

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 42079 of 2014

(Arising out of Order-in- Original No.24825/2014, dated 26.03.2014 passed by the Commissioner of Customs, Custom House, 60 Rajaji Salai, Custom House, Chennai 600 001)

Kobelco Construction Equipment India Pvt Ltd.

.....Appellant

C-20 South Extension, Part II
New Delhi 110 049

Versus

Commissioner of Customs

...Respondent

Seaport – Import
Custom House, No.60, Rajaji Salai,
Chennai 600 001

APPEARANCE:

Shri D. Santhana Gopalan, Advocate for the Appellant
Shri Sanjay Kakkar, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.41351/2025

DATE OF HEARING: 21.07.2025

DATE OF DECISION: 25.11.2025

Per Mr. Ajayan T.V.

The appellant Kobelco Construction Equipment India Pvt Ltd., assails the Order in Original No.24825/2014, dated 26.03.2014 passed by the Commissioner of Customs (Seaport – Import), Chennai who had passed the said order upon being appointed as the common adjudicating authority in respect of four Show Cause Notices (SCNs) issued to the appellant. These SCNs alleged that the components/spare parts of earth moving equipment imported by the appellant through various ports are liable to be assessed to Additional Duty of Customs (Known as CVD) under first proviso to Section 3(2) of the Customs Tariff Act 1975 read with Section 4A of the Central Excise Act 1994 on MRP/RSP basis. The SCNs proposed invoking of extended period of limitation and demanded the differential duty along with interest as well as proposed penalties.

2. Brief facts, as culled out from the appeal records, are that the appellant, a subsidiary of Kobelco, Japan is engaged in the manufacture of hydraulic excavators falling under Tariff Heading 8429 of the first schedule of the Customs Tariff Act, 1975. The goods are manufactured at the appellant's factory located at Shri City, Chittoor district, Andhra Pradesh. The appellant also operates as a dealer in spare parts, components and assemblies of excavators and parts of excavators for which they had depots at Singaperumal Kovil, Chennai and Noida, Andhra Pradesh. The imports were made through Chennai Sea Port, Chennai Air Cargo and Air Cargo New Delhi and ICD, New Delhi. The imported excavator parts were stated to be kept at the appellant's aforementioned depot.
3. The Directorate of Revenue Intelligence, Chennai Zonal Unit initiated investigation into the appellant's imports and is stated to have found that the appellant was importing parts of excavators for sales / trading without paying the CVD on RSP basis as required. The DRI detained three live consignments of parts of excavators under bills of entry no.4523079 dated 02.09.2011, 4524629 dated 02.09.2011 and 4534626 dated 02.09.2011, which were filed in the name of the appellant's depot at Kancheepuram District, Tamil Nadu. During the course of investigation, statements were recorded and the appellant has also deposited an amount of Rs.2,29,80,015/-. Show Cause Notices were issued as mentioned above, inter-alia alleging that the goods imported by the appellant are subject to MRP based assessment under the first proviso to Section 3 (2) of the Customs Tariff Act read with Section 4 A of the Central Excise Act since the imported goods attract the provisions of the Standards of Weight and Measures Act (SWMA), 1976 / Legal Metrology Act, 2009 and the Rules made there under. After due process of law, the proposals in the Show Cause Notices stood confirmed vide the impugned order in original demanding the duty, penalty and redemption fine as per the tabulation below.

S. No	Name of Port	Customs Duty (Rs)	Penalty u/s 114A (Rs.)	Penalty u/s 114AA (Rs.)	RF (Rs.)
1.	Seaport-Import Chennai	1,95,48,043	1,95,48,043	20,00,000	8,00,000
2.	AP&ACC, Chennai	2,68,548	2,68,548	1,00,000	
3	NCH, New Delhi	47,55,498	47,55,498	5,00,000	
4	ICD Patpurganj New Delhi	10,82,210	10,82,210	2,00,000	
	Total	2,56,54,299	2,56,54,299	28,00,000	8,00,000

4. We have heard Shri. D. Santhana Gopalan, Ld. Advocate appearing for the appellant and Shri. Sanjay Kakkar, Ld. Authorised Representative, appearing for the Respondent on 30.06.2025, on which date both parties had filed written submissions and were permitted to address the issues raised by the opposite side by way of further written submissions and the matter was posted to 21.07.2025 on and by which date both parties submitted their further written submissions, and the orders were reserved.
5. Ld. Advocate for the Appellant stated the factual background of the dispute to have originated from an investigation by the Anti Evasion Branch, Central Excise, Noida, who visited the appellant's premises at Noida on 30.06.2011. The officers formed the view that packing, repacking, labelling and relabelling of spare components and assemblies of hydraulic excavators constituted manufacture under Section 2 (f) (iii) of the Central Excise Act, 1944. Hence, a Show Cause Notice dated 29.06.2012 was issued by the Commissioner of Central Excise, Noida proposing to demand central excise duty of Rs.97,86,971/- along with interest and penalty, in compliance with Notification No.19/2010 – CE (NT) dated 29.04.2010 read with Section 2 (f) (iii) and Section 4 (A) of the Central Excise Act 1994. The appellant paid the said duty demand for the period from 29.04.2010 to 30.06.2011.
6. It is his submission that the impugned Order in Original confirmed differential duty on spare parts/components imported during the period from April 2010 to September 2011 by invoking the larger period of limitation. The Adjudicating Authority held that the imported goods are covered under Legal Metrology Act as the appellant is importing goods not in bulk form but packed in cartons/polythene covers/cardboard boxes/wooden cases etc., depending on the dimension of the goods and are required to be declared with the retail sale price on the package under Legal Metrology Act. It was also held that Customs has jurisdiction to arrive at RSP of imported goods in a situation where an importer did not declare RSP deliberately to avoid payment of higher Customs duty. It was further held that the contention of the appellant that if the imported goods are considered as pre-packaged goods, then they are eligible for exemption of SAD under Customs Notification No. 29/2010 dated 27.02.2010 (S. No. 1) is not acceptable as only unconditional Notification which was not claimed at the time of clearance, can be extended at a later period i.e. after

clearance of goods. The impugned order demanded differential CVD and SAD to the tune of Rs.2,56,54,299/- and appropriated the amount of Rs.2,29,80,015/- paid by the appellant. The said order also directed the enforcement and adjustment of the bank guarantee executed by the appellant.

