in remarks. The Bill of Entry should be assessed again so as to charge the tax and cess in accordance with the judgement of the Hon'ble Supreme Court in the case of **Cosmos Films (supra).** The payment of tax and cess, along with interest, should be made against the electronic challan generated in the Customs EDI System. On completion of above payment, the Port of Import shall make a notional Out of Charge for the Bill of Entry on the Customs EDI System.

**27.** Further, the Joint Director of Foreign Trade, by Trade Notice No. 7 of 2023-24, dated 8th June, 2023, recorded that all the imports made under the Advance Authorization Scheme on or after 13th October, 2017 and up to 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.

**28.** Thereafter, the show cause notice was taken out of the call book and a personal hearing was scheduled on 31st August, 2023 before Respondent No.2 wherein it was, *inter alia*, submitted on behalf of the Petitioner that no interest could be levied as there is no machinery provision under the Tariff Act to levy interest on IGST which is payable under Section 3 (7) of the Tariff Act. Reliance in this regard was placed on the decision of this Court in ***Mahindra and Mahindra v/s. Union of India & Others – 2022 (10) TMI 2012 ,*** as confirmed by the Hon'ble Supreme Court in its Order in ***Union of India & Others v/s. Mahindra & Mahindra Ltd., 2023 (8) TMI 135 – SC ,*** by which the SLP against the Judgement of this Court was dismissed.

**29.** After the personal hearing, the Petitioner filed written submissions on 14th October, 2023.

**30.** Thereafter, Respondent No.2, by a letter dated 15th January, 2024, stated that, since in relation to the decision of the Hon'ble Supreme Court in **Mahindra & Mahindra (supra),** a Review Petition had been filed by the Department, the adjudication of the show cause notice would be kept in abeyance and transferred to the call book as of 12th January, 2024.

**31.** The said Review Petition was dismissed by the Hon'ble Supreme Court by an Order dated 9th January, 2024. Thereafter, the matter was taken

out of the call book and a personal hearing notice was issued to the Petitioner, directing appearance on 22nd July, 2024.

**32.** The Petitioner, by its letters dated 18th July, 2024 and e-mail dated 19th July, 2024 requested the Deputy / Assistant Commissioner of Customs working under the Office of Respondent Nos.3, 5 and 4 respectively to re-assess the bills of entry and relied upon the Judgement in **Mahindra & Mahindra (supra)** to submit that interest could not be levied on the amount of IGST payable under Section 3 (7) of the Tariff Act. No response was received by the Petitioner in respect of the said letters or e-mail.

**33.** A personal hearing scheduled on 22nd July, 2024 was duly attended by the authorized representative of the Petitioner, who placed on record written submissions dated 22nd July, 2024.

**34.** By an Order dated 1st August, 2024, Respondent No.2 adjudicated the show cause notice and passed the following orders:-

> *"(i) I hereby confirm the demand of duty amounting to Rs.7,18,75,084/- (Rs. Seven Crore Eighteen Lakh Seventy Five Thousand Eighty Four only) towards IGST under section 28(8) of the Customs Act, 1962.*
>
> *(ii) I order to recover the interest at appropriate rate in respect of demand confirmed at para (i) under section 28AA of the Customs Act, 1962.*
>
> *(iii) I order to confiscate the impugned goods having assessable value of Rs. 39,93,06,014/- (Rs. Thirty Nine Crores*

*Ninety Three Lakhs Six Thousand Fourteen only). Since goods are not available for confiscation, Redemption Fine of Rs.2,00,00,000/- (Rs. Two Crore only) is imposed on the Noticee under Section 125 of the Customs Act, 1962.*

*(iv) I impose penalty of Rs.70,00,000/- (Rs. Seventy Lakhs only) on the Noticee under Section 112(a) of the Customs Act, 1962.*

*(v) I order to enforce the bonds executed by the Noticee at the time of import in terms of Section 143 (3) of the Customs act, 1962, for recovery of aforesaid dues."*

**35.** After the passing of the said Order dated 1st August, 2024, by Finance Act (No.2) of 2024, Section 3 (12) of the Tariff Act was amended prospectively with effect from 16th August, 2024, to *inter alia* include the applicability of interest and penalty provisions of the Customs Act to the Tariff Act.

