

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85628 of 2024

[Arising out of Order-in-Original No.29/SJ(29)/PCC(ADJN.)/MUMBAI/2023-24 dated 20.12.2023 passed by Pr. Commissioner of Customs (Adjudication), Mumbai.]

GTN Engineering (India) Limited

Plot No.29, Nagarjuna Hills, Punjagutta
Hyderabad – 500 082.
Telangana State.

.....Appellants

VERSUS

Pr. Commissioner of Customs (Adjudication)

2nd Floor, Old Building
New Custom House, Ballard Estate
Mumbai – 400 001.

.....Respondent

Appearance:

Shri Akhilesh Kangasia, Advocate for the Appellants

Shri Ram Kumar, 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/85030/2026

Date of Hearing: 13.11.2025

Date of Decision: 20.01.2026

PER : M. M. PARTHIBAN

This appeal has been filed by M/s GTN Engineering (India) Limited, Hyderabad (herein after, referred to, as 'the appellants', for short), assailing the Order-in-Original No. 29/SJ(29)/PCC(ADJN.)/MUMBAI/2023-24 dated 20.12.2023 (herein after, referred to as 'the impugned order') passed by the Principal Commissioner of Customs (Adjudication), Mumbai, Maharashtra.

2.1 The brief facts of the case are that the appellants *inter alia*, are engaged in the manufacture of 'industrial valves and its components' for export to various countries such as Singapore, USA, Canada, Gulf countries etc., for which they import raw materials such as forged body, springs, bearing, pad stud and other components under 'Advance Authorisation' scheme of the Foreign Trade Policy (FTP) on the basis of Advance Authorisation Licenses/Scrips issued by the Directorate General of Foreign Trade (DGFT). For this purpose, the appellants are holding the Import Export Code (IEC) No.

0903003953. During the period 24.10.2017 to 24.09.2018, the appellants had imported the said raw materials in 175 Bills of Entries (B/Es) by availing the import duty/IGST exemption benefit vide Notification No.18/2015-Customs dated 01.04.2015 as amended. The imported goods were assessed at the port(s) of import and the proper officers of customs have allowed clearances of the imported goods by extending the duty exemption claimed by the appellants under the above notification dated 01.04.2015 on the strength of nineteen (19) Advance Authorisations submitted by the appellants.

2.2 DGFT vide Notification No.33/2015-2020 dated 13.10.2017 had amended the Policy provisions contained in paragraph 4.14 of the FTP 2015-2020, wherein imports under Advance Authorization exempted from IGST were subjected to 'pre-import condition'. Consequently, Central Board of Excise & Customs (CBIC) vide Notification No.79/2017-Customs dated 13.10.2017 amended the Notification No.18/2015-Customs dated 01.04.2015, whereby goods imported under Advance Authorisation are allowed duty exemption from IGST, on the condition that, if only the goods are first imported and the same are used as inputs in the manufacture of final products, which are later exported.

2.3 On the basis of intelligence developed by Directorate of Revenue Intelligence, Hyderabad Zonal Unit (DRI), import and export transactions undertaken by the appellants during the period 13.10.2017 to 09.01.2019 were obtained from them and detailed verification was conducted by DRI. The Department interpreted that the quantity of imported raw material physically incorporated in the manufactured product, which were later exported, can be verified only when the size of the exported product and the number of input components (size-wise) which went into the manufacture of such exported product are known. On the basis of verification conducted, DRI had noticed that the exports of industrial valves before the import of forged body under components in certain cases, and that there was difference between the number of components imported prior to export of similar industrial valves. Therefore, the Department had concluded that there is no one-to-one correlation of usage of imported items by the appellants as stipulated in the original condition attached to the advance licences. On the above basis, the Department issued Show Cause Notices (SCN) dated 24.10.2019 proposing for demand of differential duty of Rs.5,45,78,477/- under Section 28(1) of the Customs Act, 1962 along with interest; confiscation of imported goods under Section 111(o) *ibid* and for imposition of penalty on the appellants. The said

