

# EY Tax Alert

**Bombay HC holds interest and penalty not leviable on delayed payment of IGST on import of goods in absence of substantive provisions under Customs Tariff Act**

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## Executive summary

This Tax Alert summarizes the recent ruling of the Bombay High Court (HC)<sup>1</sup> on applicability of interest, penalty and redemption fine on delayed payment of integrated tax (IGST) as a part of Customs duty on import of goods during the period 13 October 2017 to 9 January 2019.

The petitioner imported raw materials under Advance Authorization for manufacture of goods, however, did not comply with the "pre-import condition" applicable during the relevant period. Accordingly, Revenue authority demanded payment of IGST along with interest, penalty and redemption fine in lieu of confiscation of goods. Petitioner filed a writ petition before the HC challenging the demand of interest, penalty and redemption fine.

The key observations of the HC are:

- ▶ The unamended Section 3(12) of the Customs Tariff Act, 1975 (CTA) did not make provisions of the Customs Act relating to interest, penalty and offences applicable to IGST chargeable under Section 3(7).
- ▶ The amendment made in Section 3(12) giving reference to interest, penalty and offences in respect of duties levied under Section 3 of CTA, is prospective in nature and would apply only w.e.f. 16 August 2024.
- ▶ The decision of this Court in case of Mahindra & Mahindra<sup>2</sup> is squarely applicable to facts of the present case since Sections 3(7) and 3(12) is *pari materia* to Sections 3(6) and 3A(4) of CTA as referred to in the said decision.
- ▶ Once the petitioner pays IGST, it would amount to the petitioner not having availed the benefit of the exemption and the issue would be regularized. Thus, the provisions of Section 111(o) of the Customs Act will not be attracted and consequently, no fine or penalty would be recoverable from the petitioner.

Basis above, HC quashed and set aside the impugned order to the extent it sought to recover interest, penalty and redemption fine.

<sup>1</sup> 2025-VIL-328-BOM-CU

<sup>2</sup> 2022 (10) TMI 2012



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## Background

- ▶ Petitioner is, *inter alia*, engaged in the manufacture, export and supply of Linear Alkyl Benzene Sulphonic Acid (LABSA).
- ▶ In order to manufacture LABSA, petitioner procures input materials domestically as well as from foreign vendors.
- ▶ Petitioner had been granted Advanced Authorization License under the Foreign Trade Policy 2015-2020 (FTP).
- ▶ In terms of Notification No.18/2015 - Customs dated 1 April 2015 (said notification), import of input materials under a valid Advance Authorization Licenses were exempted from payment of Basic Customs Duty, Countervailing Duty, Special Additional Duties, Anti-dumping duty and Safeguard Duty.
- ▶ Post introduction of GST, said notification was amended to, *inter alia*, grant exemption from payment of IGST on imports w.e.f. 13 October 2017, due to subsumption of additional customs duties in IGST.
- ▶ The exemption from payment of IGST was available subject to, *inter alia*, following conditions: (i) discharge of export obligation shall only be by physical exports; and (ii) the exemption shall be subject to pre-import condition.
- ▶ The “pre-import condition” in the said Notification means that goods should be imported prior to export of finished goods to comply with the actual user condition of exempt goods.
- ▶ Simultaneously, Directorate General of Foreign Trade (DGFT) had also issued Notification No. 33/2015-2020 dated 13 October 2017 amending various provisions of the Foreign Trade Policy 2015-2020 whereby “pre-import condition” was incorporated in paragraph 4.14 thereof w.e.f.13 October 2017.
- ▶ However, subsequently, “pre-import condition” inserted in the said notification was omitted w.e.f. 10 January 2019.
- ▶ Thus, for the period from 13 October 2017 to 9 January 2019 (said period), pre-import condition was to be mandatorily complied by the importer to be entitled to exemption from payment of IGST.
- ▶ During the said period, petitioner had imported input materials claiming benefit of the said notification without payment of IGST under Section 3(7) of the Customs Tariff Act, 1975 (CTA) albeit in contravention of the pre-import condition.
- ▶ Gujarat High Court (HC) in case of Maxim Tubes Company Pvt. Ltd vs. Union of India<sup>3</sup> struck down the “pre import” condition in paragraph 4.14 of the FTP holding it as ultra vires the Advance Authorization Scheme. The said Judgement was challenged by Revenue before the Supreme Court (SC).
- ▶ Pending the decision of the SC, a Show Cause Notice was issued to the petitioner proposing demand of IGST, interest and penalty for confiscation of input materials imported without payment of IGST during the said period.
- ▶ Thereafter, SC in the case of Union of India v. Cosmos Films<sup>4</sup> allowed the Appeal of the Revenue and upheld the validity of the pre-import condition.
- ▶ Pursuant to the said Judgement, Central Board of Indirect Taxes and Customs (CBIC) issued Circular No. 16/2023- Customs dated 7 June 2023, providing the procedure for payment of IGST and compensation cess by the importers who had violated the pre-import condition. It also provided that importer may approach the concerned assessment group at the Port of Import for purposes of payment of IGST and compensation cess along with applicable interest.
- ▶ Further, Joint Director of Foreign Trade, vide Trade Notice No. 07/2023-24 dated 8 June 2023, recorded that all the imports made under the Advance Authorization Scheme from 13 October 2017 to 9 January 2019, which could not meet the pre-import condition, may be regularized by making payments as prescribed in the said circular.
- ▶ Eventually, an adjudication order was passed confirming the demand of IGST, interest and penalty proposed under SCN. Redemption fine was also imposed in lieu of confiscation of input materials due to their non-existence.
- ▶ Aggrieved, petitioner filed a writ petition before the Bombay HC, challenging the above order to the extent it seeks to demand interest, penalty and redemption fine from the petitioner.
- ▶ Petitioner has also challenged the Circular to the extent it purports to levy interest on payment of IGST by the importers who had violated the pre-import condition during the given period.
- ▶ *Vide* Finance Act (No.2) of 2024, Section 3(12) of CTA was amended to, *inter alia*, include interest, penalty and offence provisions of the Customs Act, 1962 (Customs Act) under CTA.