**36.** It is in these circumstances that the Petitioner has filed the present Writ Petition.

**37.** Mr. Motwani, the learned Counsel appearing on behalf of the Petitioner, submitted that the issue regarding levy of interest and penalty in respect of duties levied by Section 3 of the Tariff Act is no longer *res integra* in view of the decision of this Court in the case of **Mahindra & Mahindra Limited (supra),** which has been upheld by the Hon'ble Supreme Court. Mr. Motwani submitted that, in the said case, this Court, after going through

the provisions of Section 3 of the Tariff Act regarding levy of additional duty equal to excise duty and Section 3A of the Tariff Act dealing with special additional duty as applicable at the relevant time, has held that when no specific reference was made to interest and penalty under Sections 3 (6) and 3A (4) of the Tariff Act, imposing interest and penalty would be without the authority of law. Mr. Motwani submitted that, in the present case, the levy of IGST is under Section 3(7) of the Tariff Act and the unamended Section 3 (12) of the Tariff Act, which is applicable to the said levy, is pari materia to Sections 3 (6) and 3A (4) of the Tariff Act as referred to in the case of **Mahindra & Mahindra Limited (supra).** He, therefore, submitted that the said decision was squarely applicable to the facts of the present case. He further submitted that the said fact was not in dispute as the Revenue had itself kept the matter in the call book to await the outcome of the Review Petition in the Hon'ble Supreme Court in the case of **Mahindra & Mahindra Limited (supra).**

**38.** Mr. Motwani submitted that, in fact, post the decision of **Mahindra & Mahindra Limited (supra),** the legislature has moved to rectify the issue by the Finance Act (No.2) of 2024, and Section 3 (12) of the Tariff Act has been amended prospectively with effect from 16th August, 2024 to

*inter alia* specifically include applicability of interest and penalty provisions of the Customs Act.

**39.** With respect of the applicability of Section 3 (12) of the Tariff Act post the amendment, Mr. Motwani submitted that the amended Section 3 (12) is prospective in nature. In this regard, Mr. Motwani relied upon the decision of the Hon'ble Supreme Court in the case of ***CCE Ahmedabad v/s. Orient Fabrics Limited - 2003 (158) ELT 545 (SC).***

**40.** Mr. Motwani submitted that Respondent No. 2 violated the principle of judicial discipline by not following the decision of the jurisdictional High Court in the case of **Mahindra & Mahindra Limited (supra).** Mr. Motwani further submitted that Respondent No.2 erred in holding in the impugned Order that the decision in **Mahindra & Mahindra Limited (supra)** was not applicable to the present case on the ground that this Court had decided the same in respect of challenge to an Order of the Settlement Commission.

**41.** Mr. Motwani further submitted that, by the letter dated 15th January, 2024 sent to the Petitioner, the Respondents had confirmed that the Petitioner's matter was being transferred to the call book in view of pendency of the Review Petition before the Hon'ble Supreme Court in the case of **Mahindra & Mahindra Limited (supra).** Mr. Motwani submitted that the

same implies that the Respondent believed that the said case had a direct bearing on the facts of the present case. Accordingly, once the Review Petition was dismissed, the Respondent ought to have followed the judgement of this Court in the case of **Mahindra & Mahindra Limited (supra)**. In support of this proposition, Mr. Motwani relied upon the judgement of this Court in ***Shreenathji Logistics v/s. Union of India 2022 (11) TMI 709, Bombay High Court.***

**42.** Mr. Motwani then submitted that Respondent No.2 erred in relying upon the decision of the CESTAT, Kolkata, in the case of **Texmaco Rail Engineering Limited (Appeal No. 75921 of 2014)** to confirm the levy of interest. Mr. Motwani submitted that the CESTAT, Kolkata, decided the same issue of levy of interest on duties leviable under Section 3 of the Tariff Act, which was settled by the jurisdictional High Court in the case of **Mahindra & Mahindra Limited (supra).** He submitted that the decision of this Court in **Mahindra & Mahindra Limited (supra)** was binding on Respondent No.2. Despite the same, Respondent No.2 chose to follow the decision of CESTAT, Kolkata, which is not acceptable and is contrary to the principle of judicial discipline.