SCN was adjudicated by the learned Principal Commissioner of Customs vide impugned order dated 20.12.2023, in confirmation of the adjudged duty demands for an amount of Rs. 5,44,52,019/- along with interest, by taking into account the amount of Rs.1,26,458/- already paid by the appellants; imposing redemption fine of Rs.1,30,00,000/- under Section 125 ibid and penalty of Rs.50,00,000/- on the appellants under Section 112(a) ibid. Feeling aggrieved with the said order, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants submitted that subject goods imported under the cover of 19 Advance Authorisations during the relevant period have been exclusively used for manufacture of industrial valves and components for exports only. Neither the imported goods nor the manufactured finished goods were cleared within the domestic area. There is no such allegation or finding either in the SCN or in the impugned order. Further, he submitted that the appellants have fulfilled the export obligation in respect of all 19 Advance Authorisations, and wherever there was a marginal shortfall in the fulfilment of export obligation, the applicable duty was paid and the Export Obligation Discharge Certificates (EODC) have been duly obtained in respect of 18 out of 19 Advance Authorisations. He further stated that based on such EODCs, the Customs Department have also cancelled the bonds executive against such 19 Advance Authorisations. He also stated that the copies of the same have been submitted by the appellants as a part of the appeal records.

3.2 Learned Advocate also submitted that the entire exercise of demanding IGST is revenue neutral, since, if the appellants had imported the goods on payment of IGST, then the entire amount would have been available to them as input tax credit. He further stated that the provisions of Section 3(7) of the Customs Tariff Act, 1975 does not borrow the provisions pertaining to levy of interest, imposition of redemption fine and penalty from the Customs Act, 1962 during the relevant period. Therefore, he claimed that in the absence of these machinery provisions, no interest can be demanded, and no redemption fine or penalty can be imposed on the appellants. He further stated that IGST demand is also not sustainable in the absence of any allegation or evidence of diversion of the imported goods and the finished goods to DTA, and more particularly after the appellants have obtained the requisite EODCs from the DGFT and the jurisdictional Customs authorities have cancelled the bonds executive before them.

3.3 In view of the above submissions, learned Advocate submitted that the impugned order is liable to be set-aside and the appeal filed by the appellants be allowed. In support of their stand, he relied upon the following case laws:

(i) *Sakkar Industries Private Limited Vs. Commissioner of Customs, Ahmedabad* – 2024 (10) TMI 1141 – CESTAT Ahmedabad;

(ii) *Mahindra and Mahindra Vs. Union of India* – 2022 (10) TMI 212 – BOMBAY High Court; upheld by the Hon'ble Supreme Court

(iii) *Suryadev Alloys and Power (P) Ltd. Vs. Principal Commissioner of Customs (Audit), Chennai* – 2025 (8) TMI 1356 – CESTAT Chennai;

(iv) *A.R Sulphonates Private Limited Vs. Union of India & Ors.* – 2025 (4) TMI 578 – Bombay High Court.

4. On the other hand, learned Authorized Representative for Revenue submitted that the DRI investigation have found that the appellants had not complied with pre-import condition and therefore there are required to pay the duty demand of IGST as confirmed in the impugned order. In respect of the demand of interest, imposition of fine and penalty, he reiterated the findings of the adjudicating authority by relying upon the judgement of the Hon'ble Supreme Court in the case of *Union of India & Ors. Vs. Cosmo Films Limited* - (2023) 5 Centax 286 (S.C.).

5. Heard both sides and perused the records of the case along with additional submissions made by both sides in the form of paper books.

6. We find that the issue required to be addressed by the Tribunal is whether the appellants are eligible for duty free import of raw materials/inputs in terms of the requirement of legal provisions as contained in the Foreign Trade Policy and Handbook of Procedures providing the scheme of 'Advance Authorisation', read with relevant notification(s) issued by the Ministry of Finance providing customs/import duty exemption. The period of dispute is from 13.10.2017 to 09.01.2019.

7. In order to address the above issues, we would like to refer to the relevant provisions of the FTP, HBP and the notifications issued in this regard.

Foreign Trade Policy (FTP)

[FTP 2015-2020](#) (w.e.f.30.06.2015)

"4.03 Advance Authorisation

(a) *Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal*

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(i) Wherever SION permits use of either (a) a generic input or (b) alternative input, unless the name of the specific input [which has been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/description of the input used (or to be used) in the Authorisation must match exactly with the name/description endorsed in the shipping bill.

4.13 Pre-import condition in certain cases

4.14 Details of Duties exempted

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, wherever applicable. However, Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any."