## Petitioner's Contention

- ▶ This Court, in the case of Mahindra & Mahindra<sup>5</sup>, after going through Section 3 of the CTA regarding levy of additional duty equal to excise duty and Section 3A of CTA dealing with special additional

<sup>3</sup> 2019 (368) ELT 337

<sup>4</sup> 2023 (5) TMI 42 - Supreme Court

<sup>5</sup> 2022 (10) TMI 2012

duty as applicable at the relevant time, had held that when no specific reference is made to interest and penalty in the above provisions, imposing the same would be without the authority of law.

The above decision was upheld by the SC<sup>6</sup>.

- ▶ Levy of IGST under Section 3(7) of CTA is *pari materia* to Sections 3(6) and 3A(4) of CTA. Hence, the said decision is squarely applicable to the facts of the present case.
- ▶ The said decision is binding on the adjudicating authority. Despite the same, the adjudicating authority chose to follow the decision of CESTAT Kolkata in the case of Texmaco Rail Engineering Limited<sup>7</sup> to confirm the levy of interest, which is contrary to the principle of judicial discipline.
- ▶ CESTAT Kolkata distinguishes the said decision on the ground that the Court, in the said decision, was concerned with a settlement case, which was a variation/ deviation from the applicability of the routine structural legal process.
- ▶ Since this court in the said decision had held that interest and penalty are substantive provisions and ought to be specifically mentioned, the finding of adjudicating authority is not sustainable.
- ▶ Also, the Circular, in so far as it seeks to recover interest along with IGST, is bad in law basis the said decision.
- ▶ As per Section 111(o) of the Customs Act, the goods would be liable for confiscation in the event the condition, subject to which the goods are exempted from duty, is not observed. Redemption fine is demanded under Section 125 of the Customs Act in lieu of confiscation of goods.
- ▶ SC in the case of Orient Fabrics Limited<sup>8</sup> has held that since the term "offences and penalties" were introduced vide an amendment later, the confiscation proceedings were without the authority of law.
- ▶ Thus, in the present case as well, the term "offences and penalties" had been introduced in Section 3(12) of CTA by an amendment w.e.f. 16 August 2024. Accordingly, no confiscation could have been undertaken and accordingly no redemption fine could be imposed.
- ▶ The Trade Notice issued by DGFT also clarified that all imports made under Advance Authorization Scheme from 13 October 2017 to 9 January 2019, which could not meet the pre import condition, may be regularized by making payments as prescribed in the said circular and, contended that considering the same, no confiscation or redemption fine is imposable.

