CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT NO.1

Customs Appeal No. 85014 of 2017

(Arising out of Order-in-Original No. CCP/ADJ/AKJ/02/2016 dated 19.09.2016 passed by the Principal Commissioner of Customs (Preventive, Mumbai)

JSW Steel Ltd. **Appellant**
2nd Floor, Innovation Centre,
Geetapuram, Dolvi,
Taluika Pen,
Raigad 402 107.

Versus

Commissioner of Customs (Preventive) Mumbai **Respondent**
2nd Floor, New Customs House,
Ballard Estate, Mumbai 400 001.

Appearance:

Shri Ramnath Prabhu with Shri Rishabh Jain, Advocates, for the Appellant
Shri Deepak Sharma, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

Date of Hearing: 29.10.2025
Date of Decision: 29.10.2025

FINAL ORDER No. 86732/2025

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellant had imported various types of coal through Dharamtar Port and filed the Bills of Entry *inter alia,* mentioning therein that the additional duty of customs (CVD) payable is @ 5% *ad valorem*. The Bills of Entry filed by the appellant were provisionally assessed by charging the CVD @5%. The assessment initially made provisionally was finalized accepting the CVD amount claimed by the appellant. However, the department subsequently felt that the CVD amount actually to be charged on importation of the goods should be at 6% *ad valorem* and accordingly, proceeded against the appellant for recovery of the

differential CVD amount. Before initiation of the show cause proceedings, the appellant had paid the differential duty and intimated regarding such payment to the department. The differential amount on account of higher CVD was confirmed in the adjudication proceedings and the amount already paid by the appellant was appropriated in the adjudication order dated 19.09.2016 against such confirmed demand. Further, the adjudicating authority in the said order has also confirmed the interest demand under Section 28AA of the Customs Act, 1962. The appellant has not contested the differential amount of CVD confirmed in the adjudication order. Insofar as confirmation of the interest demand is concerned, the appellant had assailed the impugned order on the ground that no machinery provisions have been provided in Section 3 of the Customs Tariff Act, 1975 for charging interest for delayed payment of the CVD amount.

3. On reading of the statutory provisions, more particularly Section 3 of the Tariff Act of 1975, as it existed at the material time, we find that the provisions have only been made in the statute for levy of additional duty, equivalent to central excise and sales tax and other levies. In the said statute, there is no machinery provision for payment of interest for delayed payment of the additional duties. Since the statute is silent about payment of interest, a separate liability cannot be created by the department for claiming the interest amount from the importer/appellant. We find that the issue arising out of the present dispute regarding payment of interest on CVD amount levied under Section 3 of the Act of 1975 has already been dealt with by the Hon'ble Bombay High Court in the case of *Mahindra & Mahindra Ltd. vs. Union of India* - (2023) 3 Centax 261 (Bom.). The relevant paragraphs recorded in the said order are quoted herein below:-

> *"29**.** Further the Customs Act, 1962 under section 28 provides for recovery of dues and under section 28AB provides for interest on delayed payment of duty. Both are separate provisions and in our view, the incorporating provisions would apply only to the duty leviable under the Customs Act and not interest on delayed payment of duty or penalty because as time and again Courts have held that taxing statute have to be incorporated strictly and tax can be imposed only when the language of the statute expressly provided for it. The authority has to be provided specifically, explicitly and expressly. Moreover, CVD, SAD and surcharge are in addition to the basic*

customs duty. Sub-section (5) of Section 3 and sub-section (3) of Section 3A of Customs Tariff Act, 1975 provide that the duty chargeable under the said sections will be in addition to any other duty imposed under the Customs Tariff Act, 1975 or any other law for the time being in force. Sub-section (3) of Section 90 of the Finance Act, 2000 say the surcharge shall be in addition to any duties of customs under the Customs Act or under any other law for the time being in force.

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38. We have to note that in the present case, it is not disputed that petitioner has paid a sum of Rs. 11.84 Crores much prior to the issuance of show cause notice. There is no determination of duty under section 28(2) of the Customs Act, 1962 and, therefore, Section 28AB of the Customs Act, 1962 is also not applicable. Petitioner has also paid the difference between the admitted duty liability and the amount settled by respondent no. 2. We do not agree with respondent no. 2 that CVD, SAD and surcharge are being recovered under section 28 of the Customs Act, 1962. Consequently Section 28AB of the Customs Act, 1962 also will also not be applicable. In the absence of specific provision relating to levy of interest in the respective legislation, interest cannot be recovered by taking recourse to machinery relating to recovery of duty."

Further, we also find that the SLP filed by Union of India against the above order of the Hon'ble Bombay High Court in the case of Mahindra & Mahindra Ltd. (supra) was dismissed by the Hon'ble Supreme Court. Therefore, the issue arising out of the present dispute regarding payment of interest on the CVD amount is no more open for any debate.

4. In view of the settled position of law, we do not find any merits in the impugned order insofar as it has confirmed interest demand on CVD amount on the appellant. Therefore, the impugned order to such extent is set aside and the appeal is allowed in favour of the appellant.

(Order dictated in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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