[To be published in the Gazette of India Extraordinary Part-II, Section - 3, Sub Section (ii)]

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade

Notification No. 33/2015-2020
New Delhi, Dated: 13 October, 2017

Subject: Amendments in Foreign Trade Policy 2015-20 -reg

S.O. (E): In exercise of powers conferred by Section 5 of FT (D&R) Act, 1992, read with paragraph 1.02 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby makes following amendments in Foreign Trade Policy 2015-20.

1. Para 4.14 is amended to read as under:

"4.14 : Details of Duties exempted

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorization for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition."

Effect of this Notification: Various provisions of Foreign Trade Policy 2015-20 is amended to enable certain additional duties/taxes/cess exemptions for Advance authorisations, EPCG Authorisations and units under EO / EHTP / STP/ BTP Scheme.

(Alok Vardhan Chaturvedi)
Director General of Foreign Trade

(Issued from F.No.01/94/180/201/AM-18/PC-4 (GST))

Handbook of Procedures (HBP)

"4.47 Redemption / No Bond Certificate

(b) Export Obligation Discharge Certificate (EODC): 04.08.2015

*(i) In case Authorisation holder imports / procures inputs first and exports later, the Authorisation holder shall submit online application in ANF-4F as in (a) (i) above. **In such cases, if EO has been fulfilled, the Regional Authority may issue EODC / Redemption Certificate to Authorisation holder and forward a copy to the Customs authority at the port of registration of Authorisation indicating the same details of proof of fulfilment of EO as stated in paragraph (a) above evidencing fulfilment of Export Obligation.***

(ii) Copy of EODC will also be endorsed by Regional Authority to Customs at the Port of Registration by post till system of transmitting these through EDI under message exchange between DGFT and CBEC is introduced. Ordinarily, redemption of BG / LUT shall not preclude customs authority

from conducting random checks and from taking action against Authorisation holder for any misrepresentation, mis declaration and default detected subsequently as per the Customs Act."

Notification No. 18/2015-Customs dated 01.04.2015

*"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from **the whole of the duty of customs** leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and ¹[from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act, subject to the following conditions, namely :-*

(i) that the said authorisation is produced before the proper officer of customs at the time of clearance for debit;

(ii) that the said authorisation bears,-

(a) the name and address of the importer and the supporting manufacturer in cases where the authorisation has been issued to a merchant exporter; and

(b) the shipping bill number(s) and date(s) and description, quantity and value of exports of the resultant product in cases where import takes place after fulfillment of export obligation; or

(c) the description and other specifications where applicable of the imported materials and the description, quantity and value of exports of the resultant product in cases where import takes place before fulfillment of export obligation;

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¹(xii) that the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be subject to pre-import condition;....."

8.1 From the plain reading of the legal provisions contained in the FTP. HBP and the Customs notifications, it transpires that the appellants importer is required to obtain Advance Authorization from the DGFT authorities and the same should be produced before the jurisdictional Customs authorities at the port of import for availing the custom duty exemption in terms of the conditions specified therein. The said notification provided for both types of imports i.e., [i] imports prior to discharge of export obligation requiring execution of bond before the customs authorities binding the importer to pay

¹ Condition (xii) was omitted by Notification01/2019-Customs dated 10.01.2019.

on demand an amount equal to the duty leviable but for such exemption, if the conditions are not fulfilled, including use of raw materials in manufacture of final products for export; [ii(a)] imports made after the discharge of export obligation, wherein the imports were allowed clearance on execution of bond in case the facility of rebate/CENVAT credit facilities are availed as provided therein while for use of such imported materials in their factory; or [ii(b)] without execution of bond, where no rebate/CENVAT credit was availed without execution of bond. The requirement of pre-import condition of raw material was introduced in condition No. (xii) vide amending Notification No. 79/2017-Customs dated 13.10.2017. Subsequently, the said pre-import condition was omitted by Notification No. 1/2019-Customs dated 10.01.2019. However, one another condition of the said notification which finally closes the imports against the Advance Authorization is the proof of export obligation arising on account of duty free imports having been discharged by the importer; or, in the absence of producing the evidence of such proof of export obligation, the importer shall pay the amount equivalent to the duty exemption availed by this notification.