**43.** Mr. Motwani further submitted that Respondent No.2 wrongly distinguished the ratio laid down by this Court in **Mahindra & Mahindra**

**Limited (supra)** on the ground that this Court was concerned with a settlement case, which was a variation/ deviation from the applicability of the routine structural legal process and, therefore, not applicable. Mr. Motwani further submitted that Respondent No.2 also held that the provisions of unamended Section 3 (12) of the Tariff Act use the term *"including"* and, therefore, the same cannot restrict and foreclose the applicability of the rest of the provisions of the Customs laws to the provisions of the Tariff Act. Mr. Motwani submitted that this finding of Respondent No.2 was not sustainable as this Court, after looking into the inclusive provisions, had held in **Mahindra & Mahindra Limited (supra)** that interest and penalty are substantive provisions and ought to be specifically mentioned.

**44.** Mr. Motwani submitted that, for all the aforesaid reasons, the impugned order, in so far as it seeks recovery of interest, fine and penalty, is without jurisdiction, without the authority of law and is liable to be quashed and set aside.

**45.** Mr. Motwani further submitted that, for all the aforesaid reasons, even Circular No. 16 of 2023- Customs dated 7th June, 2023, in so far as it seeks to recover interest along with IGST, is bad in law to the said extent.

**46.** With respect to redemption fine demanded under Section 125 of the Customs Act, Mr. Motwani submitted that said redemption fine is demanded in lieu of confiscation of goods under Section 111 (o) of the Customs Act. Mr. Motwani submitted that, as per Section 111(o) of the Customs Act, the goods would be liable for confiscation in the event the condition, subject to which the goods are exempted from duty, is not observed .

**47.** Mr. Motwani submitted that the Hon'ble Supreme Court in the case of **Orient Fabrics (supra),** has held that since the term *" offences and penalties"* were introduced by way of an amendment, the confiscation proceedings were without the authority of law. He submitted that in the present case as well, the term *" offences and penalties"* had been introduced in Section 3 (12) of the Tariff Act by an amendment, with effect from 16th August, 2024. Accordingly, no confiscation could have been undertaken and accordingly no redemption fine could be imposed.

**48.** Further, in this context, Mr. Motwani submitted that, without prejudice to the above, the Joint Director General of Foreign Trade, by Notice No. 7 of 2023-24, dated 8th July, 2023, had clarified that all imports made under 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 Circular No.16 of 2023- Customs, dated 7th June, 2023. Mr. Motwani submitted that, considering the same, no confiscation or redemption fine is imposable. He submitted that the said Circular does not mention about demanding any redemption fine.

**49.** Mr. Motwani further submitted that, in the present case, once the Petitioner pays the IGST, it would amount to the Petitioner not having availed the benefit of 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.

**50.** In conclusion, Mr.Motwani submitted that, for all the aforesaid reasons, the present Writ Petition ought to be allowed.

**51.** In reply, Mr. Ram Ochani, the learned Counsel appearing on behalf of Respondent No.3, submitted that the decision in the case of Mr. **Mahindra & Mahindra Limited (supra)** was not applicable to the facts of the present case since it did not interpret Section 3 (12) of the Tariff Act. He submitted that, therefore, Respondent No.2 was correct in distinguishing the judgement of this Court in **Mahindra & Mahindra Limited (supra)** and relying

upon the decision of the CESTAT- Kolkata in the case of **Texmaco Rail Engineering Limited (supra).**

**52.** Mr. Ochani further submitted that the provisions of unamended Section 3 (12) use the term *"including"* thereby implying that all provisions of the Customs Act would be made applicable to the Tariff Act. Mr. Ochani submitted that, in these circumstances, Respondent No.2 was justified in ordering payment of interest, penalty and redemption fine in the impugned order.

