

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 10206 of 2025

(Arising out of Order in Appeal No. JMN-CUSTOM-000-APP-463-484-2024-25, dated 31.12.2024 passed by the Commissioner (Appeals)-Customs, Ahmedabad)

M/s Chiripal Poly Films Ltd.

Chiripal House, Shivranjani Cross Road,
Satellite Ahmedabad-Gujarat-380015

...Appellant

VERSUS

Commissioner of Customs –Jamnagar

Seema Shulka Bhawan, Jamnagar-Rajkot
Highway Near Victoria Bridge, Jamnagar

...Respondent

APPEARANCE:

Shri P.P. Jadeja, Consultant appeared for the Appellant

Shri Prashant Tripathi, Superintendent (AR) appeared for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

FINAL ORDER NO. 10643/2025

DATE OF HEARING: 25.07.2025

DATE OF DECISION: 12.08.2025

SOMESH ARORA:

Appellant is bonafide importer and registered for manufacture and export of BOPP films etc since year 2009. They imported Plastic granules, Additives etc under Advance Authorization by availing benefit of Notification No.18/2015-Cus dated 01.04.2015 as amended by Notification No.79/2017-Cus dated 13.10.2017 granting duty exemption subject to "pre-import condition", against a valid Advance Authorisation issued by DGFT Authority in terms of paragraph 4.03 of Foreign Trade Policy. This notification exempts goods from the whole of duty of customs leviable, which is specified in First Schedule to Customs Tariff Act and from whole of additional duty, safeguard duty and antidumping duty, u/s 3, 8B, 8C and 9A of Customs Tariff Act 1975. The exemption for these levies was subject to "pre-import condition" inserted on 13-10-2017 as condition "(xii)" that exemption from integrated tax and the goods and services tax compensation cess leviable thereon under Section 3(7) and Section 3(9) of Customs Tariff Act shall be subject to pre-import condition. Thereafter, vide Notification No. 1/2019-Cus., dated 10-1-2019 this condition "(xii)" i.e. 'pre-import condition' was omitted which means that this Condition was to be complied with for the period 13-10-2017 upto 09-1-2019. In imports by Appellant Reliance SEZ, Specified officers had allowed exemption of IGST under the said Notification in 2018 without payment of

duty on final assessment of the Bill of Entry. However, DRI raised dispute on non-compliance of pre-import condition against which they filed a SCA No. 18097/2018 before Hon'ble Gujarat High Court, which granted stay and allowed their SCA with Maxim Tubes Co Pvt Ltd V/s. UOI {2019 (368) ELT 337 (Guj)}. Union of India challenged the judgment of Hon'ble Gujarat High Court before the Apex Court which over ruled the decision of Hon'ble Gujarat High Court in Union of India vs Cosmo Films Ltd reported at 2023 (385) E.L.T. 66 (S.C.).

1.1 As per Hon'ble Supreme Court in para 75 of the judgment, Revenue was directed to permit all importers to claim refund or input credit, whichever is applicable. CBIC was also directed to issue a Circular to guide. There was nothing mentioned for payment of interest in the decision of the Hon'ble Supreme Court. CBIC issued Circular on 07-06-2023 with direction to make payment of duty with Applicable Interest. Payment of IGST is revenue neutral situation as ITC is available to them. They also had interim stay from Hon'ble Gujarat High Court against such payment. They worked out and quantified details of imports made during 13.10.2017 to 09.01.2019 and deposited IGST of Rs. 1,93,97,795/- and Interest of Rs. 1,45,37,545/- for 22 Bills of Entry on request by the RSEZ, Jamnagar vide their letter dated 28-06-2023. The amount has been deposited seeking Re-assessment on their 22 self-Assessed Bill of Entry, under Advance authorisation No. 0810142447 dated 26-04-2018 which were cleared without payment of any duty at the time of clearance of goods in 2018. The interest amount were deposited "under protest" as intimated to RSEZ vide letters dated 09-08-2023 and dated 16-08-2023.

1.2 In the instant case, dispute, inter alia, is about whether appeal filed before the Commissioner (Appeals) was within 60 days or after the expiry of period of condonation. The Appellant submits that they filed CA-1 Appeals before Commissioner (Appeals) on 01-04-2024, which were maintainable in terms of section 128 of the Customs Act 1962 which provides that any person aggrieved by any decision or order passed under the Customs Act 1962 by an officer of customs lower in rank than Principal Commissioner of Customs or Commissioner of Customs **may appeal to the Commissioner (Appeals) within 60 [sixty days] from the date of communication to him of such decision or order(s)**. Therefore, for computing time limit, it has to be ascertained first as to when the Order under challenge is communicated. As per Section 153 of the Customs Act 1962, service of Order is completed, when it is served to the person for

whom it is made. As per appellant, in this case, Orders of Re-assessment in Bills of Entry were said to have been made on 31-08-2023, but, copies of such Re-assessed Bill of Entry were provided by the proper officer of Reliance SEZ, Jamnagar vide their letter dated 13-03-2024 which were received by Appellant on 16-03-2024. The CA-1 Appeals filed on 01-04-2024 therefore were maintainable, as filed within 60 days from 16-03-2024.

1.3 This is a case of challenge to "Re-assessment of duty" wherein payment of duty of Rs. 1,93,97,795/- along with interest of Rs.1,45,37,545/- is made on 31-08-2023 for 22 Bills of Entry under protest. Now, the appellant desired to claim refund of "Interest" deposited under protest on 31-08-2023 vide TR6 Challan No. 1820 dated 31.08.2023. As per Appellant, they communicated their protest vide letters dated 16-08-2023 as "Interest" was not payable, which was wrongly included in the said deposits, made vide manual TR-6 Challan dt. 31-08-2023. Such Deposit of "Interest" was not in accordance with law and against **Article 265 of the Constitution of India**, which provides that "No tax shall be levied or collected except by authority of law".

1.4 Appellant submits that w.e.f. 08.04.2011, Section 17(1) of the Customs Act 1962 provides obligation on importers to "self-assess" the duty, leviable on goods imported. Sections 17(2) and 17(3) of Customs Act, provide for verification of Self-Assessment by the Proper Customs Officers. After such verification, **proper officer** either accepts Self-Assessment made or initiates process of Re-assessment as provided under Section 17(4) of the Customs Act 1962. The proper officer of Customs who has Re-assessed duty is also required to issue Speaking Order u/s 17(5) within 15 days of such Re-assessment. In this case, the proper officer(s) have not issued Speaking Order(s) in terms of section 17(5) of Customs Act 1962, despite fact that deposit of "Interest" was made **"Under Protest"** and Appellant has requested to issue Speaking Orders.

1.5 CBEC Circular No. 17/2011-Cus dated 08-04-2011 provides that on any re-assessment of duty, proper officer **shall** pass speaking order, within 15 days of Re-Assessment. They have not accepted order of Re-assessment or given any consent orally or in writing for recovery of "Interest" in Re-assessment. **CBIC vide its Instruction No. 7/2018-Cus dated 05-04-2018** has directed officers to issue Speaking Order within 15 days of Re-Assessment u/s 17(5) where any Re-Assessment

done under section 17(4) is different to self-assessment made by the importer with observations as under :-

“2. It has been observed that officers exercising the powers under the above mentioned sub-section are not issuing a speaking order in each and every case particularly where the importer or exporter, as the case may be, does not confirm his acceptance of the re-assessment. It may be appreciated that an importer or an exporter has an inalienable right to know the reasons for loading of value, change of classification, any decision regarding entitlement to an exemption notification etc. Omission to issue speaking orders in matters of re-assessment may not prejudicially affect the right of the importer or exporter to appeal as such, but nevertheless deprives him of knowing the grounds of such re-assessment. At the same time, any such re-assessment without the support of a speaking order could be perceived as legally questionable. Time and again, courts have frowned upon the instances of non-issuance of speaking orders under the said sub-section.”

The above binding Instruction of CBIC was not followed in this case by the proper officer specially when interest is deposited “under protest” and the importer has not confirmed his acceptance of said re-assessment in writing. They filed applications seeking “Speaking Orders” u/s 17(5) of the Customs Act, in 22 Bills of Entry but the same was not received.

1.6 Appellant submits that in terms of section 153 of the Customs Act, the officers have not delivered the Orders of re-assessment in 22 Bills of Entry, till it was forwarded under RSEZ’s letter dated 13-03-2024, which the Appellant received on 16-03-2024. CA-1 Appeals filed on 01-04-2024 are within the time limit of 60 days under section 128 of the Customs Act 1962. They rely on Section 131A of the Customs Act 1962 which provides for exclusion of time for obtaining copy of such order.

1.7 Specified Officers at RSEZ Jamnagar have reported vide their letter dated 17-09-2024 to Commissioner(Appeals) that said Re-assessed Bills of Entry were handed over at the material time, but, evidence of delivery of same or acknowledgement thereof by Appellant could not be traced out from their relevant records. This is conclusive proof that despite specific question regarding delivery of the said Re-assessed Bill of Entry “evidence of acknowledgement of delivery” was not produced by the officers of Reliance SEZ. The O-I-A has also erred in noting that since Appellant has taken credit of IGST on 31-08-2023, which they could take having Re-assessed Bill of Entry with them. Appellant had clarified that they have taken ITC on the basis of TR-6 challan No. 1820 dated 31-08-2023. Taking ITC on 31-08-2023 is not a conclusive evidence like RSEZ’s letter dated 13-03-2024 to prove delivery of Re-assessed Bills of Entry on 31-08-2023, in terms of section 153 of the Customs Act 1962. In

absence of “signed Acknowledgement” by Appellant u/s 153 ibid, Revenue has not proved delivery of Re-assessed B/E except by letter dated 13-03-2024 which was received by Appellant on 16-03-2024.