8.2 On perusal of the documents placed in the appeal records, the SCN was issued on the ground that there is no one to one correlation between the import of raw materials and its use in the final products exported, and there is no authentic verification available that the quantity of imported raw material was incorporated in the finished product that was exported by the appellants and such views were also accepted by the learned Commissioner at paragraph 5.9.1 of the impugned order. In addition to this, the impugned order also agreed with the claim of the investigation that pre-import condition and that the imported raw material having been incorporated in exported final product could be accepted only when the number of input components, size wise, is shown to have gone into the manufactured final products which were exported. Therefore, the demand was confirmed on the basis of the conclusion arrived at by the adjudicating authority in the absence of fulfilment of mandatory 'pre-import' condition. The impugned order also relied upon the judgement of the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Cosmo Films Limited (supra).

9.1 On perusal of the details submitted in the appeal papers, we find against the various imports under 175 B/Es in 19 Advance Authorization, for which the adjudged duty demands have been confirmed, the appellants have obtained the Export Obligation Discharge Certificates (EODC)/ Redemption

Letters from the Regional Licensing Authorities of DGFT and submitted the same to the jurisdictional Customs authorities, who after verifying the same have closed the bonds executed by the appellants before them, in fulfilment of the conditions of the said notification dated 01.04.2015. The relevant details are as follows:

S. No.	Advance Authorisation No. & Date	EODC/Redemption letter-RL File ref. and date of issue by Regional Licensing Authority, DGFT	Customs cancellation of bond letter reference & Date
1	AA No. 0910064524 dated 26.12.2016	File No. 09/70/040/00249/AM17. Date of EODC/RL 19.07.2019	F. No. S45/367/2016/DEEC/GR.7ACC dated 13.08.2019
2	AA No. 0910064591 dated 17.01.2017	File No. 09/70/040/00267/AM17. Date of EODC/RL 21.12.2020	F. No. S45/22/2017/DEEC/GR.7ACC dated 17.03.2021
3	AA No. 0910064592 dated 17.01.2017	File No. 09/70/040/00262/AM17. Date of EODC/RL 19.07.2019	F. No. S45/21/2017/DEEC/GR.7ACC dated 13.08.2019
4	AA No. 0910064787 dated 10.03.2017	File No. 09/70/040/00299/AM17. Date of EODC/RL 15.10.2020	F. No. S45/74/2017/DEEC-ACC dated 27.11.2020
5	AA No. 0910064788 dated 10.03.2017	File No. 09/70/040/00303/AM17. Date of EODC/RL 04.12.2018	F. No. S45/73/2017/DEEC dated 28.12.2018
6	AA No. 0910065009 dated 04.05.2017	File No. 09/70/040/00015/AM18. Date of EODC/RL 07.08.2019	F. No. S45/155/2017/DEEC/GR.7ACC dated 04.09.2019
7	AA No. 0910065024 dated 11.05.2017	File No. 09AE04001259AM 24. Date of EODC/RL 01.06.2023	E.F. No. CUS/BBG/MISC/156/2023-EODC dated 23.01.2024
8	AA No. 0910065133 dated 07.06.2017	File No. 09/70/040/00047/AM18. Date of EODC/RL 04.11.2020	F. No. S45/210/2017/DEEC-ACC dated 18.12.2020
9	AA No. 0910065134 dated 07.06.2017	File No. 09/70/040/00051/AM18. Date of EODC/RL 13.01.2021	F. No. S45/209/2017/DEEC-ACC dated 14.06.2021
10	AA No. 0910065356 dated 21.08.2017	File No. 09AE04002559AM24. Date of EODC/RL 27.06.2023	F. No. S45/269/2017/DEEC/2017 dated 18.11.2024
11	AA No. 0910065439 dated 08.09.2017	File No. 09AE04002604AM24. Date of EODC/RL 28.06.2023	Shortfall in EODC of Rs.1,77,868/-paid. Customs letter dated 04.09.2025
12	AA No. 0910065614 dated 21.10.2017	File No. 09/70/040/00132/AM18. Date of EODC/RL 06.09.2021	F. No. S45/362/2017/DEEC-ACC dated 29.11.2021
13	AA No. 0910065615 dated 27.10.2017	File No. 09AE04002728AM24. Date of EODC/RL 03.07.2023	E.F. No. CUS/BBG/CBG/36/2024 - EODC dated 28.08.2024
14	AA No. 0910065705 dated 28.11.2017	File No. 09/70/040/00163/AM18. Date of EODC/RL 21.12.2020	F. No. S45/398/2017/DEEC dated 29.01.2021
15	AA No. 0910065785 dated 28.11.2017	File No. 09/70/040/00174/AM18. Date of Receipt 21.12.2020	Shortfall in EODC of Rs.1,77,868/-paid.
16	AA No. 0910065887 dated 16.01.2018	File No. 09/70/040/00213/AM18. Date of EODC/RL 09.10.2020	F. No. S45/039/2018/DEEC dated 27.11.2020
17	AA No. 0910066031 dated 07.03.2018	File No. 09/70/040/00228/AM18. Date of EODC/RL 05.02.2021	F. No. S45/107/2017/DEEC/GR - 7 - ACC dated XX.03.2021
18	AA No. 0910066064 dated 14.03.2018	File No. 09/70/040/00238/AM18. Date of EODC/RL 30.08.2021	F. No. S45/124/2018/DEEC/ACC dated 06.10.2021
19	AA No. 0910066152 dated 17.04.2018	File No. 09AE04002750AM24. Date of EODC/RL 05.07.2023	E.F. No. CUS/BBG/CBG/36/2024-EODC dated 28.08.2024

