

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87856 OF 2024

[Arising out of Order-in-Original No: 186/2024-25/Commr/NS-III/CAC/JNCH dated 15th October 2024 passed by the Commissioner of Customs (NS-III), Nhava Sheva.]

G Amphray Laboratories

Sambava Chambers, 4th Floor, Sir PM Road
Fort, Mumbai - 400001

... Appellant

versus

Commissioner of Customs (NS-III)

Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707

...Respondent

APPEARANCE:

Dr Sujay Kantawala, Shri Anupam Dighe and Ms Chandni Tanna, Advocates and
Shri Prathamesh, Chartered Accountant for the appellant

Shri AK Shrivastava, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86721/2025

DATE OF HEARING:	24/04/2025
DATE OF DECISION:	22/10/2025

PER: C J MATHEW

A very peculiar issue was engendered in the imports, valued at ₹

54,13,64,050 effected by M/s G Amphray Laboratories against ‘advance authorization’ between October 2017 and December 2018, and solely as consequence of ‘pre-import’ condition inhering in exemption notification¹ availed then; the impugned condition, inserted *vide* notification² of October 2017, was omitted *vide* notification³ of January 2019 owing to which ‘integrated tax’, envisaged in section 3(7) of Customs Tariff Act, 1975, was liable to discharged thereon. The scheme of ‘advance authorization’ was intended to provide the exemption thereon only to the extent that the imported goods be used in the production of goods for export; stemming therefrom demand of differential duty, under section 28 of Customs Act, 1962 along with interest thereon under section 28AA of Customs Act, 1962, was proposed for recovery by notice⁴ along with penal consequence of section 114A of Customs Act, 1962 in addition to proposal for confiscation under section 111 (o) of Customs Act, 1962.

2. Admittedly, the exports were undertaken by deployment of goods other than those imported without payment of duty. The records show that the appellant herein had discharged ‘integrated tax’ of ₹ 6,84,60,401 along with interest thereon of ₹ 4,94,39,247 on 7th July 2023 despite which the show cause notice was adjudicated by

¹ [no. 18/2015-Cus dated 1st April 2015]

² [no. 79/2017 dated 13th October 2017]

³ [no. 01/2019 dated 10th January 2019]

⁴ [show cause notice dated 18th December 2022]

Commissioner of Customs (NS-III) *vide* its order⁵ and which, in addition to appropriation of ‘integrated tax’ and interest towards the confirmation of proposed recovery, also confiscated the goods under section 111 of Customs Act, 1962 while offering redemption on payment of fine of ₹ 3,00,00,000 under section 125 of Customs Act, 1962 even as penalty was imposed under section 114A of Customs Act, 1962. This appeal challenges the fastening of detriments not envisaged in section 3(12) of Customs Tariff Act, 1975.

3. Setting the background, Learned Counsel for appellant submitted that entitlement to exemption from ‘integrated tax’ had been under dispute with finality rendered by decision of the Hon'ble Supreme Court in *Union of India v. Cosmo Films Ltd [2023 (385) ELT 66 (SC)]* which prompted the discharge of liability that enabled regularization with taking credit thereof, too. It was submitted that, in consequence, it was only reasonable to expect closure of proceedings initiated by show cause notice *supra*. He further contended that any undischarged liability under the authority of Customs Tariff Act, 1975 did not entail all consequences that befall duty liability stemming from section 12 of Customs Act, 1962 as section 3(12) of Customs Tariff Act, 1975 presented circumscribed authority and amendment therein was effected only on 16th August 2024. Reliance was placed on the decision of the Tribunal in *Chiripal Poly Films Ltd v. Commissioner of Customs*,

⁵ [order-in-original no. 186/2024-25/Commr/NS-III/CAC/JNCH dated 15th October 2024]

Ahmedabad [(2024) 22 Centax 245 (Tri-Ahmd)]. Likewise, it was contended that the Hon'ble High Court of Bombay in *Learned Authorized Representative Sulphonates Pvt Ltd v. Union of India [(2025) 29 Centax 212 (Bom)]* had taken note of the amendment in section 3(12) of Customs Act, 1962 as having prospective effect.

4. We have heard Learned Authorized Representative.

5. In *re Chiripal Poly Films Ltd*, the Tribunal held that

'5.24 In view of the above mentioned provisions of law and judicial pronouncements, it is settled that in the absence of specific provision relating to levy of Interest, Redemption Fine and Penalty in respective legislation for levy duty, the same cannot be demanded or imposed or recovered by taking recourse to machinery provisions relating to recovery of the duty. Therefore, the orders for recovery of "Interest, Redemption Fine and Penalty" in these cases are not sustainable considering charging provisions of the Customs Act 1962 and relevant provisions under the Customs Tariff Act, 1975 and the decisions rendered thereon as mentioned above. The issue on imposing Interest, Redemption Fine and Penalty is no longer ResIntegra.

