# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
**NEW DELHI**

PRINCIPAL BENCH – COURT NO. IV

## CUSTOMS APPEAL No. 51850 of 2021 [DB]

[Arising out of Order in Appeal No.104 (SM)/CUS/JPR/2021 dated 27.07.2021 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

**M/s. Poddar Pigments Limited** **...Appellant**
E-10-11 & F-14 to 16,
RIICO Industrial Area,
Sitapura, Jaipur-303022

**Versus**

**The Commissioner** **....Respondent**
Central Excise & CGST,
Jaipur, NCRB, Statue Circle,
Jaipur-302005

**APPEARANCE:**
Mr. Yash Dhadda, Advocate for the appellant
Mr. Girijesh Kumar, Authorized Representative for the Respondent

**CORAM :**
**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**
**HON'BLE MR.P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing: 27/06/2024**
**Date of Decision: 14/10/2024**

**FINAL ORDER No. 58792/2024**

**DR. RACHNA GUPTA**

Present appeal has been filed to assail the order in appeal No.104/2021 dated 27.07.2021 vide which the claim of seeking the refund of amount of interest paid alongwith the amount of IGST has been rejected. The relevant facts in brief are as follows:-

2. The appellant is engaged in manufacture of Colour Additive Masterbatches. It exports its manufactured goods outside India and procures various raw-materials through imports from other countries vide 18 number of Bills of Entry during the period from 31.10.2017 to 13.12.2017. The appellant had imported goods under Various Advanced Authorization issued by DGFT by availing IGST benefit at the rate of "Nil" duty in terms of Notification No.18/2015-Cus. dated 01.04.2015 (as amended). However, vide letter dated 18.05.2018 the appellant had requested the Department for re-assessment of those 18 Bills of Entry. As the appellant self-evaluated and is appraised that they had not fulfilled the pre-import condition as the goods imported under Advance Authorizations were required to be imported first and thereafter the manufactured goods were to be exported which was mentioned in the said letter that inputs used for production of their export product i.e. colour masterbatches, does not fall under the list of inputs given in the Appendix of the aforesaid Notification. The benefit of Notification has been taken due to ambiguity about the said Notification.

3. Based on the said request the bill of entries were re-assessed. The appellant had paid the amount of IGST and has also availed the input tax credit. The payment was made alongwith the payment of interest amounting to Rs.7,95,166/- since the appellant had committed the mistake of wrongly availing benefit of IGST exemption for import under mistake of wrongly interpreting the definition of pre-import condition, that the

amount of interest of Rs.7,95,166/- was claimed to be refunded vide refund claim dated 26.06.2019. The Show Cause Notice No.241/2019/896 dated 21.09.2019 had proposed the rejection of the said claim. The proposal has been accepted initially vide Order-in-Original No.18/2019 -20 dated 15.02.2020. The appeal against the said order has been rejected vide the Order-in Appeal / the Order challenged vide the present appeal. Being aggrieved, the appellant is before this Tribunal.

4. We have heard Mr. Yash Dhadda, ld. Counsel for the appellant and Mr. Girijesh Kumar, Departmental Representative for the Department.

5. That the appellant at first instance, while importing goods under the exemption notifications No.18/2015 dated 01.04.2015 claimed exemption of IGST. However later it requested the proper officer for re-assessment of already assessed (self-assessed) Bills of Entry and paid IGST on the reassessed value. However, it had to pay the interest at ICEGATE auto-calculated by the system. The amount of interest paid in respect of 18 Bills of Entry at the given port was Rs.7,95,164/-only. Since interest was not payable as per law, in its understanding appellant applied for manual refund of interest paid. The Department issued a Show cause notice dated 21.09.2019 proposing rejection of refund claim and bar of unjust enrichment otherwise than on merits.

6. That the learned adjudicating authority, passed an order in original dated 15.02.2020 wherein it was mainly held that during

re-assessment of Bills of Entry the objection for non-payment of interest was not made and the exemption from payment of IGST was *suo moto* not taken by the appellant along with other grounds hence the refund claim of the appellant should be rejected.

7. That against said OIO, an appeal was filed before the Hon'ble Commissioner (Appeals) wherein without analyzing the facts in detail the appeal was disposed off in a manner that refund of interest paid was rejected by Order in Appeal dated 27.07.2021.

8. Ld. Counsel for the appellant has brought to notice the decision of Hon’ble Supreme Court in the case of Union of India vs. Cosmo Films in Civil Appeal No.290/2023. It is impressed that when a bonafide mistake is the reason for not paying IGST at the appropriate time, the assessee is entitled for refund of the amount of interest paid along wherewith EGST. Finally relying upon the decision of Bombay High Court in the case of **Mahindra & Mahindra** reported **as 2022 (10) TMI 212 (Bom.-HC)** the order under challenge is prayed to be set aside and the appeal is prayed to be allowed.

9. Ld. D.R. while rebutting these submissions has mentioned that the appellants had already claimed the exemption of IGST with respect to the impugned import vide 18 number of Bills of Entry in terms of Notification No.18/2015 dated 01.04.2015. The said Notification got amended vide Notification No.79/2017 dated 13.10.2017 incorporating condition No.xii according to which the

exemption of IGST was subjected to "pre-import condition". Though said condition No.xii was later omitted vide the subsequent Notification No.01/2019 dated 10.01.2019. However, for the impugned period from 13.10.2017 to 10.01.2019 (the period of 18 Bill of Entries) the pre-import condition was applicable. The appellants thus had wrongly claimed the IGST exemption.