However, the above facts of the case relating to an important condition of the notification regarding fulfilment of export obligation as per the Advance Authorization scheme and the customs authorities having accepted such Export Obligation Discharge Certificates (EODC) issued by DGFT and cancelled the bonds executed before them by the appellants, have not been taken into account by the learned adjudicating authority. In fact, the fulfilment of notification conditions for duty free importation of raw materials under the

said notification dated 01.04.2015 comes to an end, with the process of submitting the EODC by the appellants-importer and cancellation of bond by the jurisdictional customs authorities. In view of the fact that the purpose for which the DGFT authorities have issued the Advance Authorization under 4.3 of the FTP have been fulfilled by complying with the conditions mentioned in terms of paragraphs 4.12, 4.13 of the FTP, for which duty exemption have been specified in paragraph 4.14 *ibid*, by duly submitting all relevant details including the accounting of inputs, fulfilment of pre-import conditions for issuance of EODC certificates by DGFT authorities in terms of paragraph 4.47 of HBP, for discharging the export obligation, we find that there is no ground for the impugned order to claim that there is non-fulfilment of the conditions of the Notification No.18/2015-Customs dated 01.04.2015 as amended. Furthermore, in all cases the EODC certificates have been taken into account, after due verification by the jurisdictional customs authorities, and the bond executed by the appellants to comply with the condition including the requirement of payment of amount equal to the duty exempted under the notification, have been duly cancelled. Further, for a small part of the IGST where the appellants were unable to substantiate with the documents for compliance with the conditions of notification, they had paid an amount of Rs.1,26,458/- to the government exchequer. For the above reasons, we are unable to agree with the learned adjudicating authority, that the conditions of the notification No.18/2015-Customs dated 01.04.2015 as amended including the 'pre-import condition' have not been fulfilled by the appellants. Further, it is not the case of the Revenue that they had produced any iota of proof, or any evidence in the form of document to prove that the conditions of notification have not been fulfilled by the appellants. Therefore, on the basis of the above discussions, we find that the impugned order does not stand the legal scrutiny.

9.2 We find that the facts of the case in *Cosmo Films Limited* (supra) were different from the one present before us, as in the present case, the appellants have completed their exports by fulfilling all the conditions of the FTP, HBP and Customs notification and obtained the EODC/ 'Redemption Letters' duly issued by the DGFT. This is also evident from the factual details captured in the table above at paragraph 9.1, wherein the various dates in which the Advance Licenses have been issued are much prior to the actual imports of raw materials during the disputed period 24.10.2017 to 24.09.2018, and its use in the finished products which had exported out of the country in fulfilment of export obligations, having been duly verified by the Regional Licensing

Authority i.e., Additional DGFT in the Ministry of Commerce and Industry, in issuance of the Redemption Letters, after the date of issue of Advance Licenses and after the importation of raw materials have taken place. These details have also been duly taken into record by the customs authorities in cancellation of bonds executed before them, as part of the requirement under Notification No. 18/2015-Customs dated 01.04.2015. Whereas in the above referred case relied upon by the Revenue and the adjudicating authority 'the exporter-respondents had imported the goods after fulfilling the corresponding export obligation' as mentioned in paragraph 33 of the said judgement, and therefore the Hon'ble Supreme Court had held that it was impossible to fulfil the 'pre-import condition' mandated for old AAs through a retrospective application of an amendment in the impugned notifications, even though the respondents could demonstrate that all imported goods were subsequently used for manufacturing export products. In other words, the entire period of dispute in the present case before us, in which the imports have been taken place are prior to issuance of the EODC in all cases, and not post fulfilment of export obligation, as observed in the referred case. Therefore, we do not find that there are merits in the impugned order for denying the duty exemption benefits on the basis of the said relied upon judgement which had gone in favour of Revenue on the basis of different facts.