1.8 Appellant also submits that law is settled that when applicant was pursuing remedy before concerned authorities under bona fide belief of securing Speaking Order u/s 17(5) and u/s 149 seeking amendment of the Re-assessed Bill of Entry, then, actual time spent in pursuing such remedy is to be excluded while considering limitation or delay, in filing Customs Appeal u/s 128 of Customs Act. Principles of Section 14 of Limitation Act 1963 are also applicable to exclude the time period from date of Re-assessment till 16-03-2024 when Re-assessment orders are delivered to Appellant by RSEZ Jamnagar’s letter dt. 13-03-2024. There is a clear distinction between delay which can be condoned upon sufficient cause being shown and period which should be excluded for considering such limitation provided to Condone delay. The time spent in prosecuting remedy before another forum under bonafide belief falls under exclusion clause, under Section 14 of Limitation Act 1963. As the Applicant did not receive Speaking Orders of Re-assessment said to have been passed on 31-08-2023 till 16-03-2024, period from 31-08-2023 to 16-03-2024 requires to be excluded for calculating time limitation for filling Appeal u/s 128 of Customs Act 1962. They rely upon decision in the case of M.P. Steel Corporation Vs CCE reported in 2015 (319) E.L.T. 373 (S.C.).

1.9 In the reported case of Karnataka Power Corporation Ltd vs Commr. Of Cus. (Appeals), Chennai reported at 2002 (143) E.L.T. 482 (S.C.) it has been held that “the assessee sought amendment to the claim before the Assistant Collector itself, thus, he ought to have been considered and decided it - Order of the lower authorities set aside and matter to be decided afresh by Assistant Collector”.

1.10 They also rely upon following decisions :-

- a) 2009 (15) S.T.R. 511 (Tri. - Bang.) - YARNAR PACKS vs CCE, HYDERABAD-IV
Appeal - Limitation - Delay in filing of appeal - Order-in-Original was not sent by registered post with acknowledgement - Moreover, no evidence as to whether the person received the order was actually authorised under Rule 3 of erstwhile Central Excise Rules, 1944 - Benefit of doubt in favour of appellants proving that there was no evidence of satisfactory service of OIO to them - Matter remanded to Commissioner (Appeals) for a fresh decision on merits - Section 35B(5) of Central Excise Act, 1944. [para 6]
- b) 2008 (10) S.T.R. 81 (Tri. - LB) - Margra Industries Ltd. vs Commissioner Of Customs, Delhi

Presumption of deemed service not acceptable in view of sub-sections of Section 153 of Customs Act, 1962 and Section 37C of Central Excise Act, 1944

- c) (2023) 4 Centax 322 (Tri.-Del) - Pr.Customs, ACC (Import), New Delhi vs Lava International Ltd
In case of amendment of Bills of Entry, cause of action for refund arises only after amendment and limitation starts from that date, and not from date of assessment.
- d) 2024 (389) E.L.T. 172 (Ker.) - TRAVANCORE COCOTUFT PVT. LTD. vs DY. COMMISSIONER (CUS.), KOCHI
Bill of Entry - Amendment of - Bill of Entry, although, is a self-assessment order, it can be amended not only under Section 128 of Customs Act, 1962 but also other relevant provisions of Customs Act also which would include Sections 149 and 154 *ibid.* - Section 149 read with Sections 128 and 154 of Customs Act, 1962. *[paras 17, 21 and 23]*
- e) 2019 (365) E.L.T. 56 (Mad.) - Usha International Ltd vs Assistant Commissioner of Cus., CHENNAI
- f) In Priya Blue Industries Ltd. [\[2004 \(172\) E.L.T. 145 \(S.C.\)\]](#) Supreme Court had not noticed power of assessing officer to alter assessment under Section 149 of Customs Act, 1962 and several decisions thereafter had allowed modification of assessment. *[paras 18, 19, 20, 21, 22, 23, 24, 25]*
- g) 2018 (11) G.S.T.L. 113 (Mad.) - Ru's Marketing And Creative Unit vs Commr. Of S.T., Coimbatore
Computation of time for filing appeal starts from date of service of certified copy of order, and it was not served, there was no delay in filing of appeal - Section 83 of Finance Act 1994 *[para 17, 18]*

1.11 It is a settled law that request for amendment of Bills in Entry which can be amended only under Section 128 also does not hold good. The issue is no longer *res integra*. The Telangana High Court in *Sony India Pvt. Ltd. v. UOI* [\[2022 \(379\) E.L.T. 588\]](#) has considered the decision in case of ITC Ltd v/s Commissioner [2019 \(368\) E.L.T. 216 \(S.C.\)](#) and held that the amendment of the Bill of Entry is clearly permissible even in a situation where the goods are cleared for home consumption. The condition is that in such a case, amendment shall be allowed only on the basis of documentary evidence which were in existence at the time of clearance of the goods. Provisions of Section 149 is additional remedy available to the Importers like Appellant who seek amendment of Bill of Entry and re-assessment under Section 128 is not the only remedy available to importers.

1.12 It is settled law that when matter arises as to right of a party of remedy in Appeal, then, provision, being procedural, the law should lean in favour of Appellant, who comes before Hon'ble authority to pursue remedy, rather than person seeking to defeat the remedy, on technicalities. Appellant's contention of receipt of Order of Re-assessment only under letter dated 13-03-2024 received on 16-03-2024 and CA-1 Appeals were filed within 60 days from receipt of orders of Re-

assessments may be accepted. They rely upon following decisions on service of orders u/s 153 of Customs Act 1962 :-

- a) (2018 (359) E.L.T. 245 (Tri. - Kolkata) - Essel Mining & Industries Ltd vs Commissioner Of Customs,

Order not served on assessee but sent to Customs House Agent (CHA) - Export consignment dealt by CHA and proceedings initiated much after completion of export by assessee - Service of order to CHA does not satisfy condition of Section 153 of Customs Act, 1962 - Rejection of appeal by Commissioner (Appeals) on question of limitation not sustainable - Matter remanded to Commissioner (Appeals) to examine period of limitation based on documents submitted by assessee and thereafter, decide case on merit - Section 128 of Customs Act, 1962 [[1999 \(106\) E.L.T. 9](#) (S.C.), [2003 \(156\) E.L.T. 904](#) (Tribunal) relied on]. [para 4]

- b) 2021 (378) E.L.T. 800 (Tri. - Chennai) -M.T. & N. International Corporation Commr. of Cus., Chennai-VII COMMISSIONERATE

Adjudication order reportedly sent by Department by speed post - However, in absence of any evidence of its having been actually served upon appellant-assessee, it cannot be said to have been communicated to him enabling him to file appeal - Department ought to have tracked delivery through speed post and ought to have kept a copy of delivery report after downloading same from postal website - Accordingly, it is later date of actual receipt of order by appellant that is relevant for deciding limitation to file appeal - Impugned order of dismissal of appeal as time barred, set aside - Matter remitted to Appellate Authority to decide appeal on merits - Section 128 of Customs Act, 1962. [paras 5, 6]

- c) 2021 (377) E.L.T. 618 (Tri. - Chennai) - HARI BABU Vs COMMISSIONER OF CUSTOMS, CHENNAI

Mere dispatch of order not communication of decision/order - Even if date of dispatch reckoned for computing 60 days, delay of 30 days was within condonable period prescribed - Appellant not to be deprived of remedy of appeal in hyper-technical manner - Defect ought to have been rectified and appeal heard on merits - Order set aside - Matter remanded to Commissioner (Appeals) with direction to give opportunity to appellant to file an application for condonation of delay and to hear appeal on merits - Sections 128 and 153 of Customs Act, 1962. - *The words "service" as well as "communication" has to be construed to mean that such order is served or put to the knowledge of the aggrieved person. When there is a defect in filing the appeal which can be rectified, the same has to be pointed out to the appellant before the appeal is heard on merits.* [paras 5, 6]

- (d) 2015 (330) E.L.T. 690 (Tri. - Chennai) - BSNL vs Commr. Of Cus. (Imports)

Bills of Entry - Reassessment on account of excess duty paid - Denial of - Limitation - Delay in filing appeal - Assessment date applicable - Whether date of assessment of Bill of Entry on 28-4-2005 or date of communication of out of charge order on 05-05-2005 - *HELD* : Words 'communication of such decision or order' in Section 128(1) of Customs Act, 1962 clearly indicate that date of communication of assessment order should be effective communication - Mere constructive knowledge of order not acceptable unless order communicated as per procedure under Section 153 *ibid* - Present appeal filed within condonable period of 90 days from date of communication of out of charge order - Matter remanded for fresh adjudication - Sections 128 and 153 of Customs Act, 1962. [para 4]

- (e) 2015 (316) E.L.T. 56 (Ker.)- MALABAR EXTRUSIONS PVT. LTD vs UNION OF INDIA

Appeal against assessment order/bill of entry rejected on ground that Section 128 of Customs Act, 1962 could not be invoked for claiming refund and appeal was only maintainable against orders of ADC/JC/DC/ AC - *HELD* : Reasons of Revenue authorities at different points of time did not reconcile with each other - Exporter was never given opportunity of hearing before passing order by Commissioner (Appeals) - Section 128 *ibid* vests power with competent authority to render justice by passing appropriate orders - As appeal preferred by exporter against bill of entry was well within time, it should have been considered on merits. [paras 7, 8, 9]

- (g) 2015 (315) E.L.T. 617 (Tri. - Kolkata) - SEAKING INTERNATIONAL vs CC OF CUSTOMS, KOLKATA

Bill of Entry assessed on 7-2-2006 and on request speaking order issued on 6-7-2006 against which appeal filed on 30-8-2006 - Appeal not decided on merits and rejected as time-barred - As per C.B.E. & C. Circular No. 16/2003-Cus., dated 17-3-2003, date of communication of

order is the relevant date - Apparently date of communication is 6-7-2006 - Impugned order set aside - Matter to be decided afresh - Section 128 of Customs Act.