**53.** Mr. Ochani submitted that, for the the aforesaid reasons, the present Petition deserves to be dismissed.

**FINDINGS AND CONCLUSIONS:-**

**54.** Before considering the submissions of the parties, it would be useful to consider the provisions of Section 3 (7) and Section 3 (12) of the Tariff Act.

**55.** Section 3(7) of the Tariff Act, as amended by the Tax Laws (Amendment) 2017, with effect from 1st July, 2017, reads as under:-

> *"(7):- Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as*

*determined under sub-section (8) or sub-section (8A), as the case may be."*

**56.** Section 3 (12) of the Tariff Act, prior to its amendment by Finance (No. 2) Act, 2024 dated 16th August, 2024, reads as under:-

> *"(12):- The provisions of the Customs Act,1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act."*

**57.** Section 3 (12) of the Tariff Act, prior to its amendment, did not make applicable the provisions of the Customs Act relating to interest, offences and penalties to integrated tax chargeable under Section 3 (7) of the Tariff Act.

**58.** This issue is no longer *res integra.* In **Mahindra & Mahindra Limited (supra),** this Court was interpreting Sections 3 (6) and 3A (4) of the Tariff Act, which are pari materia to the unamended Section 3 (12) of the Tariff Act, and which read as under:-

> *"3.(6):- 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 chargeable under this section as they apply in relation to the duties leviable under that Act."*

*"3A(4):- The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties shall, so far as may be apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act."*

**59.** In **Mahindra & Mahindra Limited (supra),** this Court held as under:-

*"26:- Sub-section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Tariff Act, 1975 does not provide for any interest or penalty. Neither Section 90 of the Finance Act, 2000 provides for the same. Therefore, no interest and penalty can be levied on the portion of payment pertaining to surcharge, CVD and SAD.*

*We must also note that sub-section (8) of Section 9A of the Customs Tariff Act,1975, prior to the 2004 amendment, did not include interest and penalties. By Section 76 of Finance (No.2) Act, 2004, the words in sub-section (8) of Section 9 of the Customs Tariff Act, 1975 "relating to non levy, short levy, refunds and appeals" were replaced with "relating to the date for determination of rate of duty, non levy, short levy, refunds, interest appeals, offences and penalties". No such amendment to include interest and penalty was inserted in sub-section (6) of Section 3 or sub-section (4) of Section 3A of the Customs Tariff Act, 1975. Therefore, the intention of the legislature was very clear that it wanted to include interest and penalties only with regard to anti-dumping duty on dumped articles and not for CVD i.e. levy of additional duty equal to excess duty and SAD i.e. special additional duty. No such insertion or amendment was made in Section 90 of the Finance Act 2000 relating to surcharge. Therefore, interest and penalty cannot be levied on the portion of demand pertaining to surcharge under section 90 of the Finance Act, 2000 or additional duty of customs under section 3 or special additional duty of customs under the Customs Tariff Act, 1975.*

*27:- Sub-section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Act, 1975 makes applicable to the duty chargeable under Section 3 and Section 3A the provisions of the Customs Act, 1962 and the rules and regulations made thereunder including those relating to drawbacks, refunds, exemptions from duties so far as it applies to Section 3 and so far as Section 3A is concerned, it is relating to non-levy, short-levy, refunds and appeals. Similarly, sub-section (4) of the Finance Act, 2000 makes applicable the provisions of the Customs Act and the rules and regulations thereunder in relation to the levy and collection of surcharge. Sub-section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Tariff Act, 1975 or sub-section (4) of the Finance Act, 2000 make no reference to interest or penalty. There is no substantive provision in Section 3 or Section 3A under the Customs Tariff Act, 1975 or Section 90 of the Finance Act,2000 requiring payment of penalty or interest. There is, therefor, no substantive provision which obliges a party to pay integrate or penalty on CVD, i.e. the additional duty equal to excise duty or SAD, i.e. special additional duty to be levied at a rate having regard to the maximum sales tax or local tax or any other charges leviable on a like article or surcharge to be levied under the Finance Act, 2000.*

