CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 3

CUSTOMS APPEAL NO. 51841 OF 2021

[Arising out of Order in Appeal No. 103(SM) CUS/JPR/2021 dated 26.07.2021 passed by the Commissioner (Appeals) Central Excise &CGST, Jaipur]

M/S MAYUR UNIQUOTERS LIMITED **Appellant**

Village Jaitpura, Jaipur-Sikar Road, Jaipur

Vs.

COMMISSIONER (APPEALS)
Office of the Commissioner (Appeals), **Respondent**
Central Excise & CGST, Jaipur
NCRB Building, Statue Circle, Jaipur-302005

Appearance:
Present for the Appellant : Shri Yash Dhadda, Chartered Accountant
Present for the Respondent: Shri Rajesh Singh, Authorised Representative

WITH

CUSTOMS APPEAL NO. 51895 OF 2021

[Arising out of Order in Appeal No. 80(SM)CUS/JPR/2021 dated 22.06.2021 passed by the Commissioner (Appeals) Central Excise &CGST, Jaipur]

M/S JLC ELECTROMET PRIVATE LIMITED **Appellant**

E-153(A), Road No. 11-H, VKI Area, Jaipur-302013

Vs.

COMMISSIONER (APPEALS)
Office of the Commissioner (Appeals), **Respondent**
Central Excise & CGST, Jaipur
NCRB Building, Statue Circle, Jaipur-302005

Appearance:
Present for the Appellant : Shri Yash Dhadda, Chartered Accountant
Present for the Respondent: Shri Rajesh Singh and Shri S K Rahman, Authorised Representatives

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOS. 58005-58006 /2024

Date of Hearing : 01/08/2024
Date of Decision : 12/08/2024

P. V. SUBBA RAO:

1. These two appeals involve the same question as to whether the appellants are entitled to refund of the interest which they had paid on the IGST imported goods which they paid with delay or not.

2. **Customs Appeal No. 51841 of 2021 is filed by Mayur Uniquters Limited[1]** to assail the Order-in-Appeal dated 26.07.2021 passed by the Commissioner (Appeals), Jaipur whereby he upheld the Order-in-Original dated 15.02.2020 passed by Joint Commissioner rejecting the refund claim of Mayur.

3. **Customs Appeal No. 51895 of 2021 is filed by JLC Electroment Pvt. Ltd.[2]** to assail the Order-in-Appeal dated 16.06.2021 which upheld the Order-in-Original dated 15.02.2020 passed by the Joint Commissioner rejecting the refund claim of JLC.

4. Both appellants imported goods under advance authorizations issued by the Directorate General of Foreign Trade DGFT availing the benefit of Notification No. 18/2015-Cus dated 01.04.2015, as amended by Notification no. 79/2017-Cus dated 13.10.2017. They cleared goods on self-assessment without any re-assessment by the officers. Later, they realized that the exemption from IGST available under the notification was subject to pre-import condition, which they had not fulfilled. Therefore, they re-determined the liability on the imports and paid the IGST on the basis of their own assertion along with interest under section 28 (I)(b). Thereafter they filed refund

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1 Mayur
2 JLC

claims asking for refund of the interest which they had paid asserting that no interest was payable on the IGST on imported goods even if the IGST was paid after delay. On a query from the Bench learned counsel for the appellant clarified that when the appellants had prepared the challan to pay IGST on the imported goods, the customs EDI system itself calculated the amount of interest payable and, accordingly, both appellants had paid interest.

5. This claim for refund was rejected by the Joint Commissioner and such rejection was upheld by the Commissioner (Appeals) by the impugned orders. Aggrieved the appellants are before us in appeal.

6. Learned counsel for the appellant has made the following submissions:

(i) The appellants had self-assessed Bills of Entry and cleared the goods claiming exemption both from the basic customs duty and the IGST but later, realized that they were not entitled to the benefit of the Exemption from IGST voluntarily paid IGST along with interest;

(ii) The interest was paid as calculated by the system;

(iii) IGST was paid under section 83(3) of the Customs Tariff Act, 1975 it does not provide for payment of interest.

(iv) There was no power under the law to impose interest on additional duty of customs in the form of IGST;

(v) Bombay High Court in the Case of **Mahindra and Mahindra Limited vs. Union of India**[3] held that there is no mechanism to pay interest or penalty on delayed payment of Cess or special additional duty. This decision was upheld by the Supreme Court while dismissing the SLP filed by the Revenue as[4].

(vi) Therefore, the appellants were not required to pay interest at all on the delayed payment of IGST which must be refunded to them. Refunds have been wrongly denied by the lower authorities.