- (h) 2021 (377) E.L.T. 895 (Tri. - Chennai)- R. RAVICHANDRAN vs CC CHENNAI
No actual 'service' or 'communication' of decision/order upon appellant - Date on which appellant came to know about Order-in-Original to be considered for computing period of limitation - Appeal filed within time of sixty days of such date - Dismissal of appeal as time-barred set aside - Matter remanded for consideration on merits - Sections 128 and 153 of Customs Act, 1962. [paras 6, 7]
- (i) 2018 (18) G.S.T.L. 584 (Bom.) - CCE&ST, Nashik-II vs GADE TRANSPORT,
"Order-In-Original was not received by assessee and must have been received by someone else and setting aside Commissioner (Appeals) ordered and remitting matter to be decided on merits. No case made out for interference - Section 85 of Finance Act, 1994. [paras 5, 6]."
- (j) 2022 (64) GSTL-187(MP)-Al Sadik Haj Tour Organizers Vs CCE, Jabalpur,
"Original order not served upon petitioner but same was received by his legal representative who was not authorized by petitioner to be his agent - Therefore, no proper service of impugned order passed by Original Authority upon petitioner, so as to enable him to prefer appeal before Commissioner of Central Excise (Appeals) in accordance with Section 85 of Finance Act, 1994 rules of limitation are not meant to destroy rights of parties - Matter remitted back to Commissioner (Appeals)."

1.13 Appellant has a very strong case on merits by a clear decision of Hon'ble CESTAT vide order dated 23-07-2024 in their own case wherein Appeal against recovery of "Interest" in imports at the ports at Ahmedabad, Mundra and JNCH was allowed. In this case, all goods imported under Advance Authorisation scheme were actually utilised by appellant for manufacture of final products which were exported. Therefore, there is no breach of fundamental condition of Advance Authorisation scheme about utilization of goods imported under Scheme for manufacture of finished goods exported, and physical incorporation of goods imported under scheme in export goods. Consequently, O-I-A rejecting Appeal on time bar without considering merit of the case is not sustainable and may be remanded. They prayed to allow Misc Application No. C/EH-10025/2025-DB in the Customs Appeal No. C/10206/2025-DB with directions to proper officer of RSEZ, Jamnagar to issue speaking Order u/s 17(5) on question of recovery of Interest and to Re-assess the said Bills of Entry u/s 149 of Customs Act 1962 and allow consequential refund of Interest amount to the Appellant.

2. This Matter was heard for some time on 05-03-2025 wherein learned AR was allowed time to show evidence to indicate that order of reassessment was communicated to the party at any time prior to 16.03.2024, which as per Appellant is the date of receipt of Re-assessment orders in 22 Bills of Entry. Revenue could not produce any evidence of service of order on the Appellant on any earlier date. The

matter came up for hearing on 16-04-2025 wherein the Bench passed the following Misc Order No. 10282/2025 dated 16-04-2025.

"Learned Advocate points out that the issue in this case has been decided by Hon'ble Mumbai High court. Though from this bench some reference was also made to the Larger Bench but now a different view of Hon'ble Bombay High Court is available. Early hearing application is therefore accepted and the matter to come up on July 7th, 2025."

Appellant thereafter filed additional submissions on merits of its Appeal, which are as follows:-

2.1 The main issue involved in this Appeal is whether they are liable to pay duty along with Interest for the alleged violation of "Pre-Import Condition" in imports under Advance Authorization scheme (referred to as the AA scheme) during period of 13-10-2017 to 09-01-2019. The goods imported under Advance Authorisation scheme were actually utilised by appellant for manufacture of final products which were exported by following the procedure of filing Shipping Bills, export invoices etc. Therefore, there is no breach of prime condition of Advance Authorisation scheme about utilization of goods imported under Scheme for manufacture of finished goods exported, and physical incorporation of goods imported under scheme in export goods. The O-I-A deserves to be set aside considering merits against recovery of "interest".

2.2 Their Appeal Nos C/10228/2024 to C/10230/2024 on similar facts filed before CESTAT, Ahmedabad (different Constitution) were decided vide Final Order No. 11628-11630/2024 dated 23-07-2024 wherein demand for interest and imposition of redemption fine and penalty were set aside. Relevant para 5.10, 5.20, 6 and 7 of the said order are reproduced below:-

"5.10 We find from above provisions that for recovery of IGST on import of goods, provisions are made under section 3(7) of Customs Tariff Act 1975. However, no specific provision is made for recovery or charging of Interest, Fine and Penalty u/s 3(7) or 3(12) of Customs Tariff Act 1975 as compared to such similar provisions made under the Section 8B(9) and Section 9A(8) of Customs Tariff Act 1975. Such provisions u/s 9A(8) were introduced in Statute by The Finance (No. 2) Act, 2009 way back on 19-08- 2009. However, while introducing similar provisions post GST Regime under Section 3(7) or 3(12) of the Customs Tariff Act 1975, Government of India has not incorporated such provisions for recovery of the Interest, Fine and Penalty under Section 3(7) or Section 3(12) of Customs Tariff Act 1975. We are of the view that Interest, Fine & Penalty are separate/independent financial levies, and hence charging provision must be there in statute levying interest, fine, penalty is the mandate of settled law established by provisions for such separate and independent levy and decisions by the courts. Accordingly, we do not find and revenue has also not been able to show us such charging provision for levy and collection of –interest, Fine and Penalty for late payment of IGST leviable under Section 3(7) or under Section 3(12) of Customs Tariff Act 1975. Therefore, the orders for recovery of interest, fine and Penalty on late payment of the IGST during Reassessment

process of Bill of Entry for the period from 13-10-2017 to 09-01-2019 are without authority of law and the same are unsustainable."

.....

"5.20 We find that interest is recovered as per Para 5.2(c) of Circular No. 16/2023-Cus dated 07-06-2023, Appellant had no option, but, to pay –Interest|| along with IGST, if they wish to avail option to pay IGST in compliance to para 75 of decision dt. 28-04-2023 by Apex Court. We find that in this case, issue is IGST leviable under Section 3(7) of Customs Tariff Act 1975. Section 3(7) is charging section for IGST on goods imported into India, and it is a separate levy independent of Customs Duty leviable under Section 12 of Customs Act. Thus, the Circular No. 16/2023-Cus dated 07-06-2023 directing to charge applicable interest is ex-facie, contrary to provision for charging –interest|| u/s 3(7) of Customs Tariff Act 1975 and decisions of the Hon'ble Supreme Court, Punjab & Haryana High Court, Gujarat High Court, Bombay High Court and other decisions, as mentioned above. We observe that any Circular issued by CBIC would reflect only the views of Officers on any issue, but, law is also settled that decision by Court will always prevail over the views expressed in a CBIC Circular. The decisions of Hon'ble Supreme Court in the cases of 2002 (139) ELT-3(SC) - CCE, Vadodara vs Dhiren Chemical Industries and 2008 (12) STR-416(SC) - CCE, Bolpur vs Ratan Melting & Wire Industries shows that circular contrary to the statutory provisions has really no existence in the law."

"6. Since we decide these Appeals on the multiple counts, on merits and limitation, the other issues raised by the appellant are not taken up or discussed and the same are left open.

7. In view of our above discussion and findings, the impugned orders on confirmation of demands for interest and appropriation thereof, order of confiscation of goods, imposition of Redemption fine and penalty are not sustainable and the same are set aside. The appeals are allowed with consequential reliefs in the above terms. (Pronounced in the open court on 23.07.2024)"

In view of the foregoing, their eligibility and entitlement for Refund of "Interest amount" deposited on 31-08-2023 is established based on the provisions of Customs Tariff Act 1975, decisions thereon by various judicial forums, and as concluded by Hon'ble CESTAT's Final Order dated 23-07-2024 allowing Appellant's own Appeals against recovery of "Interest" for imports at ports at Ahmedabad, Mundra and JNCH. Therefore, mandatory conditions for allowing any Refund i.e eligibility, claim filed in time limit and no unjust enrichment are satisfied in Applicant's case.

2.4 After CESTAT's Final Order No.11628-11630/2024 dated 23-07-2024, in their case, on identical issue, co-ordinate Bench at Delhi also passed Final Order Nos.58005-58006/2024 dated 12.08.2024 taking contra view in cases of M/s Mayur Uniquoters Ltd and M/s JLC Electromet Pvt Ltd. Counsel empathetically submitted that in cases of M/s Mayur Uniquoters Ltd and M/s JLC Electromet Pvt Ltd, the judgments considered in the case of Chiripal Poly-Films Ltd have not been considered, hence, it

being Per-Incuriam and needs to be ignored. The Ahmedabad Bench, vide Interim Order No.37-39/2024 dated 03.12.2024 directed the Registry to place 3 appeals pertaining to Meghmani Organics Ltd., Filatex India Ltd. and Macro Polymers Pvt. Ltd. before Hon'ble President with following question to be answered by the Larger Bench, constituted by the Hon'ble President. The Larger Bench has so far not been constituted.

"Whether the importer is liable to pay interest, fine and penalties for non/delayed payment of IGST in case of non-compliance of pre-import condition under Notification No.18/2015-Cus with reference to Section 3(7) read with Section 3(12) of the Customs Tariff Act or otherwise?"

2.4 Appellant submits that RSEZ being non EDI Port, Re-assessment orders in 22 Bills of Entry were forwarded under RSEZ's letter dated 13-03-2024, which they received on 16-03-2024, in terms of section 153 of Customs Act 1962. CA-1 Appeals filed on 01-04-2024 are within the time limit of 60 days as permitted under section 128 of the Customs Act 1962. Therefore, CA-1 Appeals should have been decided on merits, whereas, the said CA-1 Appeals are rejected only on time limitation, without going into merits of this case.

2.5 It is a settled law that amendment in Bills of Entry by Order under Section 128 is not mandatory requirement in the law. The issue is no longer *res integra*. The Telangana High Court in *Sony India Pvt. Ltd. v. UOI [2022(379)ELT-588]* has considered the decision in the case of ITC Ltd reported at 2019(368)ELT-216(S.C.) and held that the amendment of Bill of Entry is clearly permissible even in a situation where goods are cleared for home consumption on the basis of documentary evidence in existence at the time of clearance of the goods. Therefore, it is settled that Provisions of Section 149 is an additional remedy available to Importers who seek amendment of Bills of Entry u/s 149 of Customs Act 1962 and Re-Assessment under Section 128 is not the only remedy available.