7. The Ld. Counsel submits that given the above background, considering that the appellant has discharged an amount of Rs.2,29,80,015/- which has been appropriated towards the duty demand in the impugned order and since the appellant has also taken Cenvat credit of the said amount of Rs.2,29,80,015/- in its central excise returns, the issue of whether CVD is payable on MRP basis or on transaction value being Revenue neutral, has become academic and revenue neutral. Therefore, at this stage, the appellant is not contesting the findings of the impugned order in so far as it holds that CVD was payable on the MRP of the imported goods.
8. He would submit that resultantly, the appellant confines the submissions to the claim for SAD exemption under Notification no.29/2010-Cus. dated 27.02.2010 and also as to the applicability of interest and penalty provisions under the Customs Act, 1962 to the levy of CVD under Section 3 of the Customs Tariff Act, 1975.
9. Stating thus, the Ld. Counsel proceeded to submit contentions regarding the entitlement to SAD Exemption and urged that if CVD is paid on MRP basis, the appellant is entitled for benefit of exemption of SAD in respect of the imported goods in terms of Notification No.29/2010-Cus dated 27.02.2010. It is submitted that CVD was originally paid on transaction value at the time of the assessment of Bill of Entry and SAD exemption was not claimed, which itself would indicate that the imported goods were not intended for retail sale in India. However, since the assessment have been reopened by the department through the impugned order demanding additional duty of customs on MRP basis, the imported goods must be extended the benefit of SAD exemption under notification no.29/2010 - Cus. dated 27.02.2010. Ld. Counsel submits that this notification stipulates that all pre-packed goods intended for retail sale are exempt from payment of special additional duty under Section 3 (5) of the Customs Tariff Act, 1975. Reliance is placed on the decisions in ***Lili Foam Industries (P) Ltd v. Collector of Central Excise, 1990 (46) ELT 462 (Tri), Bakeman's***

Home Products Pvt Ltd. v Collector of Customs, Bombay, 1997 (95)ELT 278 (Tribunal) and Decora Ceramics Pvt Ltd v. CCE, Rajkot, 1998 (100) ELT 287 (Tri).

10. It was also contended that it is settled law that not claiming the benefit of a notification at the time of filing the Bill of Entry will not preclude an importer from claiming the same at a later point of time. Reliance was placed on the decisions in ***M/s. Share Medical Care v UOI, 2007 (209) ELT 321 SC, M/s. Unichem Laboratories Ltd v.CCE, Bombay, 2002 7 SCC 145, M/s. Applicom India Ltd. v. CC, Bangalore, 2007(213) ELT 317 (Tri-Bang).***
11. It was pointed out that the impugned order has denied the claim for exemption under the Notification No.29/2010 on the ground that the same is a conditional exemption and that such an understanding was erroneous. That the notification does not provide any conditions to claim the exemption and hence the demand of Rs.1,12,03,668/- is liable to be set aside on this ground alone.
12. The Ld. Counsel then goes on to strenuously urge that in the absence of substantive provisions in Customs Tariff Act, 1975, penalty, confiscation and fine imposed is without authority of law and is liable to be set aside. In the instant case, the interest, penalty, confiscation, and the redemption fine has been imposed in relation to demand of additional customs duty leviable under Section 3(1) of the Customs Tariff Act, 1975 (CTA).The CTA has limited machinery provisions and therefore it borrows various provisions from the Customs Act for implementation of its provisions. Section 3(8) of the CTA, presently Section 3(12) of the CTA is the borrowing provision regarding additional customs duty. Section 3 of CTA, which levies duties other than basic customs duty, while borrowing procedural provisions of customs Act, however does not explicitly borrow substantive provisions relating to penalty, confiscation, fine and interest from the Customs Act. Reliance is placed on the decision of the Bombay High Court in ***Mahindra & Mahindra Ltd v. Union of India, 2022 (10) TMI 212-Bombay High Court*** wherein it was held that in the absence of specific provisions for levying of interest and penalty due to delayed payment of tax, the same cannot be levied/charged unless the statute makes a substantive provision in this behalf. The decision has been affirmed by the

Hon'ble Apex Court in ***Union of India v. Mahindra and Mahindra Ltd, 2023 (8) TMI 135-SC ORDER***. The review petition filed by the Department has also been dismissed vide order dated 09.01.2024 in Review Petition (Civil) Dairy No.41195/2023. He would submit that the above view has also been affirmed by this Tribunal, Chennai Bench in ***Acer India Pvt Ltd v. CC, Chennai, 2023-VIL-998-CESTAT-CHE-CU***, wherein it has been held that even in cases where differential CVD is payable, there shall be no recovery of interest or confiscation of goods or imposition of fines since the Customs Tariff Act has not borrowed the relevant provisions. Reliance is placed on the decision of this Tribunal in ***Final Order No.40320/2025 dated 11.03.2025 passed in Appeal No.C/40600/2021 in the case of Flextronics Technology v CC***. It is further submitted that the aforesaid position has also been affirmed by the Hon'ble Bombay High Court in ***A.R. Sulphonates Pvt Ltd v UOI, 2025 (4) TMI 578-BOMBAY HIGH COURT***

13. The Ld. Counsel for the appellant further submits that the longer period of limitation is not invocable in the instant case as the Appellant has not suppressed or misdeclared any facts much less with an intention to evade payment of duty. The entire demand fails on the ground of limitation. Even if it is presumed without admitting that CVD is payable on the MRP of the imported goods as confirmed in the impugned order, the entire CVD payable shall be available to the Appellant as credit. Therefore, since no malafide can be attributed to the Appellant, the extended period is not invocable. Reliance is placed on the decision in ***CCE v Tenneco RC India Pvt Ltd, 2015 (323) ELT 299 (Mad)*** wherein the Hon'ble Madras High Court relying on the decision of the Hon'ble Supreme Court in ***Nirlon Ltd, 2015 (320) ELT 22***, has held that when the entire exercise is revenue neutral, the Appellant could not have achieved any purpose to evade the duty.
14. Per contra, Shri. Sanjay Kakkar, Ld. A.R. commences his contentions stating that given the conceded position that the appellant is at this stage not contesting the finding of the impugned order in so far as it holds that CVD was payable on the MRP of the imported goods finding it to be revenue neutral, he too was not pressing his contentions in this regard as to whether CVD is payable on MRP basis. However, the contentions on the other aspects as advanced by the Ld. Counsel for the appellant is opposed and