7. Learned authorised representative for the Revenue made the following submissions:

i) The appellants had voluntarily requested for re-assessment and paid the IGST and interest as applicable. The interest was due to the delay in payment of IGST in the Bills of Entry. After depositing the IGST along with interest the appellants availed credit of said IGST. It is well settled that where tax liability arises, applicable interest automatically becomes payable. The appellants did not file any appeal against the re-assessment nor did they pay interest on IGST under protest.

ii) CBIC's circular no. 16/2023 dated 07.06.2023 categorically directs that applicable IGST must be recovered along with interest

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3 2022-TIOL-1311-SC-MUM-CUS
4 2023(386) ELT 11 (SC)

iii) IGST was leviable on the supply in the course of import of goods under Advance Authorisation. Exemption from payment of IGST was available subject to 'pre-import' condition. The appellants had not fulfilled this condition but self-assessed Bills of Entry claiming exemption from IGST. Later, realizing their mistake, the appellants requested for re-assessment levying IGST and they paid the re-assessed IGST along with applicable interest. Thus, no excess IGST and interest thereon was paid by the claimant and hence their applications for refund of interest were rejected.

iv) The levy of IGST on supply in the course of import is under section 5 of IGST Act, 2017 and section 3(7) of Customs Tariff Act,1975.

v) Section 20 of IGST Act,2017 made several provisions of the CGST Act applicable to IGST including section 50 of CGST Act,2017 which provides for interest on delayed payment of tax. Thus, there is statutory provision for levy of interest on delayed payment of tax.

vi) Alternatively, if the provisions of Customs Act and the Customs Tariff Act are considered, section 3(12) of the Customs Tariff Act, 1975 reads as follows:

> "Section3
>
> (12) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or

cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act".

vii) Thus, it is clear that all the provisions of the Customs Act, 1962 are applicable on the duty or tax or Cess, chargeable under section 3 of the Customs Tariff Act, 1975. Therefore, the provisions of Section 28AA of the Customs Act, 1962 would also apply on this section. Hence, the Appellant is very much liable to also pay the interest on IGST amount, as paid by the appellant. Therefore, the original adjudicating authority rightly rejected the refund claim and the same has rightly been upheld by the lower Appellate authority i.e. Commissioner of Customs (Appeals).

viii) Interest is a consequence of delayed payment of duty or tax. As held by the Hon'ble Supreme Court in case of M/s Navyuga Engineering co Ltd Vs Union of India & Others in Civil Appeal No. 1024/2014 once section 28 applies for determination of duty obligation arising under section 125(2) of the Customs Act, the interest on delayed payment of duty arises under section 28AB of the Customs Act, 1962.

ix) Hence, the Appellants were liable to also pay the interest on IGST amount, and had correctly paid it and there is no basis for refund of interest. Therefore, the original adjudicating authority rightly rejected the refund claims which decisions were correctly upheld by the Commissioner of Customs (Appeals).

x) The impugned orders may be upheld and the appeals may be dismissed.

8. The submissions advanced by learned chartered accountant for the appellants and the learned authorised representative for the Revenue have been considered. The following questions need to be answered by us in these two appeals:

a) Can the appellants claim refund on the basis of a judgment passed in the case of some other assessee?

b) Can the appellants claim refund of the interest paid by them without assailing the assessment itself?

c) What is the nature of the IGST charged on the goods imported into India? Is it a duty or an additional duty of customs or is it IGST?

d) Is interest chargeable if the IGST on imported goods is paid after a delay?

9. The refund claims were filed relying on the judgment of the Bombay High Court in the case of **Mahindra & Mahindra.** The appellants themselves have neither contested their own assessments nor have they been modified. The question which arises is can one assessee claim refund on the basis of a decision in the case of another assessee? To answer this question, the nature of refund proceedings must be understood. Refunds are in the nature of execution proceedings and do not determine the mutual rights and liabilities between the assessee and the Revenue. They are simple cases refunding the money which is due to the assessee as per the assessment. The counterpart of this is the recovery of arrears by the department under section 142 of the Customs Act or similar provisions in other laws. Neither can the assessee claim refund nor can the

department recover any amounts as arrears beyond the assessed tax or duty. If a judgment is delivered by a court in a case with respect to an assessee, it does not automatically increase or reduce the liabilities of every other assessee who is similarly placed. Otherwise, it will create utter chaos and confusion. For instance, if the classification of a good is decided in an appeal under a particular heading in the Customs Tariff, every importer of identical goods in the country cannot seek consequential refund of duty. Conversely, if the classification of the good in the appeal increases duty, the department cannot automatically recover differential duties from all importers. This is the law laid down by the Supreme Court in **Mafatlal Industries**[5] .