2.6 Hon'ble Supreme Court in the case of National Thermal Power Co Ltd v/s Commissioner of Income Tax, in **1998 (99) E.L.T. 200 (S.C.)**, held that Tribunal has jurisdiction to examine question of law which arises on facts, as found by authorities below, and having bearing on tax liability of assessee, even though said question was neither raised before lower authorities nor in appeal before Tribunal, but sought to be added later as additional ground by separate letter. In *Devangere Cotton Mills Ltd v/s Commissioner - 2006 (198) E.L.T. 482 (S.C.)*, Hon'ble Supreme Court

held that Tribunal has got wide power to hear and consider a new ground and decide appeal. In Utkarsh Corporate Service V/s. CCE & ST- 2014 (34) STR (35) (Guj), the Hon'ble Gujarat High Court also held that additional legal grounds can be raised before any authority. The Decision in 2000 (115) ELT-403 (Tribunal)-Godrej Foods Ltd vs CCE, supports this view. Such a view is also relied in following cases:-

- FORWARD RESOURCES (P.) LTD - 2022 (1) CEN 54 (Tribunal Ahmedabad)
- VATSAL RESOURCES PVT. LTD - 2022 (1) CEN 57 (Tribunal Ahmedabad)
- REYNOLDS PETRO CHEM LTD - 2022 (1) CEN 58 (Tribunal Ahmedabad)
- SHRESTH LEASING & FINANCE LTD- 2022 (1) CEN 64 (Tribunal Ahmedabad)
- SHREE KANKESHWARI ENTERPRISE - 2023 (9) CEN 77 (Tribunal Ahmedabad)
- SHRESTH LEASING & FINANCE LTD - 2023 (68) GSTL 143 (Tribunal Ahmedabad)
- VATSAL RESOURCES PVT. LTD - 2023 (68) GSTL 279 (Tribunal Ahmedabad)
- REYNOLDS PETRO CHEM LTD. - 2023 (68) GSTL 292 (Tribunal Ahmedabad)
- FORWARD RESOURCES PVT. LTD - 2023 (69) GSTL 76 (Tribunal Ahmedabad)

2.7 Appellant also submits that in a similar case, Writ Petition NO.19366 of 2024 filed b M/s A. R. Sulphonates Pvt Ltd vs UOI and others, challenging Order dated 01-08-2024 passed by the Commissioner of Customs (Adjudication) Mumbai 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. The Petitioner had also challenged Circular No.16/2023-Customs dated 07-06-2023 issued by CBIC to the extent it directed to levy interest for delayed payment of IGST in imports. The facts in that case are similar to this case for demand of interest, under Section 3(7) of Customs Tariff Act, 1975. The Hon'ble High Court considering all the facts and circumstances passed the following Order:-

"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 Customs Tariff Act, 1975 by Finance 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.

Appellant requests to consider this Appeal on merits considering the above mentioned decisions. The issue referred to Larger Bench for consideration is decided by Hon'ble Mumbai High Court in Writ Petition NO.19366 of 2024 filed by M/s A. R. Sulphonates Pvt Ltd vs UOI which is squarely applicable in this case.

2.8 It is settled law that when matter arises as to right of a party of remedy in Appeal, then, provision, being procedural, the law should lean in favour of Appellant, who comes before Hon'ble authority to pursue remedy, rather than person seeking to defeat the remedy, on technicalities. Appellant has a very strong case on merits by a clear decision dated 23.07.2024 of the Tribunal in their own case allowing their Appeal against recovery of "Interest" in import at the ports at Ahmedabad, Mundra and JNCH. Appellant in this case seeks directions to Re-assess the said 22 Bills of Entry u/s 149 of Customs Act 1962 and allow consequential refund of "Interest".

3. Revenue submissions in the matter:

Revenue in the matter while, reiterating findings submitted as follows:

3.1 The re-assessed Bills of Entry were handed over to the party on 31.08.2023 itself ie. the day on which these were re-assessed. The reason for saying so is that in case of import, a Bill of Entry is the only document under Rule 36 of the CGST, Rules, 2017 on the basis of which ITC is available to them, and the appellant had availed ITC on 31.08.2023 itself.

3.2 As directed by Bench on previous hearing, a letter was written to field formation (RSEZ) to provide some proof, dated acknowledgment, etc regarding handing over of re-assessed Bills of Entry to the appellant. Vide letter dated 13.03.2025, it was intimated that no dated acknowledgment could be traced out in the file. Another letter was written to get the comprehensive reply from concerned GST formation after making an inquiry as to on what basis the appellant availed subject credit on 31.08.2023. As per reply dated 21.04.2025 from RSEZ, the matter has been referred for inquiry to the field formation and reply is awaited.

3.3 The time limit to file an appeal before the Commissioner (Appeals) cannot be relaxed/condoned since it is a statutory requirement. The judgment in the case of Singh Enterprise 2008(221) ELT 163 (SC) has also been discussed in OIA in para 6.12. A strict application of the timeline provided in the statute has to be adhered to. The only question that

remains is whether there is any proof of handing over reassessed Bills of Entry to the appellant by the officers on 31.08.2023.

3.4 A dated acknowledgment is not the only piece of evidence which can prove that the order was served. If it is proven by any other evidence that the order was delivered, it would be sufficient. They draw support from the decision of Hon'ble Andhra Pradesh High Court in the case of CH. RAMAKOTAIAH VS ASSISTANT COMMR. OF C. EX. & S.T., VISAKHAPATNAM [2018 (359) E.L.T. 310 (A.P.)] which held that an acknowledgement card containing the signature of the assessee is not the only proof of service of the order. The court held that once delivery is proven, the burden to prove that they did not receive the order on time shifts to the assessee. Relevant paras are reproduced as under:

3. The Order-in-Original, which is challenged by the petitioner, is actually dated 28-8-2013. The petitioner has come up with a challenge to the Order-in-Original dated 28-8-2013, only after the respondents issued a garnishee notice on 1-6-2017. The claim of the petitioner in the writ petition is that the Order-in-Original was never served on the petitioner and that therefore, the petitioner was completely in the dark until a garnishee notice was served on the bank.

10. The reach of Section 37C cannot be extended to such an extent that unless an acknowledgement card containing the signature of the assessee is produced, the service of the Order-in-Original upon the assessee cannot be treated as completed. Once a registered letter or a speed post is proved to have been submitted at the post office and the necessary registration fee or speed post fee paid therein, a presumption would normally arise that in due course, the said registered letter reached the addressee in 48/72 hours. The online tracking system provided by India Post is nothing but a proof of such delivery in an electronic form. Once the website of the India Post shows that the article sent by the Department was delivered to the addressee, the burden of proving that the Order-in-Original was served on the assessee, is discharged by the Revenue. Thereafter, burden shifts to the assessee to show that despite the entry in the online tracking system, they did not receive the copy of the order. Facts of the instant case are identical in as much as possession of reassessed Bills of Entry as on 31.08.2023 is proven from the fact that ITC was availed on the same date. It cannot have any explanation other than the fact that re-assessed Bills of Entry were handed over i.e. communicated to the appellant on 31.08.2023 itself.

3.5 The Circular No 16/2023 dated 07.06.2023 was issued on the directions of Hon'ble Supreme Court after judgment in Cosmo Films vide which Pre-import conditions were upheld, prescribing the process by which the importers could avail ITC. **The Circular categorically prescribed that in case of import, TR-06 challan is not the proper document to avail ITC and it can be availed on the basis of Bill of Entry.** As this Circular was issued on the directions of Hon'ble Supreme Court, it was required to be followed by the importers, and therefore, ITC could not be

availed on the basis of TR-06 challan as claimed by the appellant, since it was not a prescribed document to do so under GST Rules. Availment of ITC on 31.08.2023 clearly means that reassessed Bills of Entry were available with the appellant on that date and same were handed over by the department immediately after reassessment.

3.6 Though a dated acknowledgment would be direct evidence proving service of order on 31.08.2023, circumstantial evidences have equal weight in case of absence of direct evidence and when the circumstantial evidences are irrefutable. Circumstantial evidences are considered even in criminal proceedings where the evidences are evaluated even more strictly since the prosecution has to prove a case beyond any doubt. In revenue matters, circumstantial evidences are considered even if direct evidences are not there. He relies on following cases:

A. RAJENDRA JAGANNATH PAREKH Versus COMMISSIONER OF CUSTOMS, AHMEDABAD [2004 (175) E.L.T. 238 (Tri. Mumbai)]

It was a case of smuggling of Gold and commenting on circumstantial evidence, Hon'ble Court held as under:

26. There is an essential difference between "burden of proof" as a matter of law and pleading and as a matter of adducing evidence. The burden in the former sense is upon the party who invites a decision in the existence of certain facts which he asserts. This burden is constant and never shifts. But the burden to prove in the sense of adducing evidence, ie, onus of proof shifts from time to time having regard to the evidence adduced by one party or the other, or the presumption of fact or law raised in favour of the one or the other. Such shifting of onus is a continuous process in the evaluation of evidence. When sufficient evidence either direct or circumstantial in respect of its contention is disclosed by the revenue adverse inference could be drawn against the assessee if he fails to rebut it by materials in his exclusive possession. It is only on the application of the principles of shifting onus, the rule relating to burden of proof in Section 106 and the presumption that may be drawn under Section 104 of the Evidence Act can sustain

[AIR 1961 SC 1474; AIR 1964 SC 136; AIR 1966 SC 1867; 1983 (13) E.L.T. 1489 AIR 1972 SC 2136; 1546 (S.C.) AIR 1974 SC 859; 1983 (13) 3(13) [E.L.T.](#) 1558 (S.C.) AIR 1975 SC ELT. 1603 (S.C.) AIR 1975 SC 182; 5083 and 1983 (13) [E.L.T.](#) 1620 referred to].