towards this end, Ld. A.R. emphasises on the interdependence of Customs Act and Customs Tariff Act. It is submitted that these two pivotal enactments in India's customs regime, though legislatively distinct are intrinsically interwoven and intertwined. Their interdependence is not merely functional but seamless and essential as they serve complimentary purposes. The Customs Act provides the procedural and administrative machinery for the levy assessment of customs duty while the Customs Tariff Act establishes the substantive framework for determining the rates of levy and classification applicable. The operation of the two acts was never meant to be disjunctive or independent. The Customs Act cannot function without the Customs Tariff Act schedule that provides the substantive rates and classification. The Customs Tariff Act is referred at 18 places in the Customs Act and the Customs Act is mentioned at 35 places in the Customs Tariff Act and the Schedule thereunder. The absence in the Customs Tariff Act of any defined 'proper officer', 'adjudicating authority', adjudication procedure, no defined mechanisms and machinery for 'assessment' for the purposes of levy of various types of all 'levy/duty' contained therein, no define mechanism and provision to issue exemption notifications, to issue instruction to the assessing officers etc. indicate the interdependence of the Customs Act and the Customs Tariff Act, notwithstanding their legislative distinctiveness. Plain reading of Sec.3 (12) of the Customs Tariff Act at the relevant time specific to the impugned case would indicate that the Customs Act and their rules and regulations there under are wholesomely and unambiguously applicable to Section 3 of the Customs Tariff Act. The amendment in Section 3(12) of the Customs Tariff Act vide Finance Act 2024 is only clarificatory.

15. The Ld. AR further urges that in the instant case the issue is not one of leviability of interest / penalty on CVD but on customs duty as a composite duty of customs, to which provisions of Customs Act would apply. The fact remains that CVD leviable under Sec.3 (2) of the CTA gets subsumed along with other duties under the CTA and attains a composite character of "customs duty" as under Section 12 of Customs Act read with Sub Section 2 (15) of the Customs Act. A clear charging provision exists in the form of Sec. 28 AA for interest and Sec. 112 / 114 A / 114AA for penalties. The levy may be under distinct Sections, the issue that matters is one of collection and recovery which remains as a composite executive action. Even otherwise interest on tax being an implied consequence of delayed

payment is automatic or implied consequence of delayed payment and as such leviable under Sec.28AA of the Customs Act. Reliance is placed on the decisions in ***Pratibha Processors v. Union of India (1996) 11 SCC 101, CCE & C, Aurangabad Vs. Padmashri V.V. Patil S.S.K. Ld.2007 (215) E.L.T.23 (Bomb.), Associated Cement Co. Ltd. V. Commercial Tax Officer, (1981) 4 SCC 578, Central Provinces Manganese Ore Co. Ltd. V. CIR (1986) 160 ITR 961 (SC), Haji Lal Mohammad Biri Works vs. State of U.P (1973) 32 STC 496 (SC), and Alok Shanker Pandey Vs. Uol and Ors, 2007 (3) SCC 545.***

16. The Ld. AR further urges that retention of taxes payable results in the assessee unfairly benefiting at the expense of the Government / Public exchequer and since such benefits would amount to unjust enrichment interest becomes the only remedy to counteract such benefit taken. He further submitted that penalty is an element of due process of rule of law and the penalty imposed for a tax delinquency is a civil obligation, remedial in nature.
17. Ld. A.R also submitted that the reliance placed on the case of Hyderabad Industries Ltd by Bombay High Court in the case of Mahindra and Mahindra appears misplaced. Reliance was placed on the following citations that has distinguished judgement of Bombay High Court in Mahindra and Mahindra.
 - i. KBS Industries Ltd. & Anr Vs CCEST & Settlement Commission, New Delhi, 2025 – TIOL -193 - HC – DEL – CUS***
 - ii. Texmaco Rail Engineering Ltd. Vs. Commissioner of Customs (Port), Kolkatta (2024) (1) TMI 902 CESTAT, Kolkata***
 - iii. Mayur Uniquotes Ltd. & JLC Electromet Pvt. Ltd. Jaipur Vs Commissioner (Appeals), Jaipur (2024 – TIOL – 774 – CESTAT – Del)***
18. The appellant's plea for the exemption of levy of SAD under notification 29/2010 dated 27.01.2010 is also opposed by the Ld. A.R contending that it is a clear case of mis declaration of description, non-declaration of RP for retail packages, lack of registration under the LMA / SWMA and the Rules thereunder, all acts done with an intent to evade duty. The notification is a conditional notification which cannot be extended on a post fact basis. Reliance is placed on the decision in ***Dilip Kumar and Co. and others, 2018 (7) TMI 1826: (2018) 9 SCC 1.***

19. The appellant, in response to the arguments made by the Ld. AR, filed submissions dated 17.07.2025 reiterated that CVD is levied on import of goods under Sec. 3 (1) of the Customs Tariff Act (CTA) and is thus the charging provision for levying CVD. Consequently, CVD cannot be said to be levied under Sec.12 of the Customs Act, 1962. CTA and Customs Act are independent statutes, Section 12 of the Customs Act provides for levy of Customs duty, commonly known as basic customs duty on goods imported into or exported out of India. On the other hand, Sec. 3 (1) of Customs Tariff Act, *inter alia* provides for levy of CVD which is levied independently and in addition to Customs duty levied under the Customs Act. This legal position has been upheld by the constitution Bench of the Hon'ble Supreme Court in **Hyderabad Industries Ltd. Vs. Union of India, 1999 (5) TMI 29 Supreme Court** and therefore, the issue is no longer as *res integra*. The above decision of the Apex Court was followed by the Hon'ble High Court of Bombay in **Mahindra & Mahindra (2022 (10) TMI 212-Bombay High Court**. The above legal position has also been followed in the following decisions-

a) Aidek Tourism Services Pvt. Ltd. v. CC, New Delhi, 2015 (318) E.L.T. 3 (S.C.)

b) Lohia Sheets Products v. CC, New Delhi, 2015 (318) E.L.T. 3 (S.C.)

c) CCE, Bhubaneshwar-1 v. Tata Iron and Steel Co. Ltd., 2003 (154) E.L.T. 343 (S.C.)

d) Star Industries v. CC, Raigad, 2015 (324) E.L.T. 656 (S.C.)

e) Roxul Rockwool Insulation India Pvt. Ltd. v. Union of India, 2015 (320) E.L.T. 554 (Guj.)

20. Further, it is a trite law that there cannot be two charging provisions to levy the same tax. Therefore, it is clear that Section 3 of CTA is the charging provision to levy CVD and not Section 12 of the Customs Act.