*28:- A perusal of sub-section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Tariff Act, 1975 or Section 90 of the Finance Act, 2000 show that the breach of the provisions has not been made penal or an offence. It only provides for application of the procedural provisions of the Customs Act, 1962 and the rules and regulations made thereunder so far as it apply to the duty chargeable under Section 3 or Section 3A of the Customs Tariff Act, 1975 or levy and collection under Section 90 of the Finance Act, 2000. As stated earlier, if penalty or interest has to be levied on CVD or SAD or surcharge, the authority has to be specific and explicit and expressly provided. The Customs Tariff Act, 1975 provides for additional Customs duty and special additional duty but creates no liability for penalty or interest for additional duty or special additional duty. Likewise the Finance Act, 2000 under Section 90. That being so imposing penalty or interest on additional duty and special additional duty or surcharge which*

*is not connected to the basic customs duty is unwarranted or without authority of law.*

*37. In view of the above, imposing interest and penalty on the portion of demand pertaining to surcharge or additional duty of customs or special additional duty of customs is incorrect and without jurisdiction."*

**60.** In **Mahindra & Mahindra Limited (supra),** this Court, after going through the provisions of Section 3 (6) of the Tariff Act and Section 3 A (4) of the Tariff Act as applicable at the relevant time, held that no specific reference was made to interest and penalties in Sections 3 (6) and 3A (4) of the Tariff Act, which are substantive provisions and, therefore, imposing interest and penalty would be without the authority of law. In the present case, the levy of IGST is under Section 3 (7) of the Tariff Act, and Section 3 (12) of the Tariff Act which is applicable to the said levy is pari materia to Sections 3 (6) and 3A (4) of the Tariff Act as referred to in the case of **Mahindra & Mahindra Limited (supra).** In these circumstances, in our view, the said decision is squarely applicable to the facts of the present case.

**61.** Further, we are unable to accept the submissions of the Respondents that the decision in the case of **Mahindra & Mahindra Limited (supra)** is not applicable to the facts of the present case since it does not interpret Section 3 (12) of the Tariff Act. The provisions under consideration before this Court in the case of **Mahindra & Mahindra Limited (supra)** were

Sections 3 (6) and 3A (4) of the Tariff Act. In **Mahindra & Mahindra Limited (supra),** this Court interpreted the provisions of Sections 3 (6) and 3 A(4) of the Tariff Act, which are pari materia to the unamended Section 3 (12) of the Tariff Act, which is in consideration in the present case. On interpreting Sections 3 (6) and 3A (4) of the Tariff Act, this Court held that when no specific reference was made to interest and penalties in the said provisions, imposing interest and penalty would be without the authority of law. In these circumstances, in our view, the ratio of the decision in the case of **Mahindra & Mahindra Limited (supra),** would be squarely applicable to the facts of the present case.

**62.** We are also not able to accept the submission of the Respondents that the provisions of Section 3 (12) use the term *"including"* and the same implies that the provisions of the Customs Act will be made applicable to the Tariff Act. As can be seen from the Judgement of this Court in **Mahindra & Mahindra Limited (supra)**, Sections 3(6) and 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 came to the conclusion that, since there was no specific reference to interest and penalties, imposing interest and penalties would be without the authority of law.

**63.** In these circumstances, in our view, the submissions of the Respondent, based on the use of the word *"including"* in Section 3 (12) of the Tariff Act, cannot be accepted.