5.25 We also note that adjudicating authority has relied upon a few decisions in the impugned orders, which are on different facts and applicable in such facts. The facts and issue in the present cases are not identical to those cases. Therefore, the ratio of the decision is not directly applicable in the present case.'

6. The Hon'ble High Court of Bombay, in *re AR Sulphonates*

Private Ltd, held that

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

61. Further, we are unable to accept the submissions of the Respondents that the decision in the case of *Mahindra & Mahindra Limited* (supra) is not applicable to the facts of the present case since it does not interpret Section 3 (12) of the Tariff Act. The provisions under consideration before this Court in the case of *Mahindra & Mahindra Limited* (supra) were Sections 3 (6) and 3A (4) of the Tariff Act. In *Mahindra & Mahindra Limited* (supra), this Court interpreted the provisions of Sections 3 (6) and 3 A(4) of the Tariff Act, which are *pari materia* to the unamended Section 3 (12) of the Tariff Act, which is in consideration in the present case. On interpreting Sections 3 (6) and 3A (4) of the Tariff Act, this Court held that when no specific reference was made to interest and penalties in the said provisions, imposing interest and penalty would be without the authority of law. In these circumstances, in our view, the ratio of the decision in the case

of Mahindra & Mahindra Limited (supra), would be squarely applicable to the facts of the present case.

62. *We are also not able to accept the submission of the Respondents that the provisions of Section 3 (12) use the term "including" and the same implies that the provisions of the Customs Act will be made applicable to the Tariff Act. As can be seen from the Judgement of this Court in Mahindra & Mahindra Limited (supra), Sections 3(6) and 3A(4) of the Tariff Act, which were considered by this Court in the said Judgement, also use the word "including". Despite the same, this Court came to the conclusion that, since there was no specific reference to interest and penalties, imposing interest and penalties would be without the authority of law.*

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

64. *All this apart, further, the Respondents, by letter dated 15th January, 2024 addressed to the Petitioner, confirmed that the matter was being transferred to the Call Book in view of the pendency of the Review Petition before the Hon'ble Supreme Court in the case of Mahindra & Mahindra Limited (supra). This clearly shows that the Respondent also believed that the Judgement of this Court in Mahindra & Mahindra Limited (supra) had a direct bearing on the facts of the present case. Accordingly, once the Review Petition was dismissed by the Hon'ble Supreme Court in the case of Mahindra & Mahindra Limited (supra), the Respondents ought to have followed the Judgement of this Court in the case of Mahindra & Mahindra Limited (supra). In this regard, the reliance placed on the Judgement of this Court in Shreenathji Logistics (supra) is well founded. In this case, the Petitioner therein was seeking quashing of the impugned show cause*

notice dated 19th October, 2012 primarily on the ground that there had been an inordinate delay in adjudicating the show cause notice. It was the case of the Respondents therein that, since there was a matter where an identical issue was held against the Respondents by the CESTAT, Bombay, and the Respondent therein had preferred an Appeal in this Court, the show cause notice was transferred to the Call Book. On these facts, this Court held as under:-

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

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

Respondent No.2 is totally erroneous. As held herein above by us, the Judgement of this Court in Mahindra & Mahindra Ltd., (supra) squarely applies to the facts of the present case and it makes no difference to the ratio of the said case that it was decided in a settlement case.

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

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

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

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

2. The respondents herein carry on business of manufacture of man made fabrics. They have alleged to have misdisclosed the composition of certain sorts of fabrics. They were further alleged to have under valued goods by not paying duty on to the amount realised through debit notes. The collector, by his order dated 17th November, 1987, confirmed the levy of duty, amounting to Rs. 1,19,453,59. The Collector held that 35 bales of Fabric of Sort Nos. 1200 and 1300 are liable to be confiscated, but since the goods had already been released, he appropriated a sum of Rs. 10,000/-towards the value of goods. He also imposed the penalty of Rs. 50,000/-Aggrieved, the respondents preferred appeals before the Central Excise and

Gold (Control) Appellate Tribunal.

3. The Tribunal relying upon the decision in the case of *Pioneer Silk Mills Pvt. Ltd. v. Union of India*, reported in 1995 (80) E.L.T. 507 (Del), allowed the appeals, holding that the provisions of Central Excise Act and the Rules made thereunder, so far as they relate to confiscation cannot be made applicable for the breach of provisions of the Act. It is against the said judgment and order of the Tribunal, the appellant is in appeal before us.