21. It is submitted that interest is a substantive levy and therefore can be levied only if the statute levying the tax specifically provides for it. Reliance is placed on the decisions in **India Carbon Ltd. Vs. State of Assam (1997) 106 STC 460 (SC)** rendered relying on the Constitution Bench decision in **J.K.Synthetics Ltd v CTO, (1994) 4 SCC 276**. The position of law has been approved and reiterated by the Constitution Bench in **VVS**

Sugars Vs Govt. of Andhra Pradesh and Others, 1999 (4) TMI 519 SSC 192. Reliance is also placed on the decision of the jurisdiction High Court in ***TVL Hotel Peacock Vs. Commercial Tax Officer, Chennai, 2018 (17) GSTL 385 (MAD.)***

22. Further, reiterating that CTA does not borrow interest or penal provisions, it is submitted that Customs Tariff Act does not have any machinery provision for collection and recovery of the duties levied thereunder and for its limited purpose Sec. 3 (8) of the Customs Tariff Act borrow the machinery provision of the Customs Act. The aforesaid provisions has used the expansive term "including" only to ensure that all the machinery provisions under the customs Act borrowed. However, the said Section 3(8) does not specifically or explicitly include the provisions for levy of interest or for imposition of penalty or for redemption fine under the Customs Act. Further, the Constitution Bench of the Hon'ble Supreme Court in *J K Synthetic Ltd. Vs. CTO (1994) 4 SCC 276*, has held that interest on delayed payment of tax can be levied and charged only if the statute that levies or charges the tax makes a substantive provision in this behalf. The above legal position has been affirmed by the Hon'ble High Court of Bombay in *Mahindra and Mahindra supra* which has since been affirmed by Hon'ble Apex Court and is also been reiterated by the Bombay High Court in ***A.R. Sulphonates Pvt. Ltd. vs. Union of India and Ors. 2025 (4) TMI 578 Bombay High Court.***
23. Contending that the amendment to section 3(12) confirms the absence of borrowing prior to such amendment, it is submitted that only vide Finance Act, 2024, Section 3(12) of the Tariff Act was amended prospectively with effect from 16.08.2024 to inter alia include the provisions relating to levy of interest and imposition of penalty under the Customs Act to levies under the CTA. The above amendment clearly shows that even as per the Parliament, the provisions of interest and penalty under the Customs Act were not borrowed to apply for levies under the CTA, till the amendment was introduced. Further, the Hon'ble Bombay High Court in *A.R. Sulphonates Pvt. Ltd. supra* has held that the changes made to Section 3 (12) of Customs Tariff Act vide Finance (No.2) Act, 2024 is only prospective in nature and would apply with effect from 16.08.2024.

24. Without prejudice, the appellant submits that the levy of CVD on the goods imported by the appellant in April 2010 to June 2011, was repealed with introduction of Goods and Services Tax w.e.f. 01.07.2017. Thus, at the time the above amendment was introduced, there was no levy of CVD on the subject goods. Thus, even assuming this amendment is retrospective, it shall not affect the goods imported by the Appellant prior to 01.01.2017. In light of the above, it is submitted that interest is a substantial levy and such a levy of interest in the absence of a charging provision under Section 3(8) of CTA is incorrect and bad in law.
25. Emphasising that penalty and redemption fine are penal levies it is contended that they are substantial in nature and in the absence of a clear authority in law in the CTA which provides for the levy of CVD and therefore they cannot be levied on CVD paid by the appellant. Reliance is placed on the decision in ***Pioneer Silk Mills Pvt. Ltd. Vs. Union of India 1995 (80) E.L.T.507 (Del.)***. The above decision in Pioneer Silk (supra) was maintained by the Hon'ble Supreme Court in ***2002 (145) ELT A74 (Supreme Court) and approved in 2003 (158) ELT 545 (Supreme Court), and Khemka & Co. Agencies Pvt. Ltd. vs. State of Maharashtra, 1975 (2) TMI 91 – Supreme Court***.
26. It was further submitted that the arguments of the Ld. AR that Customs Act and Customs Tariff Act being interdependent and intertwined, CVD is levied under Section 12 of the Customs Act as 'duties of customs' is incorrect and contrary to the ratio of the decision of the Apex Court in ***Hyderabad Industries Supra***. The very same arguments advanced by the Ld. AR was also advanced by the Revenue before the Apex Court in the aforesaid decision and was rejected by the Constitution Bench.
27. The argument of the Ld. AR that interest on tax is automatic and implied consequence of delayed payment based on compensatory or physical principles is opposed to the ratio of the Apex court in ***J K Synthetics supra*** and that of the ***Hon'ble Madras High Court in TVL Hotel Peacock cited supra***.
28. Contending that the citations relied upon by the Ld.A.R. is distinguishable, it is submitted that in all the decisions relied by the Ld. AR, except Alok Shankar Pandey Vs. Union of India, 2007 SCC online SC 210, the statute

specifically provided for levy of interest. In the decision in Alok Shankar Pandey supra the issue was with respect to payment of interest pursuant to the deficiency in services. It dealt with the grant of interest accrued under a contract due to deficiency of service on the part of the respondent therein. It did not deal with the levy of interest on delayed payment of tax and thus the inapplicable reliance placed is misplaced. It was pointed out that as can be seen from the tabulation in the appellant's written submissions, all the decisions which were relied on by the Ld. A.R dealt with cases where there was a statutory levy of interest and thus it was held to be automatically attracted in case of delayed payment of tax/duty.

29. It is submitted that absent a statutory levy of interest on the CVD imposed under CTA, the contention of the Ld. A.R. premised on unjust enrichment is misconceived. The submission of the Ld. AR on the reason for the Hon'ble Supreme Court to dismiss the appeal and review filed by the Revenue against Mahindra and Mahindra appears to be based on headnote and the decision and not on the basis of the decision of the Apex Court. The reliance placed on the decision in ***KBS Industries Ltd. v. CCE & ST Settlement Commission & Ors. 2025 (1) TMI 962 Delhi High Court, M/s. Texmaco Rail Engg. Ltd, v. Commissioner of Customs (Port), Kolkatta, 2024 (1) TMI 902 – CESTAT, Kolkatta, Mayur Uniquoters Ltd. V. CCE & CGST, Jaipur, 2024 (89) GSTL 269 (Tri. – Del.)*** are also misplaced as they are distinguishable as elaborated therein. The ratio decidendi of the Hon'ble Bombay High Court in ***Union of India Vs. Valecha Engineering Ltd. 2010 (249) ELT 167 (Bom.)*** only supports the case of the appellant as the ratio is that interest and penalty are payable only if there is a substantial provision levying the same and therefore the reliance placed on the said decision by Ld. A.R is misplaced. The decision of the Hon'ble Supreme Court in ***Navayuga, 2024 (390) ELT 3 (SC)*** is not an authority on the issue of applicability of interest /penalty for delayed payment of CVD. Even if it is assumed so, it only means the ratio decidendi in Valecha (supra) is upheld. Thus, the Apex Court decision is sub-silentio insofar as the issue of levy of interest on delayed payment of CVD is concerned. Consequently, the decision in Navayuga (supra) cannot be said to be an authority on the said issue. Reliance in this regard is placed on ***Municipal Corpn. of Delhi v. Gurnam Kaur, (1989) 1 Supreme Court Cases 1011.***