27. Applying the above maxim as laid down by the Apex Court to the present brought out that restricted/prohibited goods were brought into the country without licence, it is observed that the department by adducing circumstantial evidence has a valid case.

B. STATE OF MAHARASHTRA Versus NATWARLAL DAMODARDAS SONI [1983 (13) E.L.T. 1620 (S.C.)]:

On circumstantial evidences, Hon'ble Supreme Court held as under:

19. It is to be noted that in Labhchand's case (ibid), Section 123 of the Customs Act was not applicable, as the seizure of the gold was by the police and not by the Customs Officer. The Courts in that case did not use this presumption under Section 123 of the Customs Act against the appellant. They relied upon the

circumstantial evidence to raise the necessary inference with regard to the character of the gold seized and the possession of the requisite mens rea by the accused. The ratio of Labhchand's case (ibid) applies a fortiori, to the facts of the case before us.

C. COLLECTOR OF CUSTOMS, MADRAS AND OTHERS Versus D. BHOORMULL [1983 (13) E.L.T. 1546 (S.C.)]:

It was a case of gold smuggling and proceedings under Customs Act. On circumstantial evidence, Hon'ble Supreme Court held as under:

43. If we may so with great respect, it is proper to read into the above observations more than what the context and the peculiar facts of that case demanded. While it is true that in criminal trials to which the Evidence Act, in terms, applies, this section is not intended to relieve the prosecution of the initial burden which lies on it to prove the positive facts of its own case, it can be said by way of generalisation that the effect of the material facts being exclusively or especially within the knowledge of the accused, is that it may, proportionately with the gravity or the relative triviality of the issues at stake, in some special type of case, lighten the burden of proof resting on the prosecution.

44. These fundamental principles, shorn of technicalities, as we have discussed earlier, apply only in a broad and pragmatic way to proceedings under Section 167(8) of the Act. The broad effect of the application of the basic principle underlying Section 106, Evidence Act to cases under Section 167(8) of the Act, is that the Department would be deemed to have discharged its burden if it adduces only so much evidence, circumstantial or direct, as is sufficient, to raise a presumption in its favour with regard to the existence of the fact sought to be proved. Amba Lal's case, (1961) 1 SCR 933-1983 E.L.T. 1321, was a case of no evidence. The only circumstantial evidence viz. the conduct of Amba Lal in making conflicting statements, could not be taken into account because he was never given an opportunity to explain the alleged discrepancies. The status of Amba Lal viz. that he was an immigrant from Pakistan and had come to India in 1947-before the customs barrier was raised-bringing along with him the goods in question, had greatly strengthened the initial presumption of innocence in his favour. Amba Lal's case thus stands on its own facts.

3.6 Ratio of above 3 case laws is squarely applicable in this case. The department has irrefutable circumstantial evidence that the party possessed re-assessed Bills of Entry on 31.08.2023 itself, which can only mean that they were supplied i.e. communicated the same by the department. When circumstantial evidence is irrefutable, it is sufficient cause to not allow a delay which is not permissible under the statute since the Commissioner (Appeals) cannot condone a delay of more than 90 days under the Act.

3.7 In the present case, the balance of probability is in favor of revenue for two reasons:

(A) The matter (IGST exemption and Pre-import condition) was under litigation before Hon'ble Supreme Court in which the present appellant was also a party. The Hon'ble Supreme Court held the matter in favor of revenue. But since the appellants were enjoying interim orders, the Hon'ble Court allowed a refund in the matter on a case-to-case basis. For this, the Hon'ble Court directed the revenue to issue a circular prescribing procedure to avail ITC or a refund. Circular was issued on 07.06.2023 clearly mentioning that

as per GST Rules, ITC is not available on the basis of TR-06 challan since it was not a prescribed document in the GST Rules. The appellant, being a litigant in the matter, cannot claim that they did not have any knowledge of the circular.

(B) When GST Rules and a specific circular are in place, it has to be considered that any ITC availed must be on the basis of a reassessed Bill of Entry. "Standard of Proof is different in Civil matters and Criminal matters. In Criminal matters, the standard of proof is "beyond a reasonable doubt" while in civil matters, the standard of proof required is derived from "Preponderance of probability/evidence". It is to be seen whether a proof is sufficient to tilt the balance of probability in one's favour or not.

3.8 There is no statutory requirement to take a signature while handing over the order (reassessed Bills of Entry in this case). The responsibility cast upon the revenue is service of order, which can be done by hand also. When both parties (the revenue and the appellant) are making contrary claims, the evidences presented by both sides should be evaluated. In revenue/civil matters, evaluation of evidence is on the basis of "Preponderance of probability" which certainly is in favour of revenue in view of the fact that the ITC was availed on 31.08.2023 and the only way to avail it as per GST Rules and the Circular issued by the department was the possession of reassessed Bill of Entry. There are various judicial pronouncements, including those of Hon'ble Supreme Court, which make it clear that the principle of "Preponderance of probability can be applied in revenue/civil matters while evaluating the evidences available. Few such case laws are as under:

(i) In Govt of Goa Pr Chief Sec. Vs Maria Julieta Dsouza (D), in Civil Appeal No 722 of 2016, the Hon'ble Supreme Court held as under:

8. On law, the position is as follows. There is a clear distinction between burden of proof and standard of proof. This distinction is well-known to civil as well as criminal practitioners in common law jurisprudence. What Ms. Ruchira sought to point out is that the documents relied on by the plaintiff did not point out the existence of title at all. She is right to the extent that no single document in itself concludes title in favour of the plaintiff, but this is not an issue of burden of proof. This is a matter relating to the sufficiency of evidence. While inquiring into whether a fact is proved, the sufficiency of evidence is to be seen in the context of standard of proof, which in civil cases is by preponderance of probability. By this test, the High Court has correctly arrived at its conclusion regarding the existence of title in favour of the plaintiff on the basis of the evidence adduced.

In the present case, revenue has discharged the burden of proof of service of order by providing irrefutable evidence that the appellant was in possession of the reassessed Bill of Entry. Once ITC is availed as per GST Rules, the only conclusion that can be drawn is that they were handed over reassessed Bills of Entry by the officers, as claimed by the revenue.

(ii) In COMMISSIONER OF CUSTOMS (AIRPORT & ADMINISTRATION) Versus MARICO LOGISTICS PVT. LTD. [[2023] 2 Centax 129 (Cal.)],

In this case, Customs Broker License was revoked by the original authorities and Tribunal ruled in favour of the appellant since statements of various persons were inconsistent with each other. Para 4 of the judgment of Hon'ble High Court is reproduced as under.

4. On perusal of the order passed by the tribunal, we find that relief has been granted to the respondent on the purported ground that the statements recorded from various persons are inconsistent with each other. On reading of the impugned order, we get a feeling that the tribunal assumed the role of a criminal court examining the case of an accused, who has been charged of a criminal offence such as an offence under the Indian Penal Code. The tribunal lost sight of an important fact that what is called in question before it is the correctness of an order passed by the Commissioner of Customs revoking a licence granted to the respondent under the provisions of the CBLR 2013. The other legal principle which has been ignored by the tribunal is that, in cases like that of the case on hand requirement is not proof beyond reasonable doubt and action can be initiated by applying the principles of preponderance of probability.

Hon'ble Court appreciated the fact that standard of proof in proceedings under Customs Act is on the basis of "Preponderance of probability" and not "proof beyond reasonable doubt". Hon'ble court held as under:

12. While on this issue it is educative to refer to the decision of the Hon'ble Supreme Court in M. Siddiq (Ram Janmabhumi Temple-5, J.) v. Suresh Das [2020] 1 SCC 1 whereunder the law on the standard of preponderance of probabilities was explained:-

.....

720. In Miller v. Minister of Pensions, Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms: (All ER p. 373 H)

"(1) It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable the case is proved beyond reasonable doubt, but nothing short of that will suffice." (Emphasis supplied)

721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, L.J. in Bater v. Bater 1951 P 35 (CA), where he formulated the principle thus:)p.37)

"....So also in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter.

....

723. Proof of a fact depends upon the probability of its existence. The finding of the court must be based on:

723.1. The test of a prudent person, who acts under the supposition that a fact exists.

723.2. In the context and circumstances of a particular case.

724. Analysing this, Y.V. Chandrachud, J. (as the learned Chief Justice then was) in *N.G. Dastane v. S. Dastane* ([1975] 2 SCC 236) held: (SCC pp. 335, para 24)

The belief regarding existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact /situation will act on the supposition that the fact exists, if on weighing the various probabilities he find that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second is to weigh them, though the two may often be intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies, Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note: the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue (Per Dixon, J. in *Wright v. Wright*, (1948) 77 CLR 191 (Aust)), CLR at p. 210; or as said by Lord Denning, the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear (*Blyth v. Blyth*, 1966 AC 643: (1966) 2 WLR 634: (1966) 1 All ER 524 (HL)). All ER at p. 536'. But whether the issue is one of cruelty or of a loan on a pronote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally is the standard of proof to apply for finding whether the burden of proof is discharged." (Emphasis supplied)

Applying the test laid down as above, we have no hesitation to hold that there exists more than sufficient probabilities to pin down the respondent on the charge of violation of CBLR, 2013. In the present case, after the GST Rules and a specific circular, if ITC has been availed, the proposition that the appellant did not have a reassessed Bill of Entry is impossible, which is the first thing to be weeded out as per the above judgment. In this case, there are only two possibilities i.e., either they received the reassessed Bills of Entry on 31.08.2023 or else they did not. When the possibility of not possessing i.e., not receiving the reassessed Bill of Entry, is weeded out, the only possibility that remains is that they were handed over the reassessed Bill of Entry by Customs Officers.