10. It has also been held by the larger bench of Supreme Court in **ITC Ltd. vs Commissioner of Central Excise, Kolkata IV**[6] that no refund can be sought without assailing the assessment including self-assessment or otherwise modifying it. In this case, the appellants cleared the goods through self-assessment under section 17. Such self-assessment could be changed by either an appeal to the Commissioner (Appeals) or through a notice issued by the proper officer under section 28 to modify the assessment. However, Section 28 (1) (b) provides for the importer to pay differential duty along with interest on its own and in such cases, the proper officer cannot issue an SCN. The appellants, realizing that they needed to pay the IGST, paid it under Section 28(1)(b) along with interest. Therefore, no SCN was issued by the proper officer and the modification of the original self-assessment attained finality. This assessment has not been assailed before any

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5 1997 (89) E.L.T. 247 (S.C.)
6 2019 (368) E.L.T. 216 (S.C.)

higher judicial forum. As per the ratio laid down in **ITC Ltd.,** the appellants cannot claim refund without assailing the assessment.

11. This leads us to the next question as to whether the IGST on the imported goods is an additional duty of Customs (as asserted by the learned counsel) or it is IGST.

12. To examine this question, we need to examine the taxable event. Every tax or duty becomes leviable on the occurrence of a taxable event and not otherwise. For instance, earning of income is the taxable event for income tax, manufacture is the taxable event for excise duties, sale is the taxable event for sales tax, etc. The power of the Union or the State to levy tax or duty on occurrence of a taxable event is derived from Article 246 of the Constitution read with its Seventh Schedule. The nature of a tax or duty can be understood from the taxable event which makes it leviable and the corresponding charging section of the statute.

13. Duties of Customs are levied under the powers of Union under Article 246 read with entry 83 of List I (Union List) of the Seventh Schedule. These read as follows:

> **246. Subject-matter of laws made by Parliament and by the Legislatures of States**
>
> **(1)Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List")**.
>
> (2)Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
>
> (3)Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').
>
> (4)Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

Seventh Schedule

List I-Union List

83. Duties of customs including export duties

14. **Customs duties are levied on the act of importation or exportation**. Whether the duties are levied under the Customs Act or under the Customs Tariff Act, the taxable event in every case is the act of importation or the act of exportation. The machinery provisions can differ and even the measure of tax could be different but the charge has to be on that taxable event only. For instance, before 2017, additional duty of customs on imported goods equivalent to the duties of excise leviable on like articles manufactured in India was chargeable under section 3 of the Customs Tariff Act. While the measure was the excise duties leviable on manufacture, the levy of additional duty of Customs was still on the act of importation of the goods and not on their manufacture.

15. Customs duties form part of the divisible pool of taxes under Article 270 which are shared between the Centre and States as per the recommendations of the Finance Commission.

16. **Goods and Services Tax is levied on the supply of goods and services and not on importation**. The expression "Goods and Services Tax" can be understood from the definition in clause (12A) of Article 366. It reads as follows:

> **"366. Definitions.**—
>
> In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-
>
> (12A) **"goods and services tax" means any tax on supply of goods, or services or both** except taxes on the supply of the alcoholic liquor for human consumption"

17. If the supply of goods and services is across the states, such inter-state supply is the taxable event for levy of IGST. Article 246A provides for collection of Goods and Services Tax notwithstanding Article 246. Clause (2) of this Article empowers the Union to levy IGST. It reads as follows:

> **"Article 246A – Special provision with respect to goods and services tax**
>
> (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.
>
> **(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.**
>
> Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council."

18. Article 269A provides for apportionment of IGST between the Union and States as provided by the Parliament on the recommendations of the Goods and Services Tax Council. **It also has an explanation according to which the supply in the course of importation is deemed to be inter-state supply**. This article is reproduced below.

> **"Article 269A- Levy and collection of goods and services tax in course of inter-State trade or commerce**
>
> **1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States** in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.
>
> **Explanation.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce**.
>
> (2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

> (3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.
>
> (4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.
>
> (5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce."

19. The charging section of IGST is Section 5 of the IGST Act, 2017. The relevant portion of this section reads as follows:

> **"Section 5 – Levy and collection**
>
> **(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both**, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:
>
> **Provided that the integrated tax on goods other than the goods as may be notified by the Government on the recommendations of the Council imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962).**
>
> (2) The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
>
> ******"

20. Section 3 (7)and (8) of the Customs Tariff Act, 1975 reads as follows:

> **"3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges.—**

(7) Any article which is imported into India shall, in addition, **be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India**, on the value of the imported article as determined under sub-section (8).