30. Without prejudice, even if it is assumed that the decision in Valecha (supra) has been upheld in Navayuga (supra), it would mean that the ratio decidendi in Valecha (supra) that interest/penalty cannot be levied without a substantial provision levying the same, has also been upheld by the Apex Court. Consequently, no interest/penalty is leviable/imposable under provisions of Customs Act for delayed payment of CVD in the absence of any substantive provision under CTA.
31. The Ld. AR in his written submissions filed on 21.07.2025 submits that the appellant's plea for exemption of SAD would not be tenable since the conceded position of the appellant is that they are not contesting the levy of CVD. It is submitted that the benefit of the Notification No.29/2010 *ibid* sought to be claimed by the appellant is an exemption notification and the primary condition for claiming its benefit is a compliance with the provisions of the Standard of Weights and Measures 1976 of the Rules made thereunder. In as much as the investigation has revealed that the appellant is not even registered under the Package Commodity Rules framed under the SWMA Act *ibid*. The appellant cannot be granted the benefit in the absence of such registration.
32. Ld. AR has contended that the entire case is based on the fact that the appellant did not declare the MRP of the imported goods. While under Section 46 of the Customs Act or on the pre packed goods imported which has led to evasion of CVD. Once it is a matter of fact on record that the declaration of RSP on the imported articles remain uncompiled the benefit of the notification is unavailable to the appellant. The Ld. AR submits that the interest and penalty on CVD continues to be confirmed as part of the demand of customs duty as a composite collection at the point of out of charge of goods under Section 47 of the Customs Act. Given that the decisions distinguishing the Judgement of Bombay High Court in Mahindra and Mahindra continues to be pronounced, the leviability of interest and penalty on CVD ought to be held in Revenue's favour applied the doctrine of stare decisis. The Hon'ble Delhi High Court in the case of ***Interglobal Aviation Ltd. Vs. Principal Commissioner of Customs, New Delhi in WP No.934/2023, 7845/2023, 4673/2024, vide its order dated 04.03.2025***, since upheld by the Hon'ble Supreme Court, has held that Section 3 of the Customs Tariff Act is fully a collection mechanism as proposed to independent levy of integrated tax under the IGST Act as pleaded by the appellant's counsel in that case. Since it is only that CVD

has been replaced by IGST and since Section 3(7) of the Customs Tariff Act and Section 3 (2) on the same footing and similar worded it can be inferred that the levy of CVD is not under the Customs Tariff Act but under the Parent Customs Act where substantial provision for levy of interest and penalty exists. In view of the same, it is prayed that the demand for interest and penalty confirmed in the impugned Order in Original be upheld. Reliance is placed on ***JLC Electromet Pvt. Ltd. Vs. Commissioner of Customs, Jaipur (2025-TIOL-1040-CESTAT-DEL)***.

33. The Ld. AR again submits that interest as a compensatory levy has been upheld granting relief to importers without enabling provisions under the Customs Act. Placing reliance on the following decisions for the aforesaid propositions it is contented that when it is a case of payment of interest for delayed payment of tax by the same tax payer fraternity, a differential treatment cannot be adopted.

i) Kuil Fire Works Inds Vs.CCE in 1997 (95) ELT 3 (Supreme Court)

ii) Sandvik Asia Ltd in 2006 (196) ELT 257 (Supreme Court)

iii) HSBC Ltd. Vs Uol in W.P (L)-24184/2023 dated 08.11.2023 [Bombay High Court]

iv) EBiz.com Pvt.Ltd. Vs CCE in 2017 (49) STR 389 [Allahabad High Court]

v) Sony Pictures Networks India Pvt.Ltd. [2017 (353) ELT 179 (Kerala High Court)]

vi) Madura Coats Pvt.Ltd.Vs CCE, Kolkata-IV in 2012 (285) ELT 188 (Cal) [Calcutta High Court]

vii) Pr.Commr.of CGST Vs. Green Valley Industries Pvt.Ltd [High Court of Meghalaya]

viii) CCE, Chennai-II Vs. Ucal Fuel Systems Ltd [Madras High Court]

ix) Indore Treasure market City Pvt.Ltd Vs. Commr CGST & CE, Indore in ST Appeal-55434/2023 [CESTAT, Pr.Bench]

x) Sunrise Immigration Consultants Pvt.Ltd Vs.CGST, Chandigarh in S.T Appeal-60347/2022 dated 11.04.2023 [CESTAT, Chandigarh]

xi) Gautam Industries Vs. Commr of CE & ST in Excise Appeal 60432/2020, CESTAT, Chandigarh

34. Ld. A.R also contended that penalties imposed on the Appellant are tenable and warrant being upheld.

35. We have heard the rival submissions at length, carefully perused the appeal records, the written submissions and the citations submitted.
36. The appellant has stated that at this Appellate stage the appellant is not contesting the findings in the impugned order in so far as it holds that CVD was payable on the MRP of the imported goods for the reason that to the extent the appellant has paid the duty demand as proposed in the SCN, the appellant has availed the cenvat credit thereon in its excise returns thereby rendering the issue of whether CVD is payable on MRP basis or on transaction value revenue neutral, in so far as the appellant is concerned. Therefore, the appellant has confined its submissions to the claim for SAD exemption under Notification no.29/2010-Cus. dated 27.02.2010 and also as to the applicability of interest and penalty provisions under the Customs Act, 1962 to the levy of CVD under Section 3 of the Customs Tariff Act, 1975. LD. A.R. too, given the aforesaid conceded position, has not addressed us on the issue of whether CVD is payable on MRP basis or on transaction value.
37. Thus, given the mutually agreed upon respective stated positions, we are not called upon to decide the tenability of the levy of CVD, whether it ought to be on MRP, or whether it ought to be on transaction value. We have also not been addressed on this aspect. Thus, based on the limited disputes on which we have been addressed, the issues that arise for our determination are:
- A) Whether the appellant's claim for SAD exemption under Notification No.29/2010-Cus dated 27.02.2010 is tenable?
 - B) Whether the interest, penalty, confiscation, and the redemption fine imposed in the instant case is tenable?
 - C) Whether the extended period of limitation invoked is tenable?
38. On the issue of the appellant's claim for SAD exemption under the Notification No.29/2010-Cus dated 27.02.2010, we find from the impugned order in original that the Adjudicating Authority has chosen to deny the same contending that the said notification is a conditional notification and only unconditional Notification which was not claimed at the time of clearance, can be extended at a later period i.e. after clearance of goods. It was further held that the goods, were required to be declared with MRP under the Legal Metrology Act, 2009 and the Rules made thereunder and