(iii) In PARLE BISLERI PVT. LTD. Vs COMMR. OF CUS. & C. EX., AHMEDABAD [2011 (263) E.L.T. 15 (S.C.)],

In this case, the benefit of Notification 1/93 was under dispute, and revenue claimed that the benefit was not available to the party in case the aggregate value of clearance by a manufacturer from one or more factories was more than Rs. 200 lakh in the preceding financial year. Revenue claimed that Parle Bisleri Pvt Ltd, Parley Exports Ltd and Parle International Ltd should be treated as one manufacturer and their clearances should be clubbed. On the other hand, the appellant claimed to have distinct legal existence of all companies and that they should be treated independent. On this, Hon'ble Court held as under:

12. What this Court was emphasizing in the aforesaid decision was not only the fact that Circular 6/92 has no effect upon commencement of Notification No. 1/93, but also the fact that the distinct legal nature of Companies cannot be used as eyewash to portray its independent nature. Where the companies are indeed interdependent and possibly even related through financial control and management, the value of clearances has to be clubbed together in the interests of justice. The operation of Circular 6/92 admittedly protected entities like the appellant prior to the commencement of Notification No. 1/93, but certainly not after the same. In this case, this Court has been presented with a preponderance of evidence to suggest that the companies are related not only in terms of financial control, but also through management personnel, In Modi Alkalies & Chemicals Ltd. & Ors (supra) this Court has held that two basic features which prima facie show interdependence are pervasive financial control and management control. We, therefore, proceed to apply the said two tests to the facts of this case.

Hon'ble court dismissed the appeal filed by the party on the basis of "Preponderance of evidence".

(iv) COMMISSIONER OF C. EX., PANCHKULA VS VARDHMAN STRIPS (P) LTD. [2017 (350) E.L.T. 474 (P & H)]

The case was that the invoices were issued without actual movement of goods. Revenue proved that the firms to which the goods were claimed to have been transferred did not exist. Hon'ble High Court of Punjab & Haryana ruled that once revenue proves that the units to which the goods are claimed to have been transferred are found non-existent, the onus shifts to the party to prove that the goods were actually transferred to such units, although the initial onus of proving the case was on the department. Since probability of evidence was found to be in favour of the department, the issue was decided in favour of revenue on the basis of "Preponderance of probability". Relevant paras are reproduced as under.

10. A perusal of the order recorded by the CESTAT reveals that it has placed onus on the department to prove that the transaction did not involve physical transport or transfer of goods and has relied upon the statement made by Shri R.K. Gupta that transactions below six metric tonnes were valid. Admittedly, the respondents received goods which were less than six metric tonnes. A perusal of the provisions of the statute reveals that initial onus to establish culpability or violation vis-a-vis provisions of the Act lies upon the department but once the department prima facie proves the culpability of a dealer, the onus to prove that the transaction is legal and valid shifts to the dealer. A perusal of the original statement made by Shri R.K. Gupta as detailed in the order-in-original, reveals

that the respondents were not named as beneficiaries of fraudulent MODVAT/CENVAT credit. The respondents came into the picture only after various invoices and accounts of Shri R.K. Gupta were checked and it was found that goods had been delivered to the respondents namely;- Invoice No. 65, dated 7-2-2000, No. 75, dated 11-2-2000, No. 93 and No. 94, dated 13-3-2000, No. 45, dated 6-7-2000 and on that basis they had availed MODVAT credit. The respondents stated that the goods were actually received by them and submitted copies of G.R. No. 9798, dated 7-2-2000, No. 9828, dated 11-2-2000, No. 9858, dated 13-3-2000 of Paradise Tempo Transport Service, Bata Chowk, Faridabad and GR No. 923 of Golden Transport Co., Nehru Ground, NIT, Faridabad.

11. Admittedly, the transactions are less than six metric tonnes and goods were transported by Paradise Tempo Transport Service and Golden Transport Company. The order-in-original clearly records that Shri R.K. Gupta has stated that Paradise Tempo Transport Services and Golden Transport Company are non-existent. The statement made by the respondents is that the goods received were transported by these transport companies. The respondents were, therefore, required to prove the existence of these companies. The respondents have not offered any explanation as to how goods received by them could be transported by non-existent companies and, therefore, cannot hide behind the onus placed on the department.....

In the present case, the department has discharged the burden that the order was handed over. Even if it is considered the initial burden of proof, it is for the appellant to prove that they did not receive the order. The balance of evidence is conclusively in favour of the revenue and therefore, the ratio of above judgments is applicable. In view of the above judgments, following the principle of "preponderance of probability", the appeal is liable for rejection.

3.9 The case laws relied on by the appellant are not applicable since delay was condoned for following reasons:

(a) The service of order could not be proved by the department. Either the chain of proofs was incomplete, or else the order was served on some other person other than the party.

(b) The delay was within condonable limit of the Commissioner (Appeals) which was allowed in the interest of justice.

(c) The order was not served at all.

In none of the judgments relied upon has it been held that only a dated acknowledgment is required to prove service of order. Evidences were either insufficient or else they did not exist. Tribunals have not allowed delay beyond the statutory limit despite having irrefutable evidence of service of the order. In the present case, there is irrefutable evidence that reassessed Bills of Entry were handed over to the appellant on

31.08.2023, and there cannot be any other possibility. Therefore, the appeal may be rejected.

4. On 25.07.2025, the Revenue's submissions were with regard to limitation only since Commissioner (Appeals) did not record findings on merits of the case, and a statutory time limit cannot be exempted. A reassessed Bill of Entry is an appealable order[ITC Limited-2019 (368) ELT 216 (SC)], and there is conclusive proof that the reassessed Bills of Entry was received by the party on 31.08.2023. However, as per directions of Hon'ble Bench, case laws contrary to the case laws relied upon by the appellant are as under:

4.1 The Appellant has relied on the decision of Hon'ble Bombay High Court in A. R. Sulphonates Pvt. Ltd. case to argue that interest should not be levied on IGST. All the judgments in favour of the party, including the above-mentioned judgment of Hon'ble Bombay High Court, are based on Mahindra and Mahindra (Supra) judgment reported at 2022 (10) TMI 2012 in which it was held that interest is a substantive liability which cannot be imposed without a separate authority of law in the Customs Act. Provisions of the Customs Act cannot be imported to demand interest on IGST. The same arguments were in the case of CVD and SAD also where it was argued that these are the duties imposed under the Customs Tariff Act, and there is no provision in the Customs Act by which the interest, RF & Penalty can be demanded. Various judicial forums have taken divergent views on the issue, some of which in favour of revenue are as under:

(a) KBS Industries Ltd &Anr. Vs The Customs Central Excise And Service Tax Settlement Commission Principal Bench New Delhi &Ors. [2025 (1) TMI 962 - DELHI HIGH COURT]:

The case is about demand of interest for the exemption granted under Notification No 18/2015 – Cus dated 01.04.2015. It is held that exemption notification is issued under Section 25 of the Customs Act, which provides for payment of interest in case of failure to observe the conditions. Therefore, it does not matter whether enabling provision for the demand of interest has been provided in the Customs Act or not.

(b) M/s JLC Electromet Private Limited Vs Commissioner, Customs, Jodhpur, HeadquartersJaipur[2025 (4) TMI 1100 - CESTAT NEW DELHI]

"IGST is not a duty of Customs but levied under the IGST Act. Therefore, interest payable under Section 50 of the IGST Act, 2017 is applicable, and there is no need for substantial provisions of interest in the Customs Act."

(c) M/s TEXMACO RAIL ENGINEERING LTD vs COMMISSIONER OF CUSTOMS (PORT) [2024-TIOL-71-CESTAT-KOL]:

“CVD is a Customs Duty and hence, interest is applicable as provided in the Customs Act.”

(d) VEDANTA LIMITED Vs UNION OF INDIA [2018 (19) G.S.T.L. 637 (Mad.)]

Hon’ble Madras High Court, while deciding whether Pre-import condition is applicable or not, has clearly held that IGST imposed during import is under IGST Act, and not under Customs Act or Customs Tariff Act. Hon’ble CESTAT Delhi has also been taking the same position of law on this issue and deciding the issue in favour of the revenue.

Relevant portion of the order is reproduced as under:

12.....The pleading that there is no reason for differential treatment of BCD and IGST under AA Scheme is ill founded. BCD is a levy at the customs point of import and ends there. No credit flows in the supply chain. But IGST is levied at multiple points including point of import and the credit flows along the supply chain till consumption. Therefore, a differential treatment is necessary and therefore a DFIA scheme is carved out in the FTP. IGST is levied under the IGST Act, 2017 and for convenience, it is collected at the customs point through the machinations under the relevant Customs Acts and therefore the contentions of primacy of one act over the other is not tenable. The N.S. Ratnam Case is not relevant as the treatment of post exports and pre exports is discernible and intelligible. More so, under the AA Scheme for post exports in the GST regime, the exemption is deferred to the point of export. For the discussions regarding revenue risks and the difficulty in arriving at the real time exemption allowance for issue of AAs under the post export scheme, the Roopchand Adlakha case and P.R. Sriramulu case law is totally distinguishable. The principles of Fex Non Cogitadimpossibilia does not apply in this case as the scheme is an option and not a compulsion. Therefore, Raj Kumar Dey case relied by the petitioner is of no avail to them. The decision of the Hon’ble High Court of Delhi in the case of Narendra Plastic and Others [[2017 \(4\) G.S.T.L. 439](#) (Del.)] following the decision in Jindal Dychem Industries Private Limited [[2018 \(17\) G.S.T.L. 222](#) (Del.)] pertains to issues raised before the issue of the impugned amendment notifications and therefore distinguishable. In view of no perversity or arbitrariness is made out in the impugned notifications, the necessity to import the principles laid down in the decisions of the Delhi Development Authority case, Laxmi Khandsari case, Jai Singh Case and Welfare Association ARP v. Ranjit P. Kohil case into the instant case does not arise. As discussed, since GST is a self-contained law with a more rational and modern tax policy the case of Food Corporation of India will support the case of the revenue than the petitioner.

4.3 The matter has already been referred to the larger bench by this Hon'ble Tribunal in MEGHMANI ORGANICS LTD Vs Commissioner of CUSTOMS - Kandla Customs [Final Order No 10627 of 2024-DB dated 03.12.2024]. Therefore, merits of the case be kept open, if Hon'ble Bench decides to remand the matter.