▶ Once IGST is paid, it would amount to not having availed the benefit of exemption and the issue would be regularized. Therefore, the provisions of Section 111(o) of the Customs Act would not be attracted.

## Respondent's Contention

- ▶ The decision in the case of Mahindra & Mahindra (*supra*) is not applicable to the facts of the present case since it did not interpret Section 3(12) of CTA and hence, the adjudicating authority is correct in distinguishing the said decision and relying upon the decision of the CESTAT Kolkata in the case of Texmaco Rail Engineering Limited (*supra*).
- ▶ The provisions of unamended Section 3(12) use the term "including" thereby implying that all provisions of the Customs Act would be made applicable to CTA.

## High Court Ruling

- ▶ Section 3(12) of CTA, prior to its amendment by Finance (No. 2) Act, 2024 dated 16 August 2024, read as under:

*(12) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so 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 the duties leviable under that Act.*
- ▶ The unamended Section 3(12) of CTA did not make provisions of the Customs Act relating to interest, offences and penalties applicable to IGST chargeable under Section 3(7) of CTA.
- ▶ Section 3(7) and Section 3(12) of CTA, is *pari materia* to Sections 3(6) and 3A(4) of CTA as referred to in the said decision. Hence, the same is squarely applicable to the facts of the present case.
- ▶ This court also observed that Sections 3(6) and 3A(4) of CTA also use the word "including". Despite the same, it came to the conclusion that imposing interest and penalties would be without the authority of law since there was no specific reference to interest and penalties being substantive provisions.
- ▶ The amended Section 3(12), which also gives reference to interest, offences and penalties in respect of duties levied under Section 3 of CTA, is prospective in nature and would apply only w.e.f. 16 August 2024.
- ▶ The Circular, to the extent that it purports to levy interest upon the IGST payment, is beyond the provisions of CTA and is bad in law.

<sup>6</sup> 2023 (8) TMI 135 – SC

<sup>7</sup> Customs Appeal No. 75921 of 2014

<sup>8</sup> 2003 (158) ELT 545 (SC)

- Further, reliance can be placed on Orient Fabrics Limited (*supra*), and hence, no confiscation could have been imposed during the given period in absence of any specific provision related to offences and penalties.
- In terms of clarification provided in the Trade Notice, once the petitioner pays IGST, it would amount to the petitioner not having availed the benefit of the exemption and the issue would be regularized.
- Thus, the provisions of Section 111(o) of the Customs Act will not be attracted and consequently, no fine and penalty would be recoverable from the petitioner.
- Accordingly, HC quashed the impugned order, to the extent it seeks to recover interest, impose redemption fine and penalty.

## Comments

- a. This judgment re-emphasizes the principle that any demand under a taxing law must be supported by substantive provisions and clear statutory authority.
- b. Businesses that initially paid interest and penalties on delayed payment of IGST and cess on import of goods may consider applying for a refund basis this ruling.
- c. Recently, Delhi HC held that the levy of IGST on import of goods is derived from the IGST Act and not from Customs law [2025-VIL-210-DEL-CU]. One should evaluate applicability of this ruling in light of the Delhi HC's decision, as there are clear provisions for imposition of interest and penalties under GST law for delay in tax payment.