the same was not declared on the packages and thus when the goods were imported in violation of the law of the land, they cannot post-facto claim conditional notification.

39. We have perused the said notification 29/2010-Cus dated 27-02-2010, and find that it extends the benefit of exemption from the additional duty of customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act to goods that answer the description specified therein irrespective of the chapter, heading, sub-heading or tariff item of the First Schedule to the CTA. There are no conditions specified therein which are mandated to be complied with to avail the benefit of the notification. It is not open to the Department to infer a condition that is not expressly stipulated.

40. In this regard, we find the reliance placed by the appellant on the decision in ***Lili Foam Industries (P) Ltd v Collector of Central Excise, 1990 (46) ELT 462 (Tribunal) is apposite***. The Tribunal has held therein as under:

“24... Also, even though an assessee may not contest the correct rate of duty on a commodity cleared by him earlier, **whenever the Department seeks to reopen the assessment and demands differential duty for whatever reasons, it is open to the assessee to contest the demand of the higher differential duty with an argument that the rate of duty originally applied was wrong. Even if the allegations against them in the proceedings are found to be correct the quantum of differential duty to be paid by them can be questioned. The Tribunal simply cannot shut out such an argument of the appellant on the ground that he has not raised the dispute regarding the rate of duty until the proceedings are initiated against him.** After all the Department seeks to rely on Section 11A of the Central Excises and Salt Act for demanding differential duty. **The demand of differential duty can arise only when the Department correctly determines the duty payable by an assessee and the duty actually paid by him earlier.** The correct quantum of duty payable by an assessee, in cases where the goods are subjected to ad valorem rate of duty, depends on the value of the goods and also the rate of duty. Therefore, determination of the correct rate of duty for the goods on which differential duty is demanded is the first step before quantifying the demand. We accordingly over-rule the objection raised by the learned Departmental Representative that the appellant should not be permitted to raise the dispute regarding the determination of rate of duty.” **(emphasis supplied)**

41. Again, the Hon'ble Apex Court in ***Share Medical Care v Union of India, 2007 (209) ELT 321 (SC)***, has noticed its observations in ***Unichem Laboratories Ltd v. Collector, 2002 (145) ELT 502 (SC)*** and has held as under:

12. .. In *Unichem Laboratories Ltd. v. Collector of Central Excise, Bombay, (2002) 7 SCC 145 : JT 2002 (6) SC 547*, the appellant was a manufacturer of bulk drugs. Exemption was granted to him under one item. He, thereafter, filed a revised classification list categorizing its bulk drugs under the other Head claiming more benefit. The claim was rejected on the ground that the appellant had not claimed the benefit of exemption at the time of filing the classification list and subsequently it could not be done. The appellant approached this Court.

13. Allowing the appeal and setting aside the order, this Court held that if no time is fixed for the purpose of getting benefit under the exemption notification, it could be claimed at any time. If the notification applies, the benefit thereunder must be extended to the appellant. The Court held that the authorities as well as the Tribunal were not right in holding that the appellant ought to have claimed the benefit of the notification at the time of filing of classification lists and not at a subsequent stage.

The Court then stated;

"...There can be no doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law - no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly". (emphasis supplied)

xxxxx

15. From the above decisions, **it is clear that even if an applicant does not claim benefit under a particular notification at the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage"** (emphasis supplied)

42. We have not been shown any provision of law or any authority that stipulates that in the course of assessment of differential duty demand made by the Department for any alleged violation, the claim for the benefit of a notification that is otherwise available to the assessee can be denied. In our considered view, inherent in the power of assessment vested in the proper officer, is the statutory obligation to assess the duty according to law, which would then require the authorities to extend the benefit of any exemption notification that is available to the assessee. We are therefore

of the firm opinion that the appellant is entitled to the benefit of the Notification No.29/2010-Cus dated 27.02.2010 and the findings of the adjudicating authority in this regard are liable to be set aside.

43. The next issue that arises for our determination is regarding the legality of the interest, penalty, confiscation, and the redemption fine imposed in the instant case.

44. We find that the Hon'ble High Court of Bombay has in its decision in ***Mahindra & Mahindra Ltd v. Union of India, 2022 (10) TMI 212-BOMBAY HIGH COURT : (2023) 3 Centax 261 (Bom.)*** has held as under:

"32. In *Valecha Engineering (supra)*, the judgments of the Hon'ble Apex Court in *Orient Fabrics (supra)*, *India Carbon (supra)* and *J.K. Synthetics (supra)* were referred to. It was held in paragraphs 14-16 and 27 that interest and penalty can be only leviable if there be substantive provisions in the statute imposing interest and penalty. However, in paragraph 30, it was then held that provisions for interest form part of machinery provisions. This observation in *Valecha Engineering (supra)* is purportedly based on the ratio of *India Carbon (supra)* and *J.K. Synthetics (supra)*. In the decisions of the Apex Court in *India Carbon (supra)* and *J.K. Synthetics (supra)* interest and penalty were held to be substantive in nature. **In *J.K. Synthetics (supra)* it was held as follows:**

"Therefore, any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as substantive law and not adjectival law."

In *India Carbon (supra)* it was held as follows:

"7. This proposition may be derived from the above: interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf."

In *Khemka & Co. (supra)* it was held as follows:

"25. Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act."

It is, therefore, clear from these judgments of the Supreme Court that the liability to interest and penalty is substantive and that provisions imposing interest and penalty are substantive (and not machinery).