10. They had self-realized their mistake and vide their letter dated 18.05.2018 had requested re-assessment of their Bill of Entries. Subsequent thereto the IGST on the imports made by the appellant was paid. Since the payment was delayed payment and the IGST was not paid at the relevant time that the payment automatically invites the liability of paying interest. Hence there is no infirmity in the order under challenge ld. D.R. has further impressed upon that **Hon'ble Supreme Court in Cosmo Films Ltd. as per decision dated 28.04.2023** has accepted the appeal filed by the Revenue against the order based by Hon'ble Gujarat High Court in the case of **M/s. Maxim Tubes Company Pvt. Ltd. vs. Union of India reported as 2019 TIOL 459 High Court, Hyderabad**, has been accepted. The pre-import condition in Notification No.79/2017 dated 13.10.2017 has been held to be valid and intra vires. With these submissions, ld. DR has impressed upon that there is no infirmity in the order under challenge. The appeal is prayed to be dismissed.

11. Having heard the rival contentions, perusing the record following are observed to be the admitted facts:-

1) The appellant had claimed the IGST exemption while importing the goods vide 18 number of Bills of Entry.
2) Appellant is self-evaluated that the requisite Notification is subject to pre-import condition which appellant was not following.
3) Pursuant to said evaluation the appellant had requested for re-assessment of all those Bill of Entries.
4) The appellant had paid the amount of IGST on the re-assessed value voluntarily.
5) The amount of Rs.7,95,166/- was paid as interest on the amount of IGST paid.

12. The dispute is that the said amount of interest is not payable as the Notification granting exemption of IGST was ambiguous and in fact was held ultra vires by Hon'ble High Court of Gujarat in the case of Maxim Tubes (supra). In the light of these facts the controversy narrowed down to the questions:

> " Whether the appellant was liable to pay interest on the amount of IGST paid voluntarily for the reason that the non-payment of IGST was due to misinterpretation arising out of ambiguous Notification and as such as to whether the said amount of interest paid is refundable or not."

13. In the light of above facts, it is clear that the appellant initially claimed IGST exemption, however, made the payment

thereof at a subsequent later stage. This issue before the adjudicating authority below had not yet attained the finality as the Revenue's appeal against the decision of Hon'ble Gujarat High Court in M/s. Maxim Tubes (supra) was pending adjudication. Subsequent to the order under challenge the Supreme Court decision in that respect has been announced on 28.04.2023 setting aside the said order of Gujarat High Court. The pre-import condition in the Notification No.79/2017 dated 13.10.2017 has been held to be valid and intra vires. Also it is an admission of appellant itself that pre-import conditions were not fulfilled by the appellant. Though the plea taken to be a bonafide mistake but today it stands established that appellant was not entitled for availing IGST exemption under Advance Authorization. The said amount of IGST was paid voluntarily at a later date subsequent to the re-assessment of 18 Bill of Entries.

14. Coming to the decision in the case of **Mahindra & Mahindra** (supra), we hold that present is the case where interest on late payment of IGST is prayed to be refunded whereas in the said case (Mahindra & Mahindra) the refund claim was filed about amount of interest paid alongwith additional duty of customs which was paid at the date later than the relevant date. We are of the opinion that IGST on imports is not additional duty of customs hence the logic arrived at by Bombay High Court (affirmed by Hon'ble Supreme Court) is not applicable to the interest on IGST. The opinion is based on following discussion on statutory provisions. This issue has already been examined at

length and decided by this Tribunal vide Final Order No.58005-58006/2024 in Appeal No.51841 of 2021 in the case of M/s. Mayur Uniquoters Limited and others which has been held as follows:-

*"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)"*

*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.***

*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.*

15. We find no reason to take a different view in this case as the issue is identical. We, therefore, find that:

a) IGST is not an additional duty of Customs. The taxable event for levying any duty of Customs is the act of importation or exportation. The taxable event for levying IGST, on the other hand, is the supply in the course of in the course of inter-state trade. By virtue of the explanation to Article 269A of the Constitution of India, inter-state supply includes supply in the course of international trade and hence IGST is charged on such supplies.

b) The charging section for levy of IGST on the imported goods is Section 3(7) of the Customs Tariff Act read with section 5 of the IGST Act, 2017. The rates at which the IGST is levied on imports is the same as those on inter-

state supplies, i.e., as per Section 5 of the IGST Act. Therefore, whatever applies to IGST on inter-state supply of goods within India also applies with equal force to IGST on supply in the course of international trade.

c) If IGST on inter-state supply within India is paid with delay, interest is payable as per section 50 of the CGST Act, 2017. IGST paid on supply in the course of international trade stands on the same footing. Therefore, if IGST is paid with delay either in the course of inter-state supply or during supply in the course of international trade, interest has to be paid.

d) Liability to pay interest is automatic and it arises irrespective of the fact that the delay in payment was completely unintentional and without any element of deceit duty. We draw our support from the decision of Hon'ble High Court of Karnataka in the case of **Commissioner of Customs, Bangalore vs. Pierre Colsun Inc. reported in 2014 (300) ELT 207** wherein it has been held that once the duty is not paid within the specified time, the liability to pay interest is automatic and the assessee is bound to pay interest for the delayed payment of duty.

16. In the light of above, we answer the above framed question in favour of Revenue and hold that the liability of the appellant to pay interest on delayed payment of IGST was automatic. The appellant is not entitled to claim the refund of the said amount of

interest paid along with amount of IGST. The refund claim is therefore held to have been rightly rejected. With these observations, we hereby upheld the order under challenge and dismiss the appeal.

[Order pronounced in the open Court on 14/10/2024]

**(DR.RACHNA GUPTA)**
**MEMBER (JUDICIAL)**

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

Anita