(8) For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of— (a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and (b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9)"

21. It is evident from Section 5 of the IGST Act and Sections 3(8) and 3(9) of the Customs Tariff Act what is charged is not a duty of Customs but the IGST and that it is charged under section 5 of the IGST Act, 2017 read with section 3 of the Customs Tariff Act, 1975. The charge is on the supply of goods and not on the act of importation although for the ease of collection, the machinery provisions of the Customs Tariff Act and the Customs Act have been applied. These charging sections also support our view that IGST is a tax on supply and Customs duty is a tax on importation.

22. IGST and Customs duties are also accounted for differently because while IGST has to be apportioned as provided for by the Parliament on the recommendations of the GST Council, Customs duties form part of the Consolidated Fund of India and the divisible pool of taxes which are to be distributed as per the recommendations of the Finance Commission. Various streams of revenue and expenditure of the Central Government are accounted for under various "Major Heads" and further under various "minor heads" within each major head of the

budget. A perusal of the Budget presented by the Union Government for the year 2022-23 shows the following major heads for various types of taxes and duties.

(a) Goods and Services Tax

Central Goods and Services Tax (CGST) 0005

Union Territory Goods and Services Tax (UTGST) 0007

Integrated Goods and Services Tax (IGST) 0008

Goods and Services Tax Compensation Cess 0009

(b) Taxes on Income and Expenditure

Corporation Tax 0020

Taxes on Income Other Than Corporation Tax 0021

Hotel Receipts Tax 0023

Interest Tax 0024

Fringe Benefit Tax 0026

Other Taxes on Income and Expenditure 0028

(c) Taxes on Property and Capital Transactions

Stamps and Registration Fees 0030

Estate Duty 0031

Taxes on Wealth 0032

Securities Transaction Tax 0034

(d) Taxes on Commodities and Services other than Goods and Services Tax

Banking Cash Transaction Tax 0036

Customs 0037

Union Excise Duties 0038

Sales Tax 0040

Service Tax 0044

Other Taxes and Duties on Commodities and Services 0045."

23. Thus, IGST is accounted for under the Major Head '0008' as a part of the Goods and Services Tax while Customs duties are accounted for under the Major head '0037' as a part of "Taxes on Commodities and Services other than GST". Such separate accounting of Customs duties and IGST is essential because IGST has to be apportioned

between the Centre and the States as per Article 269A. Customs duties are not covered by Article 269A.

24. The Receipt budget for 2024-2025 also gives a break up of various types of Customs duties and GST received as follows:

> **"5. Customs**
> **5.01. Import Duties**
> 5.01.01. Basic Duties (including through Debit of Scrips)
> 5.01.01.01. Other than debits of Scrips 0037
> 5.01.01.02. Through Debit in Ledger due to various scrip based schemes 0037
> **Total-Basic Duties (including through Debit of Scrips)**
> **5.01.02. Additional Duty on Customs(CVD) 0037**
> **5.01.03. National Calamity Contingent Duty 0037**
> **5.01.04. Primary Education Cess 0037**
> **5.01.05. Secondary and Higher Education Cess 0037**
> **5.01.06. Social Welfare Surcharge 0037**
> **5.01.07. Health Cess 0037**
> **5.01.08. Agriculture Infrastructure and Development Cess (AIDC) 0037**
> **Total-Import Duties**
> **5.02. Export Duty 0037**
> **5.03. Cesses on Exports 0037**
> 5.04. Other Receipts 0037
> **5.05. Sale of Gold by Public Auction 0037**
> 5.06. Sale Proceeds of Confiscated Goods 0037
> 5.07. Customs Duty on Gold 0037
> 5.08. Receipt of advance payment of Assesses 0037
> **5.09. Safeguard Duty 0037**
> 5.10. Road and Infrastructure Cess 0037
> **5.11. Anti-dumping Duty 0037**
> **Total-Customs**
>
> **8. Goods and Services Tax (GST)**
> 8.01. Central Goods and Services Tax (CGST) 0005
> **8.02. Integrated Goods and Services Tax (IGST) 0008**
> 8.03. GST Compensation Cess 0009
> **Total-Goods and Services Tax (GST)."**

25. It is also clear from the above that while basic customs duty, additional customs duty and cesses are part of the Customs duties, IGST is part of the GST and not part of the Customs duties.