In *Orient Fabrics (supra)*, the Apex Court interpreted Section 3(3) of Additional Duties of Excise (Goods of Special Importance) Act, 1957 which is pari-materia to Section 3, 3A of the Customs Tariff Act, 1975

and Section 90(4) of the Finance Act, 2000. Hence, the decision of the Hon'ble Apex Court in *Orient Fabrics (supra)* would directly apply.

33. We are also unable to accept Mr. Mishra's contentions that the charging section for imposition of CVD and SAD or surcharge is Section 12 of the Customs Act, 1962. In our view, the charging sections for imposition of surcharge, CVD and SAD are Section 90(1) of the Finance Act, 2000, Section 3(1) and Section 3A(1) of the Customs Tariff Act, 1975, respectively. Mr. Mishra's contention that Section 12 is the charging section is incorrect. Section 12 of the Customs Act, 1962 reads as under:

12. Dutiable goods -

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under [the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

Mr. Mishra submitted that the words "except as otherwise provided in this Act or any other law for the time being in force" employed in Section 12 of the Customs Act, 1962, surcharge on customs duty under section 90 of the Finance Act and CVD and SAD under the Customs Tariff Act, 1975 would all be covered under any law for the time being in force. Therefore, according to Mr. Mishra CVD under section 3 and SAD under section 3A of the Customs Tariff Act, 1975 and surcharge under section 90 of the Finance Act, 2000 are all levied under section 12 of the Customs Act, 1962. Therefore, imposing interest under section 28AB on surcharge, CVD and SAD would be correct in law.

34. Section 9A(8) of the Customs Tariff Act, 1975 which borrowed provisions from Customs Act, 1962 did not borrow provisions relating to interest and penalty. The Hon'ble Courts, in judgments cited *supra*, held that in view of no specific borrowing, no interest and penalty can be imposed on anti-dumping duty. Later on, Finance (No.2) Act, 2004 amended sub-section (8) of Section 9A suitably to include interest and penalty. However, similar amendments have not been made to Section 3(6) of the Customs Tariff Act, 1975 relating to CVD, *i.e.*, additional duty equal to excise duty or Section 3A(4) of Customs Tariff Act, 1975 relating to SAD, *i.e.*, special additional duty or surcharge under section 9(3) of the Finance Act, 2000.

35. Further, Section 12 of the Customs Act, 1962 levies duty on goods imported into India at such rates as may be specified in the Customs Tariff Act, 1975. In Customs Tariff Act, 1975, Section 2 provides the rates at which duties of customs are to be levied under the Customs Act, 1962 are as specified in the first and second schedules of the Customs Tariff Act, 1975. In Section 12 of the

Customs Act, 1962 there is no reference to any specific provision of Customs Tariff Act, 1975.

On the other hand levy of CVD or SAD under section 3 or Section 3A of the Customs Tariff Act, 1975 or surcharge under section 90 of the Finance Act, 2000 is not relatable to the first or second schedule but the rate is prescribed in those three sections itself. This itself shows the charging section for surcharge or CVD and SAD is not Section 12 of the Customs Act, 1962 but Section 90 of the Finance Act, 2000 and Section 3 and Section 3A of the Customs Tariff Act, 1975, respectively.

36. We find support for our view in *Hyderabad Industries Ltd. v. Union of India* 1999 (108) E.L.T. 321 (SC) relied upon by Mr. Sridharan. The Apex Court considered Section 12 of the Customs Act, 1962 and went on to hold that the charging section to impose CVD is Section 3 of the Customs Tariff Act, 1975. Paragraphs 12, 13 and 14 of *Hyderabad Industries Ltd.* (*supra*) read as under:

12. *Section 12 of the Customs Act levies duty on goods imported into India at such rates as may be specified in the Customs Tariff Act, 1975. When we turn to Customs Tariff Act 1975, it is Section 2 which states that the rates at which duties of customs are to be levied under Customs Act 1962 are those which are specified in the First and Second Schedules of the Customs Tariff Act, 1975. In Section 12 of the Customs Act there is no reference to any specific provision of the Customs Tariff Act 1975. In other words for the purpose of determining the levy of customs duty on goods imported into India what is relevant is Section 12 of the Customs Act read with Section 2.*

13. *On the other hand levy of additional duty under section 3 is equal to the excise duty for the time being leviable on the like article which is imported into India if produced or manufactured in India. The rate of additional duty under section 3(1) on an article imported into India is not relatable to the First and the Second Schedule of the Customs Act but the additional duty if leviable has to be equal to the excise duty which is leviable under the Excise Act. This itself shows that the charging section for the levy of additional duty is not Section 12 of the Customs Act but is Section 3 of the Customs Tariff Act, 1975. This apart sub-sections (3), (5) and (6) of Section 3 refer to additional duty as being leviable under sub-section (1). In sub-section (5), for instance, it is clearly stated that the duty chargeable under section 3 shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.*

14. There are different types of customs duty levied under different acts or rules. Some of them are; (a) a duty of customs chargeable under section 12 of the Customs Act, 1962; (b) the duty in question, namely, under section 3 (1) of the Customs Tariff Act; (c) additional duty levied on raw-materials, components and ingredients under section 3 (3) of the Customs Tariff Act; and (d) duty chargeable under section 9A of the Customs Tariff Act, 1975. *Customs*

Act 1962 and the Customs Tariff Act, 1975 are two separate independent statutes. Merely because the incidence of tax under section 3 of the Customs Tariff Act, 1975 arises on the import of the articles into India it does not necessarily mean that the Customs Tariff Act cannot provide for the charging of a duty which is independent of the customs duty leviable under the Customs Act.

(Emphasis Supplied)

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."