**64.** All this apart, further, the Respondents, by letter dated 15th January, 2024 addressed to the Petitioner, confirmed that the matter was being transferred to the Call Book in view of the pendency of the Review Petition before the Hon'ble Supreme Court in the case of **Mahindra & Mahindra Limited (supra).** This clearly shows that the Respondent also believed that the Judgement of this Court in **Mahindra & Mahindra Limited (supra)** had a direct bearing on the facts of the present case. Accordingly, once the Review Petition was dismissed by the Hon'ble Supreme Court in the case of **Mahindra & Mahindra Limited (supra),** the Respondents ought to have followed the Judgement of this Court in the case of **Mahindra & Mahindra Limited (supra).** In this regard, the reliance placed on the Judgement of this Court in **Shreenathji Logistics (supra)** is well founded. In this case, the Petitioner therein was seeking quashing of the impugned show cause notice dated 19th October, 2012 primarily on the ground that there had been an inordinate delay in adjudicating the show cause notice. It was the case of the Respondents therein that, since there was a matter where an identical issue was held against the Respondents by the CESTAT, Bombay, and the Respondent therein had preferred an Appeal in this Court, the show

cause notice was transferred to the Call Book. On these facts, this Court held as under:-

> *"5:- Moreover, it is Respondents own case in the Affidavit-in-Reply that the issue in the show cause notice issued to Petitioner is squarely covered by the order passed by CESTAT in the matter of Greenwich. The Appeal was dismissed by High Court and the Hon'ble Apex Court has also dismissed the Appeal of Respondents. Therefore the order in Greenwich passed by CESTAT has attained finality. Since in the Affidavit-in-Reply Respondents accept that the order of CESTAT covers the issue in this matter as well,it would, in our view serve no purpose in adjudicating the show cause notice. It would be a futile exercise."*

**65.** Further, in our view, Respondent No.2 erred in relying upon the decision of the CESTAT, Kolkata in the case of **Texmaco Rail Engineering Limited (supra) [Appeal No.75921 of 2014]** to confirm the levy of interest. Respondent No.2 ought to have followed the decision of this Court in the case of **Mahindra & Mahindra Ltd., (supra)** as this Court was the jurisdictional High Court, and not on the decision of the CESTAT, Kolkata. The decision of this Court was binding on Respondent No.2. Despite the same, Respondent No.2 erroneously decided to follow the decision of the CESTAT, Kolkata, which is totally contrary to the principles of of judicial discipline. Further, in this context, Respondent No.2 sought to distinguish the ratio laid down by this Court in **Mahindra & Mahindra Ltd., (supra)** only on the ground that in **Mahindra & Mahindra Ltd., (supra)**, this Court was concerned with a

settlement case, which was a variation/ deviation from the applicability of the routine structural legal process and, therefore, not applicable. In our view, the said finding of Respondent No.2 is totally erroneous. As held herein above by us, the Judgement of this Court in **Mahindra & Mahindra Ltd., (supra)** squarely applies to the facts of the present case and it makes no difference to the ratio of the said case that it was decided in a settlement case.

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

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

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

**68.** In our aforesaid view, we are supported by the decision of the Hon'ble Supreme Court in **Orient Fabrics Limited (supra)**. Paragraphs 2 to 8 and 19 to 21 of Orient Fabrics (supra) read as under:-