4. Mr. S.R. Bhat, learned Counsel appearing for the appellant, urged that the view taken by the Tribunal in allowing the appeals was erroneous inasmuch as it is contrary to the decisions in the case of *Mis. Khemka & Co (Agencies) Pvt. Ltd. v. State of Maharashtra*, reported in 1975 (2) SCC 22 and *Commissioner of Central Excise v Ashok Fashion Ltd.*, reported in 2002 (141) E.L.T. 606 (Guj.).

5. In order to appreciate the issue, it is relevant to set out the subsection (3) of Section 3 of the Act, as applicable in this matter and which runs as under:

"SECTION 3. Levy and collection of additional duties. -

(1).....

(2).....

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

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

7. The Parliament by reason of Section 63(a) of the Finance Act, 1994 (Act No. 32 of 1994) substituted sub-section (3) of

Section 3 of the said Act, which now reads as under:

"3. Levy and collection of Additional Duties. -

(1)

(2)

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

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

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

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

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

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

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

71. *As far as Circular No. 16/ 2023-Customs dated 7th June, 2023 is concerned, it seeks to recover interest along with IGST. The relevant part of the said Circular reads as under:-*

"(a). for the relevant imports that could not meet the said pre-import condition and are hence required to pay IGST and Compensation Cess to that extent, the importer (not limited to the respondents) may approach the concerned assessment group at the POI with relevant details for purposes of payment of the tax and cess along with applicable interest."

72. *In our view, for all the reasons stated herein above, the said Circular, to the extent that it seeks to recover interest, is bad in law.*

73. *As far as redemption fine imposed by the impugned Order is concerned, the same is demanded in lieu of confiscation of goods under Section 111(o) of the Customs Act. As per Section 111(o) of the Customs Act, the goods shall be liable for confiscation in the event the condition subject to which the goods are exempted from duty is not observed. As already held by us on the basis of the Judgement of the Hon'ble Supreme Court in the case of Orient Fabrics Limited (supra), Section 3 (12) of the Tariff Act, after its amendment by Finance (No.2) Act, 2024, dated 16th August, 2024, makes applicable the provisions relating to interest, offences and penalties of the Customs Act to the Tariff Act. As already held by us, Section 3 (12) of the Tariff Act, as amended, is applicable only after 16th August, 2024 and is not applicable to the present case. Accordingly, in the present case, no confiscation could have been imposed.*

74. Further, the Joint Director General of Foreign Trade, by Trade Notice No. 7 of 2023-24 dated 8th July, 2023 clarified that all imports made under the Advance Authorization Scheme on or after 13th October, 2017 and upto and including 9th January, 2019, which could not meet the pre-import condition, may be regularized by making payments as prescribed in the Customs Circular No. 16/2023 - Customs dated 7th June, 2023. For this reason also, no confiscation can be done nor any redemption fine can be imposed.

75. Further, in the present case, once the Petitioner pays the IGST, it would amount to the Petitioner not having availed the benefit of the exemption and the issue would be regularized. Therefore, the provisions of Section 111 (o) of the Customs Act will not be attracted. Consequently, no fine and penalty would be recoverable from the Petitioner.

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

- (i) It is declared that Circular No.16 of 2023-Customs dated 7th June, 2023, to the extent that it purports to levy interest upon the IGST payment, is beyond the provisions of the Customs Tariff Act, 1975 and is bad in law;
- (ii) The impugned Order dated 1st August, 2024, to the extent that it seeks to recover interest, confiscate goods, impose redemption fine and impose penalty, is quashed and set aside;
- (iii) It is declared that the amendment to the provisions of Section 3(12) of the Customs Tariff Act, 1975 by Finance (No.2) Act, 2024 dated 16th August, 2024 is

*prospective in nature and is applicable only from 16th
August, 2024 onwards;*

- (iv) Rule is made absolute in the aforesaid terms;*
- (v) In the facts and circumstances of the case, there will be
no order as to costs.'*

7. In view of the rulings of the Hon'ble High Court of Bombay *supra*, recourse in the impugned order to confiscation under section 111(o) of Customs Act, 1962 and to imposition of penalty under section 114A of Customs Act, 1962 as consequence of imports in breach of condition of 'pre-import' does not sustain. This condition enabled exemption from 'integrated tax' and, while breach thereof enabled recovery of 'integrated tax', the other consequences not enumerated specifically in section 3(12) of Customs Tariff Act, 1975 did not attach.

8. The show cause notice was without authority of law and, to the extent thereof, the adjudication thereof is set aside to allow the appeal.

(Order pronounced in the open court on 22/10/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)