

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87331 of 2024

(Arising out of Order-in-Original No. 16/DSR(16)/CC(ADJN.)/MUMBAI/2024-25 dated 26.06.2024 passed by the Commissioner of Customs (Adjudication), Mumbai)

M/s Gandhar Oil Refinery India Ltd.

18th Floor, DLH Park, Near Goregaon,
S.V. Road, Goregaon (West), Mumbai- 400 062.

.... Appellant

Versus

Commissioner of Customs (Adjudication), Mumbai

New Custom House, Ballard Estate,
Mumbai- 400 001.

....Respondent

WITH

Customs Miscellaneous Application No. 86958 of 2025

(on behalf of appellant)

In

Customs Appeal No. 86426 of 2025

(Arising out of Order-in-Original No. 36/SJ(36)/PCC(ADJN.)/MUMBAI/2023-24 dated 28.12.2023 passed by the Commissioner of Customs (Adjudication), Mumbai)

M/s Shah Industries

C-1, 270, GIDC Estate, Naroda
Ahmedabad – 382 330

.... Appellant

Versus

Commissioner of Customs (Adjudication), Mumbai

New Custom House, Ballard Estate,
Mumbai- 400 001.

....Respondent

APPEARANCE:

Shri Dev Wadhwa, Advocate for the Appellant

Shri Jitesh Kumar Jain, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87000-87001/2025

Date of Hearing: 19.11.2025

Date of Decision: 19.11.2025

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Utilization of Advance Authorization for duty-free import of raw materials used for manufacturing the export products, is the subject matter of the present dispute. In the case in hand, for non-compliance of 'pre-import conditions', a case was booked against the appellants on the ground that the exports were made under the "Advance Authorization scheme" before the corresponding import of the goods used for such exportation of goods. The show-cause proceedings initiated against the appellants were culminated into the impugned orders, wherein the original authority has confirmed the adjudged demands proposed for recovery in the Show Cause Notices (SCNs).

3. The appellants, in the present case, are not contesting the differential IGST demand confirmed in the impugned orders. However, these appeals were preferred before the Tribunal on the grounds that the appellants are not liable to pay the amount of interest, redemption fine and penalties imposed on them in the impugned orders. In support of such submissions, the appellants have relied upon the judgment of Hon'ble Supreme Court in the case of *Union of India Vs. Mahindra and Mahindra Ltd. - 2023 (386) E.L.T. 11 (S.C.)*, the judgment of Hon'ble Bombay High Court in the case of *A.R. Sulphonates Private Limited Vs. Union of India & Others in Writ Petition No. 19366 of 2024 passed on 09.04.2025* and order passed by the Co-ordinate Bench of this Tribunal in the case of *Chiripal Poly Films Ltd. Vs. Commissioner of Customs, Ahmedabad vide Final Order No. 11628-11630/2024 dated 23.07.2024*.

4.1 We find that the Hon'ble High Court of Bombay, in the case of *Mahindra and Mahindra Ltd.*, reported in...., upon examination of the issue regarding payment of interest on the demand of CVD, SAD and surcharge, being recovered under Section 28 of the Customs Act, 1962, have held that since Section 3(1) of the Customs Tariff Act, 1975, which is the charging section for levy of CVD, has not borrowed the aspect of levy or demand of such interest, penalty etc. from the Customs Act, 1962, the same is not applicable to the CVD, SAD etc. The relevant paragraphs recorded in the said order of the Hon'ble Bombay High Court are quoted below:

"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.

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."*

4.2 In the Special Leave Petition (Civil) Diary No. 18824/2023 filed by the Revenue against the above judgement of the Hon'ble High Court of Bombay, the Hon'ble Supreme Court had dismissed the SLP, being devoid of any merits. Further, in the Review Petition Diary No. 41195/2023 preferred by the department, the Hon'ble Supreme Court had also held that there is no error apparent on the face of the record or any merit in the Review Petition, warranting reconsideration of the order impugned. Therefore, the Hon'ble Supreme Court dismissed the Review Petition.

4.3 We further find that the legal provisions under Section 3(12) of the Customs Tariff Act, 1975 was suitably amended vide Finance (No. 2) Act, 2024, w.e.f. 16.08.2024, so as to specifically include the provision for levy of interest, penalty etc. The said amended provision under sub-section (12) of Section 3 of the Customs Tariff Act, 1975 is extracted and given below:

Section – 106 of the Finance (No. 2) Act, 2024

Customs Tariff
Amendment of section 3.

106. In section 3 of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act, for sub-section (12), the following sub-section shall be substituted, namely:—

*"(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, short-levy, 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 maybe."*

(Emphasis supplied)

From the statutory provision referred above, it clearly transpires that the amended provisions of sub-section (12) of Section 3 of the Customs Tariff Act, 1975 shall come into force w.e.f. 16.08.2024 and shall not be applicable during the disputed period, which is prior to the date of such amendment. Therefore, we are of the considered opinion that demand of interest, fine and penalty on the appellants is not legally sustainable.

5. In view of the above discussions, the impugned order to the extent, it has confirmed the demands towards interest, redemption fine and penalties on the appellants are set aside and the appeals to such extent are allowed in favour of the appellants.

6. Miscellaneous application also stands disposed of.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)