> ***2.*** *The respondents herein carry on business of manufacture of man made fabrics. They have alleged to have misdisclosed the composition of certain sorts of fabrics. They were further alleged to have under valued goods by not paying duty on to the amount realised through debit notes. The collector, by his order dated 17th November, 1987, confirmed the levy of duty, amounting to Rs. 1,19,453,59. The Collector held that 35 bales of Fabric of Sort Nos. 1200 and 1300 are liable to be confiscated, but since the goods had already been released, he appropriated a sum of Rs. 10,000/- towards the value of goods. He also imposed the penalty of Rs. 50,000/- Aggrieved, the respondents preferred appeals before the Central Excise and Gold (Control) Appellate Tribunal.*
>
> ***3.*** *The Tribunal relying upon the decision in the case of Pioneer Silk Mills Pvt. Ltd. v. Union of India, reported in 1995 (80) E.LT. 507 (Del), allowed the appeals, holding that the provisions of Central Excise Act and the Rules made thereunder, so far as they relate to confiscation cannot be made applicable for the breach of provisions of the Act. It is against the said judgment and order of the Tribunal, the appellant is in appeal before us.*
>
> ***4.*** *Mr. S.R. Bhat, learned Counsel appearing for the appellant, urged that the view taken by the Tribunal in allowing the appeals was erroneous inasmuch as it is contrary to the decisions in the case of Mis. Khemka & Co (Agencies) Pvt. Ltd. v. State of Maharashtra, reported in 1975 (2) SCC 22 and Commissioner of Central Excise v Ashok Fashion Ltd., reported in 2002 (141) ELT. 606 (Gujarat).*
>
> ***5.*** *In order to appreciate the issue, it is relevant to set out the sub-section (3) of Section 3 of the Act, as applicable in this matter and which runs as under:*
>
> ***"SECTION 3: Levy and collection of additional duties:***
>
> *(1) .....*
> *(2) .....*
>
> *(3) The provisions of the Central Excises and Sall Act, 1944 and the rules made thereunder including those*

*relating to refunds and exemptions from duty shall, so far as may be apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of duties as they apply in relation to the levy and collection of the duties of excise on the poods specified in sub-section (1)."*

***6.*** *A perusal of the said provision shows that the breach of the provision of the Act has not been made penal or an offence and no power has been given to confiscate the goods. It only provides for application of the procedural provisions of the Central Excises and Salt Act, 1944 and the Rules made thereunder. It is no longer res integra that when the breach of the provision of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. Article 265 of the Constitution provides that no tax shall be levied or collected except by authortity of law. The authority has to be specific and explicit and expressly provided. The Act created liability for additional duty for excise, but created no liability for any penalty. That being so, the confiscation proceedings against the respondents were unwarranted and without authority of law.*

***7.*** *The Parliament by reason of Section 63(a) of the Finance Act, 1994 (Act No. 32 of 1994) substituted sub-section (3) of Section 3 of the said Act, which now reads as under:*

***"3. Levy and collection of Additional Duties:-***

*(1)*

*(2)*

*(3) The provisions of the (Central Excise Act, 1944) (1 of 1944), and the rules made thereunder, including those relating to refunds, exemptions from duty, offences and penalties, shall, so far as may be, apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in sub-sedion (1)."*

***8.*** *A comparison of the amended provisions with the unamended ones would clearly demonstrate that the words 'offences and penalties' have consciously been inserted therein. The cause of action for imposing the penalty and directions of confiscation arose in the present case in the year 1987. The amended Act, therefore, has no application to the facts of this case.*

***19.*** *It is now a well settled principles of law that expropriatory legislation must be strictly construed (see M/s D.LF. Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and Ors, reported in AIR 2003 SC 1648). It is*

*further trite that a penal statute must receive strict construction.*

***20.*** *The matter may be considered from another angle. The Parliament by reason of the Amending Act 32 of 1994 consciously brought in the expression offences and penalties' in sub-section (3) of Section 3 of the Act. The mischief rule, if applied, would clearly show that such amendment was brought with a view to remedy the defect contained in the unamended provisions of sub-section (3) of Section 3 of the Act. Offences having regard to the provisions contained in Article 20 of the Constitution of India cannot be given a retrospective effect,. In that view of the matter too sub-section (3) of Section 3 of the Act as amended cannot be said to have any application at all.*

***21.*** *In view of the aforesaid decisions, it must be held that the confiscation proceedings taken against the respondents and the penalty imposed upon them were totally without the authority of law and were rightly set aside by the Tribunal.*

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

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

**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;

(iv) Rule is made absolute in the aforesaid terms;

(v) In the facts and circumstances of the case, there will be no order as to costs.

77. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] [B. P. COLABAWALLA, J.]