

Bombay HC invalidates demand of interest, penalty and fine on IGST for Advance Authorisation imports made prior to amendment in relevant provisions in 2024

16 April 2025

Summary

The Bombay High Court (HC) ruled that the demand for interest, penalty, and redemption fine on IGST — arising from non-compliance with the pre-import condition under the Advance Authorisation Scheme — was not legally valid for imports made before the 2024 amendment to Section 3(12) of the Customs Tariff Act. The Court clarified that this amendment is prospective and cannot be applied to earlier cases.

It further emphasised that penalties and interest can only be imposed if there is a clear legal provision — such charges cannot be assumed or imposed based on interpretation. The Court also held that Circular No. 16/2023-Cus., which required interest recovery, was beyond legal authority to that extent, reiterating that administrative circulars cannot override the law.

As a result, the import was considered regularised upon payment of IGST alone, and the department was barred from taking any further penal action on this matter.

Facts of the case

- A.R. Sulphonates Pvt. Ltd. (the petitioner), a manufacturer engaged in the export-oriented production of goods, imported input materials during the period from 13 October 2017 to 9 January 2019 under the Advance Authorisation Scheme (AAS).
- The petitioner claimed exemption from Basic Customs Duty (BCD), Integrated Goods and Services Tax (IGST), and other applicable levies under Notification No. 18/2015-Cus, which provided exemption for inputs imported for physical export obligations under the scheme.
- The Department alleged non-fulfilment of conditions of the AA, which primarily stemmed from the imports having been made without satisfying the "pre-import" condition introduced by Notification No. 79/2017-Cus. and issued SCN for recovery of IGST, interest, penalty, and redemption fine. Subsequently, the validity of the pre-import conditions was upheld by the SC¹.
- The Department's position was largely premised on Circular No. 16/2023-Cus dated 20 July 2023, which directed recovery of interest on IGST under Section 3(7) read with Section 3(12) of the Customs Tariff Act.
- The Adjudicating Authority confirmed the demand and imposed interest under Section 28AA, penalty under Section 112(a) and redemption fine under Section 125 of the Customs Act.
- The petitioner challenged this order and contested Circular No. 16/2023-Cus to the extent it imposed interest.

Issues before the Bombay HC

- Whether interest, penalty, and redemption fine can be imposed under the Customs Act on IGST payable under Section 3(7) of the Customs Tariff Act in absence of a specific statutory provision?
- Whether Circular No. 16/2023-Cus validly prescribes interest recovery along with IGST?
- Whether redemption fine was sustainable given the regularisation permitted by CBIC and DGFT?

¹ In the case of Cosmos Films (2023 (5) TMI 42 – SC)

Petitioner's contentions

- The petitioner relied on the landmark ruling by the SC², holding that no interest or penalty can be levied unless specifically provided under the CTA.
- Further, emphasised that Section 3(12) of the CTA (prior to amendment in August 2024) did not include interest or penalty provisions.
- The petitioner claimed redemption fine was unsustainable as:
 - Imports were regularised as per Circular No. 16/2023 and DGFT Trade Notice No. 7/2023-24.
 - Confiscation under Section 111(o) of the Customs Act could not apply once tax was paid.

Respondent's contentions

- The Department argued Section 3(12) uses the word "including" implying a broad incorporation of customs provisions, including interest and penalties while citing CESTAT Kolkata ruling³ in supporting interest demand.
- They further argued that case of *Mahindra & Mahindra* related to a settlement case, and was hence, distinguishable.

Bombay HC's observations and ruling [Writ Petition No.19366 of 2024. dated 9 April 2025]

Interest and penalty on IGST not sustainable absent specific statutory backing:

- The HC categorically ruled that the unamended Section 3(12) of the CTA, as it stood prior to 16 August 2024, did not authorise the levy of interest or penalty in respect of IGST payable under Section 3(7) of the said Act. The Court emphasised that any penal consequence must be backed by a specific statutory provision, which was absent in this context.
- Relying on the precedent set in *Mahindra & Mahindra Ltd.*, the Court noted that Section 3(7) is *pari materia* with Sections 3(6) and 3A(4), which had previously been interpreted to exclude any such levy in the absence of an express provision. Accordingly, the principle laid down in that case, which was endorsed by both the Bombay HC and the SC, was held to be fully applicable here.
- Additionally, the HC rejected the Revenue's reliance on the term "including" as used in Section 3(12) to imply a broader incorporation of the Customs Act, 1962 provisions. The Court clarified that such a reading cannot expand the scope of the law to include punitive measures like interest and penalty, which must be explicitly provided for.

Administrative directions cannot override the Statutory Scheme:

- The Court also examined CBIC Circular No. 16/2023-Cus dated 7 June 2023 and noted that it effectively imposes an interest liability where the statute itself does not permit it.

Redemption fine held unsustainable considering regularisation and prospective amendment:

- The Court held that the imposition of redemption fine under Section 125 of the Customs Act was unwarranted, as the subject imports had already been regularised in accordance with DGFT Trade Notice No. 7/2023-24 and CBIC Circular No. 16/2023-Cus.
- It emphasised that the amendment to Section 3(12) of the CTA, which introduced the applicability of penalty and confiscation provisions, was effective prospectively from 16 August 2024.
- Given that the imports in question occurred between 2017 and 2019, the Court clarified that the amended provisions could not be applied retrospectively to past transactions.

Reliance on non-binding ruling disapproved:

- The Court also expressed disapproval of the conduct of the Adjudicating Authority for disregarding binding precedent from the jurisdictional HC.

² *Mahindra & Mahindra Ltd.* (SLP(C) No. 016214 / 2023)

³ *Texmaco Rail Engineering Ltd.* (Appeal No. 75921 of 2014)

- Instead, the Authority relied on non-binding rulings of the CESTAT, Kolkata, in contradiction to the law laid down by the Bombay HC in *Mahindra & Mahindra*.
- Such disregard, the Court emphasised, cannot be countenanced, and undermines the rule of law.

Our comments

Courts have consistently held that interest and penalties cannot be imposed unless there is a clear and specific provision in the law permitting such levy. In *J.K. Synthetics Ltd.*, the Supreme Court clarified that interest on delayed tax payments can only be charged when explicitly provided for in the statute. Similarly, in *Khemka and Co. (Agencies) Pvt Ltd*, it was emphasised that penalties are statutory liabilities and must be backed by a specific legal provision.

The Bombay High Court, in the case of *Mahindra and Mahindra Ltd.*, also held that interest and penalty could not be levied on customs surcharge, CVD, or SAD, as there was no statutory power under customs law to do so.

In line with these settled principles, the Bombay High Court in the present case has reiterated that no interest, penalty, or redemption fine can be imposed in the absence of express legal authority, i.e., during the period prior to amendment. It has also held that such amendment cannot be applied retrospectively and reinforced the principle that statutory provisions prevail over administrative circulars and highlights the importance of adhering to binding judicial precedents.

By declaring Circular No. 16/2023-Cus. to be ultra vires insofar as it mandates recovery of interest and by rejecting retrospective penal actions, the Bombay High Court has extended significant relief to importers who had availed IGST exemption under the Advance Authorisation Scheme prior to the August 2024 amendment.

Importers facing similar issues may explore the option of relief by relying on this judgment, particularly in cases concerning pre-amendment periods where punitive demands have been raised without clear legal authority.

This decision also serves as a strong reminder to adjudicating authorities to align strictly with judicial precedents while interpreting tax laws.

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