26. In short, the taxable event for levy of Customs duties levied either under the Customs Act or under the Customs Tariff Act is the act of importation or exportation and the constitutional mandate for their

levy is under Article 246 read with entry 83 of List I (Union List) of the Seventh Schedule of the Constitution. These duties are credited under Major budget head 0037 and they form part of the "divisible pool of taxes" which get shared between the Centre and States as per Article 270 on the recommendations of the Finance Commission.

27. The taxable event for levy of IGST is the inter-state supply of goods and services which definition also includes supply in the course of importation. The charging section for collection of IGST on the imported goods is section 4 of the IGST Act read with section 3(8) of the Customs Tariff Act. The Constitutional mandate for collection of IGST is clause (2) of 246A. IGST is credited to Major Budget head 0008 and it has to be apportioned between the Centre and States as decided by Parliament on the recommendations of GST Council. **Therefore, the IGST collected when goods are imported is not a duty of customs.**

28. The last question to be answered by us if interest is payable on IGST which is paid late. The submission of the learned counsel for the appellant is that Bombay High Court held in **Mahindra and Mahindra** that no interest is chargeable on the additional duty of customs levied under section 3 of the Customs Tariff Act, 1975 and therefore no interest can be charged on the IGST. We find that this judgment was delivered in a matter where the SCNs were issued in 2004 and 2005 well before the GST was introduced in 2017. At that time, Additional duty of Customs was leviable under section 3 of the Customs Tariff Act, 1975. After the introduction of the GST in 2017, section 3 was completely re-written and instead of 'additional duty of customs' equivalent to the duties of excise, IGST at the same rate as leviable

under IGST Act became leviable when goods are imported. No judgment of any High Court or Supreme Court has been brought to our notice in which it is held that no interest is chargeable on delayed payment of IGST. Therefore, reliance on **Mahindra and Mahindra** is misplaced.

29. It also needs to be noted that the charge of IGST is not just under section 3 of the Customs Tariff Act but under this section read with section 5 of the IGST Act. Therefore, unlike in the case of customs duties, no rate of IGST is prescribed either in the schedules to the Customs Tariff Act or under any notification issued under the Customs Tariff Act. Section 3 of the Customs Tariff Act refers to the IGST payable under section 5 of the IGST Act. In other words, whatever is payable under the IGST Act on inter-state supplies within India is payable under section 3 of the Customs Tariff Act read with section 5 of the IGST Act if the supplies are in the course of importation.

30. The undisputed legal position is that if there is delayed payment of IGST under Section 5 of the IGST Act, interest is payable. Section 20 of IGST Act,2017 made several provisions of the CGST Act applicable to IGST including section 50 of CGST Act,2017 which provides for interest.

31. When interest is payable on delayed payment of IGST on inter-state supplies within India, the same bill also apply to delayed payment of IGST on imports. This is especially so since section 3 of the Customs Tariff Act makes IGST payable under IGST Act. We find no legal basis or reason to hold that the interest payable on delayed payment of IGST

does not apply if such delayed payment is on supply in the course of imports.

32. To sum up:

a) No refund can be sanctioned to an assessee based on the judgment passed by a Court in respect of some other assessee.

b) No refund can be sanctioned so as to modify the assessment including self-assessment.

c) Duties of customs- whether basic or additional- are levied on the act of importation or exportation. The power to levy Customs duties flows from Article 246 read with entry 83 of List I (Union List) of Seventh Schedule of the Constitution. They are credited under Major Budget Head 0037 and they form part of the divisible pool of taxes distributed between the Centre and State as per the recommendations of the Finance Commission

d) IGST is a tax on the supply of goods- the power to levy IGST flows from Article 246A of the Constitution. IGST is credited to Major budget head 0008 and it gets apportioned between the centre and states as decided by Parliament on the recommendations of the GST council.

e) What is levied on supply in the course of importation is IGST and it is not a duty or an additional duty of Customs; the judgment in **Mahindra and Mahindra** pertains to additional duty of customs in pre-GST regime.

f) IGST is chargeable on supplies in the course of imports under section 3 of the Customs Tariff Act read with section 5 of the IGST

Act. Section 20 of the IGST Act made some provisions of CGST Act applicable to IGST including the section 50 which makes interest payable. Thus, interest is payable on delayed payment of IGST where the supplies are made within India and the same applies to interest on delayed payment of IGST on imports.

g) Thus, the appellants had correctly paid the interest on delayed payments of IGST and both the lower authorities were correct in rejecting the claim of refund.

36. In view of the above, the orders impugned in both the appeals are upheld and the appeals are dismissed.

(Order pronounced on **12/08/2024**)

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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