# Our offices

## Ahmedabad

22<sup>nd</sup> Floor, B Wing, Privilon  
Ambli BRT Road, Behind Iskcon Temple  
Off SG Highway  
Ahmedabad - 380 059  
Tel: + 91 79 6608 3800

8<sup>th</sup> Floor, Building No. 14A  
Block 14, Zone 1  
Brigade International Financial Centre  
GIFT City SEZ  
Gandhinagar - 382355, Gujarat  
Tel +91 79 6608 3800

## Bengaluru

12<sup>th</sup> & 13<sup>th</sup> Floor  
"UB City", Canberra Block  
No.24 Vittal Mallya Road  
Bengaluru - 560 001  
Tel: + 91 80 6727 5000

Ground & 1<sup>st</sup> Floor  
# 11, 'A' wing  
Divyasree Chambers  
Langford Town  
Bengaluru - 560 025  
Tel: + 91 80 6727 5000

3<sup>rd</sup> & 4<sup>th</sup> Floor  
MARKSQUARE  
#61, St. Mark's Road  
Shantala Nagar  
Bengaluru - 560 001  
Tel: + 91 80 6727 5000

1<sup>st</sup> & 8<sup>th</sup> Floor, Tower A  
Prestige Shantiniketan  
Mahadevapura Post  
Whitefield,  
Bengaluru - 560 048  
Tel: + 91 80 6727 5000

## Bhubaneswar

8<sup>th</sup> Floor, O-Hub, Tower A  
Chandaka SEZ, Bhubaneswar  
Odisha - 751024  
Tel: + 91 674 274 4490

## Chandigarh

Elante offices, Unit No. B-613 & 614  
6th Floor, Plot No- 178-178A  
Industrial & Business Park, Phase-I  
Chandigarh - 160 002  
Tel: + 91 172 6717800

## Chennai

6<sup>th</sup> & 7<sup>th</sup> Floor, A Block,  
Tidel Park, No.4, Rajiv Gandhi Salai  
Taramani, Chennai - 600 113  
Tel: + 91 44 6654 8100

## Delhi NCR

Aikyam  
Ground Floor  
67, Institutional Area  
Sector 44, Gurugram - 122 003  
Haryana  
Tel: +91 124 443 4000

3<sup>rd</sup> & 6<sup>th</sup> Floor, Worldmark-1  
IGI Airport Hospitality District  
Aerocity, New Delhi - 110 037  
Tel: + 91 11 4731 8000

4<sup>th</sup> & 5<sup>th</sup> Floor, Plot No 2B  
Tower 2, Sector 126  
Gautam Budh Nagar, U.P.  
Noida - 201 304  
Tel: + 91 120 671 7000

## Hyderabad

THE SKYVIEW 10  
18<sup>th</sup> Floor, "SOUTH LOBBY"  
Survey No 83/1, Raidurgam  
Hyderabad - 500 032  
Tel: + 91 40 6736 2000

## Jaipur

9<sup>th</sup> floor, Jewel of India  
Horizon Tower, JLN Marg  
Opp Jaipur Stock Exchange  
Jaipur, Rajasthan - 302018

## Kochi

9<sup>th</sup> Floor, ABAD Nucleus  
NH-49, Maradu PO  
Kochi - 682 304  
Tel: + 91 484 433 4000

## Kolkata

22 Camac Street  
3rd Floor, Block 'C'  
Kolkata - 700 016  
Tel: + 91 33 6615 3400

## Mumbai

14<sup>th</sup> Floor, The Ruby  
29 Senapati Bapat Marg  
Dadar (W), Mumbai - 400 028  
Tel: + 91 22 6192 0000

5<sup>th</sup> Floor, Block B-2  
Nirlon Knowledge Park  
Off. Western Express Highway  
Goregaon (E)  
Mumbai - 400 063  
Tel: + 91 22 6192 0000

3<sup>rd</sup> Floor, Unit No 301  
Building No. 1  
Mindspace Airoli West (Gigaplex)  
Located at Plot No. IT-5  
MIDC Knowledge Corridor  
Airoli (West)  
Navi Mumbai - 400708  
Tel: + 91 22 6192 0003

Altimus, 18<sup>th</sup> Floor  
Pandurang Budhkar Marg  
Worli, Mumbai - 400 018  
Tel: +91 22 6192 0503

## Pune

C-401, 4<sup>th</sup> Floor  
Panchshil Tech Park, Yerwada  
(Near Don Bosco School)  
Pune - 411 006  
Tel: + 91 20 4912 6000

10<sup>th</sup> Floor, Smartworks  
M-Agile, Pan Card Club Road  
Baner, Taluka Haveli  
Pune - 411 045  
Tel: + 91 20 4912 6800

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