5.1 In rejoinder, Appellant while reiterating their earlier submissions submitted that learned AR was allowed sufficient time to show evidence of service of reassessment orders said to have been made on 31-08-2023. Revenue, though contended that there is conclusive proof of receipt of reassessed Bills of Entry by the party on 31.08.2023, but, no such conclusive "**evidence**" has been produced to show communication of Re-assessment orders, as per section 153 of the Customs Act. Revenue has not discharged its mandatory obligation to show "evidence" of communication of Re-assessment orders as per section 153 of the Customs Act. They produced Affidavit by Authorised signatory Shri Purvang A. Talati showing receipt of Re-Assessment Orders on 16-03-2024 forwarded under letter dated 13-03-2024 from RSEZ. The impugned O-I-A has taken incorrect view that Appellant has filed Appeal beyond 91 days permitted u/s 128 of Customs Act 1962. The Appellant also requested for issue of speaking order u/s 17(5) of the Customs Act 1962 and to Re-assess the said Bills of Entry u/s 149 of the Customs Act 1962 but neither any speaking Order u/s 17(5) nor any Re-assessment u/s 149 of Customs Act 1962 has been made. Therefore, on receipt of copies of 22 Bills of Entry on 16-03-2024, under covering letter dated 13-03-2024, Appellant filed Appeals on 01-04-2024 which is within time limit of 60 days. The case law of [ITC Limited-2019 (368) ELT 216 (SC)], will start from the date of communication of 22 Re-assessed Bills of Entry **i.e. from 16-03-2024**. The impugned O-I-A has taken incorrect view that CA-1 Appeals were filed beyond 91 days and rejected CA-1 Appeals without considering the case on merits. They submit following correspondences and some more decisions to support their submission in case in aspect of Service of Order :-

- (i) Appellant's letter dated 31-07-2024 to DC/AC, RSEZ, Jamnagar with his reply dated 20-08-2024 thereon and Appellant's further submissions dated 02-09-2024 made before the Commissioner of Customs (Appeals), Ahmedabad in Appeals filed before him.
- (ii) Order dated 04-06-2025 in case of defect D. No. 10038/2025 in Appeal by Rajesh Parmanandbhai Shukla
- (iii) M/s Vijay Pratap -2025 (3) TMI 963 - Chhattisgarh.
- (iv) Sunny Textiles - 2009 (247) E.L.T. 304 (Tri. - Ahmd.)-
- (v) Hotline Electronics Ltd. - 2019 (369) E.L.T. 1579 (Tri. - All.)
- (vi) R.P. Casting Pvt. Ltd. - 2016 (344) E.L.T. 168 (Raj.) Cestat, New Delhi
- (vii) Haldiram India Pvt. Ltd. - 2007 (220) E.L.T. 526 (Tri. - Del.)

- (viii) Vt Dyers And Screen Printers - 2006 (206) E.L.T. 884 (Tri. - Chennai)
- (ix) Rajshree Dyeing & Printing Mills Pvt. Ltd. - 2005 (190) E.L.T. 9 (Guj.)

5.2 During hearing on 25-07-2025, Ld AR sought time to place on record decision of Hon'ble Delhi High Court in W. P. (C) 10505/2024 & CM APPL. 43170/2024 dated 13-01-2025 in case of KBS Industries Ltd. in which decision of Hon'ble Bombay High Court in case of M/s A R Sulphonate Pvt. Ltd. has also been considered. In KBS case, it has been held that case has held that the order of Settlement Commission is a settlement that must be accepted in its entirety. The provisions contained in the scheme are for settlement of cases and not for adjudication of disputes. It is not open for an applicant to dissect the order passed by Settlement Commission or to seek merit review of such an order. Accordingly, Hon'ble High Court dismissed the said petition filed by KBS Industries Ltd. The said decision is dated 13-01-2025, whereas decision in case of M/s A R Sulphonates Pvt. Ltd. has been issued on 09-04-2025. Hence, decision dated 13-01-2025 could not have considered decision dated 09-04-2025. Moreover, decision in KBS case relates to different facts and hence it is not applicable here. The decision dated 09-04-2025 has also considered the decision in the case of Mahindra and Mahindra (cited supra) (also confirmed by Hon'ble Supreme Court vide 2023 (8) TMI 135-SC) and decision of Hon'ble Supreme Court in CCE v/s Orient Fabrics Limited - 2003 (158) ELT 545 (SC). Therefore, decision dated 09-04-2025 is on much better footing to decide the issue in question. Decision in ITC Limited -2019(368)ELT-216(S.C.) referred by the Revenue shows that Appeal u/s 128 can be filed on Re-assessed Bills of Entry, but when Revenue has not communicated the said 22 Re-assessed Bills of Entry till 16-03-2024, proposition of this case law is not applicable.

5.3 Appellant submits that O-I-A issued only on time limitation for filling Appeals, deserves to be set aside considering merits against recovery of "interest" in the interest of justice. Deposit of interest is not as per law in Customs Tariff Act 1975. The provisions for recovery of "Interest" were not existed/included in section 3(7) or 3(12) of Customs Tariff Act 1975 at the relevant time and therefore, interest amount deposited and recovered is also against the Article 265 of The Constitution of India, which has stipulated that No Tax/Duty can be collected without the authority of law in force.

5.4 The proper officer has not issued Speaking Order in terms of section 17(5) of Customs Act 1962, though Interest was deposited under protest

and Appellant requested to issue Speaking Orders. Appellant vide its letter dated 25-01-2024 has requested to allow further amendment in Bills of Entry under section 149 of Customs Act 1962, enabling them to resort to legal remedies available under the Customs Act 1962 as this would have allowed them to proceed to resolve financial burden being faced w.e.f 31-08-2023. However, no such speaking order u/s 17(5) or amendment in Bill of Entry u/s 149 of Customs Act 1962 is issued.

5.5 Appellant again submits that the officers had not delivered the Orders of Re-assessment in Bills of Entry, in terms of section 153 of Customs Act 1962 till forwarded under RSEZ's letter dated 13-03-2024, which Appellant had received only on 16-03-2024. CA-1 Appeals were filed on 01-04-2024 which were within the permitted time limit of 60 days u/s 128 of the Customs Act 1962 and so appeals should have been decided on merit. Their Appeal Nos C/10228/2024 to C/10230/2024 on similar facts filed before Hon'ble CESTAT, Ahmedabad (different Constitution) were decided vide Final Order No. 11628-11630/2024 dated 23-07-2024 wherein demands for "interest" and imposition of Redemption Fine and Penalty were set aside as mentioned supra in para 2.2.

5.6 In view of the foregoing, eligibility and entitlement of Refund of interest amount deposited under protest on 31-08-2023 is established based on the provisions of Customs Tariff Act 1975, decisions thereon by various judicial forums, including decision dated 23.07.2024 by this Tribunal in their own case. Appellant has filed this Appeal to get Refund of Rs. 1,45,37,545/- in respect of deposit of Interest on 31-08-2023 at RSEZ.

5.7 Appellant submits that in case of Karnataka Power Corporation Ltd vs Commissioner Cus(Appeals), Chennai reported at 2002 (143) E.L.T. 482 (S.C.), it has been held that assessee sought amendment to the claim before the Assistant Collector itself, thus, he ought to have been considered and decided it. Order of the lower authorities were set aside and matter to be decided afresh by Assistant Collector. In facts of this case, to pursue its legal remedies enabling to claim Refund, Appellant vide letters dated 25-01-2024 requested Officers of RSEZ, to decide first on issue Speaking Order u/s 17(5) and also the Amendment of Re-Assessed Bill of Entry u/s 149 of Customs Act 1962. The appellants letters dt. 25-01-2024 were enabling to claim Refund of "Interest" which was not payable but paid on 31-08-2023. Appellant has rightly availed option to

initiate/pursue its legal right for enabling it to claim refund on the cause of action.

5.8 It is a settled law that amendment in Bills of Entry by Order under Section 128 is not mandatory requirement in law. The issue is no longer *res integra*. The Telangana High Court in *Sony India Pvt. Ltd. v. UOI* [2022(379)ELT-588] has considered the decision in case of ITC Ltd v/s Commissioner 2019(368)ELT-216(S.C.) and held that amendment of Bill of Entry is clearly permissible even in a situation where goods are cleared for home consumption on the basis of documentary evidence in existence at the time of clearance of the goods. Therefore, it is settled that Provisions of Section 149 is an additional remedy available to Importers like Appellant who seek amendment of Bill of Entry u/s 149 of Customs Act 1962 and Re-Assessment under Section 128 is not the only remedy available. This Tribunal being highest fact finding authority has jurisdiction to examine question of law which arises on facts and having bearing on tax liability of assessee.

5.9 Appellant submits that M/s A. R. Sulphonates Pvt Ltd vs UOI and others vide Writ Petition NO.19366 of 2024, challenged Order dated 01-08-2024 passed by Commissioner of Customs (Adjudication) Mumbai 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. Circular No.16/2023-Customs dated 07-06-2023 issued by CBIC was also challenged to the extent it directed to levy interest for delayed payment of IGST in imports. The facts in that case are identical/similar to this case for demand of interest, under Section 3(7) of Customs Tariff Act, 1975, in alleged violation of "Pre-Import Condition" in imports of goods against Advance Authorisation. Para 76 and 77 of the said order is reproduced as under:-

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

- (vi) 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;
- (vii) 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;
- (viii) It is declared that the amendment to the provisions of Section 3 (12) of Customs Tariff Act, 1975 by Finance Act, 2024 dated 16th August, 2024 is prospective in nature and is applicable only from 16th August, 2024 onwards;
- (ix) Rule is made absolute in the aforesaid terms;

- (x) 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.]”

Thus, Circular No.16 of 2023-Cus dt. 7th June, 2023, for levy of interest payment, is held beyond the provisions of Customs Tariff Act, 1975 and is bad in law by the Hon’ble High Court and by the CESTAT, Ahmedabad. They pray to consider this Appeal on merits considering the above mentioned decisions.