9.3 In this regard, we find that the Co-ordinate Bench of the Tribunal in the case of *Sakar Industries Limited* (supra) have examined the disputed issues in an identical set of facts vide Final Order No. 12422/2024 dated 22.10.2024 and held that the demand of duty is not sustainable. The relevant paragraphs of the said order are quoted below:

"4.12 From the above factual position it is clear that in almost all the cases, the appellant have fulfilled the pre-import condition, in some cases the bill of entry was re-assessed and appellant have paid the IGST for which they are not contesting on the ground that they are eligible for ITC under GST. In view of the above on the factual aspects of the case the demand of IGST along with the interest, fine and penalties are not sustainable. As regard the penalty corresponding to the IGST paid by the appellant since, the same is availed as ITC under GST there is no malafide on the part of the appellant. Hence, penalty corresponding to the duty paid by the appellant which is not in contest will also not sustain on the ground of Revenue neutrality.

4.13 We also find that the appellant has vehemently argued that the entire demand is hit by limitation for the reason that the demand for the period October-2017 to November-2018 was raised by show cause notice issued on 19.10.2022. In the facts of the present case the appellant's bills of entry were assessed and the same were verified by the custom authority and clearance of goods was allowed. The issue

raised in the present show cause notice was very much existing at the time of assessment of bill of entry. The appellant have bonafidely claimed the exemption Notification No.18/2015 as amended. Therefore, nothing prevented the department to raise the objection at the time of assessment of bills of entry and clearance of goods. Moreover, the issue involved interpretation of exemption notification on advance authorization. The issue once decided by the Hon'ble High Court of Gujarat in the case of Cosmo Films Limited vs. Union of India & Ors. 2020 (10) TMI 1099 , in favour of the assessee that leads to the bonafide belief of the appellant. Therefore, suppression of fact cannot be attributed to the appellant. Accordingly, the extended period for demand is prima facie not invokable in the facts of the present case. Therefore, the appellant has made out a strong prima facie case on time bar. However, since we decide this appeal on the factual matrix of this case, the issue of time bar is kept open. Without prejudice to above, as regard the redemption fine imposed on the appellant against confiscation of the imported goods, we find that firstly the goods were not available for confiscation and in absence of seizure of goods and non availability of the goods, confiscation of the goods cannot be ordered and consequential redemption fine cannot be imposed as held by the Larger bench of this Tribunal in the case of Shiv Kripa Ispat Ltd. vs. Commissioner of Central Excise & Custom, Nasik.

4.14 Without prejudice to the above, we find that though entire case has been decided on factual matrix as discussed above, the demand of duty, interest, penalty and fine are not sustainable. However, the issue of levy of interest, fine and penalty has been independently considered by this Tribunal in the case of Chiripal Poly Films Ltd vide Final Order No.11628-11630/2024 dated 23.07.2024. In view of the said judgment also, the appellant are also entitled for waiver of interest, penalty and redemption fine.

5. As per our above discussions and findings, the impugned order is not sustainable. Hence, the same is set aside, appeal is allowed in the above terms with consequential relief."

10.1 In the impugned order dated 20.12.2023, learned Principal Commissioner has confirmed the adjudged demands on account of demand of interest against the IGST demand and for imposition of redemption fine, penalty covering the imports during the disputed period 24.10.2017 to 24.09.2018, which is prior to the amendment of Section 3 of the Customs Tariff Act, 1975 providing necessary machinery provisions w.e.f. 16.08.2024. In this regard, we also find that the Hon'ble High Court of Bombay had examined the issue regarding the question of levy of interest on the demand of CVD, SAD and surcharge being recovered under Section 28 of the Customs Act, 1962 cannot be sustained and have held that since the charging section for levy of CVD is Section 3(1) of the Customs Tariff Act, 1975; and that unless by specific borrowing of such machinery provisions of the Customs Act, 1962 made applicable to these in terms of Customs Tariff Act, 1975, the same is

not applicable to the CVD, SAD, IGST etc. The relevant paragraphs of the said order is quoted below:

"34. Section 9A(8) of the Customs Tariff Act, 1975 which borrowed provisions from Customs Act, 1962 did not borrow provisions relating to interest and penalty. The Hon'ble Courts, in judgments cited supra, held that in view of no specific borrowing, no interest and penalty can be imposed on anti-dumping duty. Later on, Finance (No.2) Act, 2004 amended sub-section (8) of Section 9A suitably to include interest and penalty. However, similar amendments have not been made to Section 3(6) of the Customs Tariff Act, 1975 relating to CVD, i.e., additional duty equal to excise duty or Section 3A(4) of Customs Tariff Act, 1975 relating to SAD, i.e., special additional duty or surcharge under section 9(3) of the Finance Act, 2000.

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.

36. We find support for our view in *Hyderabad Industries Ltd. v. Union of India* [1999 \(108\) E.L.T. 321 \(SC\)](#) relied upon by Mr. Sridharan. The Apex Court considered Section 12 of the Customs Act, 1962 and went on to hold that the charging section to impose CVD is Section 3 of the Customs Tariff Act, 1975. Paragraphs 12, 13 and 14 of *Hyderabad Industries Ltd.* (supra) read as under:

12. Section 12 of the Customs Act levies duty on goods imported into India at such rates as may be specified in the Customs Tariff Act, 1975. When we turn to Customs Tariff Act 1975, it is Section 2 which states that the rates at which duties of customs are to be levied under Customs Act 1962 are those which are specified in the First and Second Schedules of the Customs Tariff Act, 1975. In Section 12 of the Customs Act there is no reference to any specific provision of the Customs Tariff Act 1975. In other words for the purpose of determining the levy of customs duty on goods imported into India what is relevant is Section 12 of the Customs Act read with Section 2.

13. On the other hand levy of additional duty under section 3 is equal to the excise duty for the time being leviable on the like article which is imported into India if produced or manufactured in India. The rate of additional duty under section 3(1) on an article imported into India is not relatable to the First and the Second Schedule of the Customs Act but the additional duty if leviable has to be equal to the excise duty which is leviable under the Excise Act. This itself shows that the charging section for the levy of additional duty is not Section 12 of the Customs Act but is Section 3 of the Customs Tariff Act, 1975. This apart sub-sections (3), (5) and (6) of Section 3 refer to additional duty as being leviable under sub-section (1). In sub-section (5),

for instance, it is clearly stated that the duty chargeable under section 3 shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

14. There are different types of customs duty levied under different acts or rules. Some of them are; (a) a duty of customs chargeable under section 12 of the Customs Act, 1962; (b) the duty in question, namely, under section 3 (1) of the Customs Tariff Act; (c) additional duty levied on raw-materials, components and ingredients under section 3 (3) of the Customs Tariff Act; and (d) duty chargeable under section 9A of the Customs Tariff Act, 1975. Customs Act 1962 and the Customs Tariff Act, 1975 are two separate independent statutes. Merely because the incidence of tax under section 3 of the Customs Tariff Act, 1975 arises on the import of the articles into India it does not necessarily mean that the Customs Tariff Act cannot provide for the charging of a duty which is independent of the customs duty leviable under the Customs Act.

(Emphasis Supplied)

37. *In view of the above, imposing interest and penalty on the portion of demand pertaining to surcharge or additional duty of customs or special additional duty of customs is incorrect and without jurisdiction.*

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."*

10.2 In the appeal filed by the Revenue against the above judgement of the Hon'ble High Court of Bombay, before the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No. 18824/2023, the Hon'ble Supreme Court had dismissed the SLP as 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 preferred by the department.

10.3 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)

11. From the above, it clearly transpires that the amended provisions of sub-section (12) of Section 3 of the Customs Tariff Act, 1975, which enable imposition of interest, penalties etc. on the IGST levied in terms of sub-section (7) of Section 3 *ibid*, shall come into force w.e.f. 16.08.2024 and shall not be applicable during the disputed period in the present case i.e., 13.10.2017 to 09.01.2019, which is prior to the above said amendment. Therefore, we are of the considered view that levy of interest, redemption fine and penalty on the appellants in the present case of demand of IGST is not legally sustainable. Thus, we are of the view, that the impugned order in totality is liable to be dismissed, as it does not stand the legal scrutiny.

12. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands towards IGST, interest on IGST duty demands and imposed redemption fine and penalty on the appellants. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Order pronounced in the Open court on 20.01.2026)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)