(Emphasis Supplied)

45. It is seen that the decision has been maintained by the Hon'ble Apex Court in ***Union of India v. Mahindra and Mahindra Ltd, 2023 (8) TMI 135-SC ORDER: (2023) 9 Centax 361 (S.C.)***. The review petition filed by the Department has also been dismissed vide order dated 09.01.2024 in Review Petition (Civil) Dairy No.41195/2023, ***2025 (392) E.L.T. 675 (S.C.)***.
46. Further, it is seen that this Tribunal, Chennai Bench in ***Acer India Pvt Ltd v. CC, Chennai, 2023-VIL-998-CESTAT-CHE-CU: 2023 (9) TMI 1553-CESTAT CHENNAI***, after relying upon the aforesaid decision of the Hon'ble High Court of Bombay in Mahindra & Mahindra Case, has modified the order impugned therein to the extent of setting aside the demand of interest, the order of confiscation of goods, the imposition of redemption fine, penalties imposed and the appropriation of interest paid by the appellant therein without disturbing the confirmation of duty. Again, in ***M/s. Acer India (Pvt) Ltd v. Commissioner of Customs (Audit), Chennai, 2023 (5) TMI 478-CESTAT CHENNAI***, this Tribunal, relying on the decision of the Hon'ble High Court of Bombay in Mahindra & Mahindra cited supra, held that confiscation of goods, interest on CVD, redemption fine and penalties in relation to CVD leviable under Section 3(1) of the Customs Tariff Act, 1975, cannot sustain. The decision of this Tribunal, in ***M/s. Flextronics Technology India Pvt Ltd v CC, Chennai VII Commissionerate, 2025 (3) TMI 695-CESTAT, CHENNAI*** has yet again relied on the decision of the Hon'ble High Court of Bombay in Mahindra & Mahindra to hold in favour of the appellant therein who had contended that no interest or penalty is leviable in the absence of machinery provision. It

is also seen that the Bombay High Court, yet again in its decision in **A.R. Sulphonates Private Limited v. Union of India, 2025 (4) TMI 578-BOMBAY HIGH COURT**, in a challenge to an order seeking demand of interest, penalty and redemption fine from the petitioner in connection with the demand of IGST leviable under section 3(7) of the Customs Tariff Act, 1975, relying on its decision in Mahindra & Mahindra Ltd, supra, went on to pass orders as under:

"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."*

47. In view of the aforesaid decisions of the Honorable High Court of Bombay, and given that the decision in Mahindra & Mahindra has been consistently followed by this very bench of the Tribunal, these issues are no more re-integra. Therefore, adhering to judicial discipline, we hold that the findings in the impugned order with respect to the interest, penalties, confiscation, and the imposition of redemption fine cannot be sustained and are liable to be set aside.

48. This leaves us with the last issue whether the invoking of extended period of limitation is tenable.

49. The Ld. Counsel for the appellant further submits that the longer period of limitation is not invocable in the instant case as the Appellant has not suppressed or misdeclared any facts much less with an intention to evade payment of duty. It is contended that at the time of clearance they had

paid duty on the transaction value without availing the benefit of SAD exemption itself is an indication that they did not intend the goods for retail sale in the manner in which it is imported. It is the appellant's contention that the packages imported are not sold in the condition in which they are imported and the appellant carries out further activities of packing, repacking, labelling and relabelling in respect of such imported goods which are then sold to industrial and institutional consumers like mining industry, construction industry etc. There is no evidence let in by the Department that the goods are being sold in retail sale in the manner in which they have been imported without more. The allegation of mis-declaration is on the finding that the appellant had used the term 'captive use' in the bill of entry with respect to certain goods imported. In such circumstances, what was meant by the term 'captive use' as declared by the appellant and whether it had influenced the Department to make an incorrect assessment, bears relevance. We find from the Appeal records that there is no dispute that even in respect of the bills of entry where the term 'captive use' was used, the identity of the goods imported in terms of their description vis a vis that declared in the invoice is not stated to have been found incorrect. It is also not the case of the Department that the appellant has claimed any exemption notification, if any available in respect of goods captively consumed. It is only implied that by the said term the appellant appears to have not used the goods for the purpose stated. There is nothing brought out in the appeal records to indicate that the Department's interpretation of what the term 'captive use' is, has been communicated, understood and acknowledged by the appellant to have been used understanding it to be such, when the declarations were made. Thus, when the intention attributed is contested, and it is unclear whether the Department and the appellant are at idem as to what was meant by the term 'captive use', the benefit of doubt would go to the appellant. Dehors the existence or otherwise of any intention of mis-declaration; when it is a contested position, whether the goods, in the manner in which they were imported, stood covered as those intended for retail sale requiring compliance under the Legal Metrology Act and rules, and when there is nothing on record to indicate that Customs Authorities are empowered as adjudicators of such disputes in the event of a contested position under the Legal Metrology Act and the relevant rules made thereunder, in the absence of any such adjudication by the appropriate authority under the relevant Act and Rules, in our considered view, the appellant cannot be held to

have committed the offence of mis-declaration so as to be found in violation of Customs Act or FTDR Act or rules thereunder in such circumstances. It is also settled that when the offences alleged are such that they attract penal and confiscatory consequences, the degree of probability required is of a much higher order than in the realm of mere probability. Therefore, the appellant cannot be held to have done any positive act with intent to evade payment of customs duty so as to warrant invoking of extended period in these circumstances.

50. That apart, it is the appellant's contention that even if it is presumed without admitting that CVD is payable on the MRP of the imported goods as confirmed in the impugned order, the entire CVD payable shall be available to the Appellant as credit and therefore, since no malafide can be attributed to the Appellant, the extended period is not invocable. On this aspect, we find that the appellant's reliance placed on the decision in ***CCE v Tenneco RC India Pvt Ltd, 2015 (323) ELT 299 (Mad)*** is appropriate as it is seen that the Hon'ble Madras High Court relying on the decision of the Hon'ble Supreme Court in ***Nirlon Ltd, 2015 (320) ELT 22***, has held that when the entire exercise is revenue neutral, the Appellant could not have achieved any purpose to evade the duty. Therefore, we hold that invoking of the extended period by the Adjudicating Authority cannot be sustained and is liable to be set aside.
51. The Ld. A.R., no doubt, has waxed eloquent on the interdependence of Customs Act and Customs Tariff Act, while acknowledging that they are legislatively distinct, with the invitation to infer borrowing of interest and penalty provisions as an operational imperative that does not warrant any explicit statutory mandate. Pertinently, no authority that lays down such a proposition was submitted. Such contentions, being contrary to the law laid down by the Apex Court and Higher Judicial fora elucidated supra, are hence rejected. Likewise the plea on unjust enrichment and parity with the taxpayer as well as the argument on application of stare decisis, are wholly misconceived. The submissions made premised on select pages of the decision of the Hon'ble Delhi High Court in the case of Inter Globe Aviation Ltd, also do not merit acceptance as the facts of this case are distinguishable from the facts obtaining therefrom. We also find that the decisions relied on by the Ld.A.R has been rightly distinguished by the appellants as elaborated in their written submissions.

52. In the light of the above deliberations, we find that the impugned order in original is untenable and is therefore hereby set aside.

The appeal is allowed, with consequential relief(s) in law, if any.

(Order pronounced in open court on 25.11.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(M. AJIT KUMAR)
MEMBER (TECHNICAL)

ra