5.10 The issue referred to Larger Bench for consideration is decided by the Hon’ble Mumbai High Court on 09.04.2025 in Writ Petition NO.19366 of 2024 filed by M/s A. R. Sulphonates Pvt Ltd vs UOI which is squarely applicable in this case. This decision being the latest decision is always better than the earlier ones on principle of “later is better”. Therefore, the precedent value of the same is much more than any other decisions placed on record in this connection. Regarding prayer of the Revenue to keep merits of the case be kept open, if Hon’ble Bench decides to remand the matter, the Appellant submits that when the issue has been decided in their own case and supported by various other decisions on same issue, their matter can be taken on merits as the Hon’ble Bench deems it fit.

5.11 It is settled law that a decision in appellant’s own case becomes a Law for the Appellant & Revenue. They rely upon following decisions :-

- G.S.F.C. Ltd vs CC, Ahmedabad - 2001 (138) E.L.T. 791 (Tri. – Mumbai) :-
“Appellate Tribunal - Inherent powers - Control over Departmental authorities - Earlier orders holding Applicant to be entitled to refund, having been passed by the Tribunal in exercise of the powers under Section 129B(1) of the Customs Act, 1962, directions issued to Jurisdictional Commissioner under Rule 41 of the CEGAT (Procedure) Rules, 1982 to grant refund pursuant thereto. [paras 6 & 7]”
- 2014 (305) E.L.T. 282 (Guj.) - E.I. DUPONT INDIA PVT. LTD vs UOI:-
“Binding decisions of higher appellate authorities/Courts on identical questions of law repeatedly ignored by lower authorities despite clear and specific and authoritative pronouncements to this effect by higher authorities/Courts - C.B.E. & C. directed to issue a detailed circular to all adjudicating authorities as to binding effect of orders passed by higher appellate authorities/Courts. [[2013 \(298\) E.L.T. 451 \(Guj.\)](#); 2007 (210) E.L.T. 678 (Bom.); 1991 (55) E.L.T. 733 (S.C.) relied on]. [paras 6.1, 6.2]”
- Appellant also submit that the decision of the Hon’ble CESTAT in their own case becomes final law for the Appellant/Respondent, irrespective of its correctness. Respondent submit that Hon’ble Supreme Court of India [AIR 1990 SUPREME COURT 334] in the case of Supreme Court Employees' Welfare ... vs Union Of

India (Uoi) And Anr. on 24 July, 1989 has also held that, if the question of law is related to the fact in issue, an erroneous decision on such a question of law may operate as res judicata between the parties in a subsequent suit or proceeding, if the cause of action is the same. Assuming that the question of jurisdiction involved. Assuming that the judgments of the Delhi High Court are erroneous, such judgments being on questions of fact would still operate as res judicata between the same parties in a subsequent suit or proceeding over the same cause of action."

- Hon'ble Jammu & Kashmir High Court in the case of Abdul Salam vs State Of Jammu And Kashmir, on 23 September, 1980 Equivalent citations: AIR 1981 J K 21 has also held that the rights which have become final as a result of a judgment delivered by a competent court cannot be washed away by a subsequent interpretation in a different cause. The correctness or otherwise of the earlier decision is wholly irrelevant where the conditions for the application of the rule of res judicata are satisfied in the latter case."
- CCE Vs GSFC Ltd. 2001 (43) RLT-270 (Guj) – "decision of Court or Appellate Tribunal, unless set aside by higher forum, becomes final and has to be implemented even if the same is wrong." [Para 8 to 10].

5.12 CESTAT may also direct Revenue authorities to pass fresh orders on merits allowing consequential benefits of Refund, taking in to consideration the Final Order No. 11628-11630/2024 dated 23-07-2024 passed by this Tribunal in Appellant's own case and the decision dated 09-04-2025 of Hon'ble Bombay High Court in M/s A R Sulphonate Pvt Ltd vs UOI in Writ Petition No. 19366 of 2024. These two decisions have the binding effect on all the authorities of Revenue, at this stage, on the issue in question.

FINDINGS:

6. We have considered various submissions made by both the sides as well as material on record. From the deliberation as were before us and from the submissions made including case laws, we find that the basic issue to be decided is whether the appeal was filed in time as contended by the appellant or was there a delay beyond condonation period as has been held by the authority below and has been vehemently defended by the authorized representative.

6.1 We also find that both sides have contended on merits with support of various decisions that deposit of interest was not as per law in Customs Tariff Act, 1975, since provisions of recovery of interest was not specifically included in Section 3(7) and 3(12) of the Customs Tariff Act, 1975 at the relevant time. It has also been contended by both sides this Bench (different constitution) through Interim Order No. 37-39/2024 dated 31.12.2024 directed the Registry at Ahmedabad for making reference to the Larger Bench though Hon'ble President in the following terms: "*Whether the importer is liable to pay interest, fine and penalties for non/ delayed payment on IGST in case of non-compliance of free*

import condition under Notification No. 18/2025-Cus with reference to Section 3(7) read with Section 3(12) of the Customs Tariff Act or otherwise?". It is also stated that Larger Bench has not been constituted as yet, but Hon'ble Bombay High Court in Writ Petition No. 19366 of 2024 filed by M/s A R Sulphonates Private Limited vs UOI has decided the issue in favour of the appellants. The Revenue indicates that Hon'ble Delhi High Court in the case of KBS Industries Limited and others vs Customs, Central Excise & Service Tax, Settlement Commission, Principal Bench, New Delhi and others reported in 2025 (1) TMI 1962 has taken a view that existence or reference of an enabling provision for demand of interest does not matter, since exemption Notification issued under Section 25 of the Customs Act, 1962 provides for payment of interest in case of failure to observe the conditions. In rejoinder, dealing with submissions made by AR, the Consultant for the appellant submitted that the case of KBS Industries Limited was in relation to Settlement Commission where the proceedings are in the nature of mediation proceedings under Section 127C of Customs Act, 1962. The decision itself was of 13.01.2025 whereas the decision in the case of M/s A R Sulphonates (cited supra) was delivered on 09.04.2025. Therefore, the later decision has more precedent value. Also, M/s KSB (decision supra) was on different issue and therefore not applicable in the case of the appellant.

6.2 We have considered the adversarial position as submitted through various case laws, records and as argued before us with the help of materials considered relevant from either side. We find that Section 17 of the Customs Act, 1962 which deals with assessment of duty in sub-section (4) and (5) provides as follows:

"17. Assessment of duty

.....

(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.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in the cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the shipping bill, as the case may be."

Thus, there is a clear requirement of passing a speaking order in case reassessment is resorted to by the department and acceptance of which is not confirmed by the importer or exporter in writing within 15 days from

the date of reassessment of bill of entry or shipping bill as the case may be. From the facts, it flows that the appellant had done self assessment at "nil" rate of duty which was not found acceptable to the department and reassessment was resorted to whereby Section 17(5) becomes applicable. This coupled with CBIC Instructions No. 7/2018-Customs dated 05.04.2018 as reproduced supra also directs that when reassessment is done and the reassessment is not confirmed in writing by the importer or exporter as the case may be, then the speaking order has to be mandatorily given to the importer or exporter within the stipulated time of 15 days.

6.3 With the directions of CBIC as contained in Circular based upon provisions of Section 17(5), Doctrine of Reasonable Expectation will apply and therefore, if the party waited for reasoned order, it was well within its rights. In any case, it was incumbent upon the proper officer to pass a reasoned order. This only reinforced the statutory requirement as has been contained in Section 17(5) of the Customs Act, 1962.

6.4 We find that in the instant case, reassessment was done by the department which led to payment of duty as demanded by the department but under protest. Simultaneously, we find that the party later asked for refund of duty paid under protest. Therefore, the situation in this case, in the light of amended statutory provisions is quite different from the case of ITC Ltd reported at [2019 \(368\) E.L.T. 216](#) (S.C.) and of the terms in which it was delivered. We have to consider what are the statutory requirements as have been brought out in Section 17(5). Department has not been able to show that reassessment done by the proper officer was agreed to in writing by the importer without protest. Rather to the contrary, party lodged their protest vide letter dated 16-08-2023 and also kept on asking for issue of speaking order vide their letters dated 25.01.2024 and 31.07.2024 which is inalienable right under the statute. We therefore, hold that in absence of any evidence to the contrary being brought by the department, the date on which a speaking order was received by the party shall be construed as the date of receipt of communication of the order. We accordingly, hold that Commissioner (Appeals) was not correct in holding that the appeal was not filed in time. We therefore, consider it necessary to direct the Commissioner (Appeals) to take the date of receipt of speaking order by the party as claimed to be correct date and direct him to hear the appeal.

6.5 We also find that both sides have made extensive submissions on the issue on merits and whether interest can be charged or not in the absence of specific provisions under the Customs Tariff Act, 1975. We are also aware that the reference stands made for constitution of Larger Bench on this issue previously by this Bench (different constitution). However, we find that the referring bench could not consider the decision of Hon'ble Bombay High Court in the matter of AR Sulphonates Private Limited vs UOI as per Writ Petition No. 19366/2024 due to non-availability. Also no reasoning on merits is available or flows from the order of the Commissioner (Appeals). Department has also relied upon the decision of Hon'ble Delhi High Court in the matter of KBS Industries Limited (Cited supra). The decision of Hon'ble Bombay High Court in the matter of AR Sulphonates (supra) which dealt with the issue and is not against the order of Settlement Commission unlike that of M/s K.B.S. Industries (supra) and is of later date deserves to be given due respect as per the doctrine of Judicial precedent. While allowing the appeal on the issue that date of receipt of reasoned order is the date of communication and therefore, appeal was filed in time, we for want of reasoning from the side of Commissioner on merits, remand the matter to give a reasoned speaking order in the light of various case laws on the subject. The Appeal is allowed by way of remand in above terms.

(Order Pronounced in the open court on 12.08.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Neha