

Interest, redemption fine, or penalties cannot be levied on violation of pre-import condition in absence of statutory provisions – CESTAT

13 August 2024

Summary

The CESTAT has ruled that the recovery of interest, redemption fine, and penalties on the delayed payment of IGST due to violation of the pre-import condition was unsustainable in the absence of statutory provisions under the Customs law. The CESTAT acknowledged that the appellant paid the IGST as per the directions of the SC and the CBIC's circular. The entire situation was revenue-neutral, as the appellant was allowed credit of the IGST and interest. Therefore, the demands for interest, fines, and penalties were set aside, providing relief to the appellant.

Facts of the case

- Chiripal Poly Films Ltd. (the appellant) imported inputs duty-free for manufacturing export products such as BOPP film, aluminium metalised BOPP film, polyester film, etc., under the Advance Authorisation scheme.
- The pre-import condition was introduced through Notification No. 79/2017-Customs dated 13 October 2017, which amended Notification No. 18/2015-Customs dated 1 April 2015. This condition required that inputs imported under the AA scheme must be pre-imported and used exclusively to manufacture export goods to avail of an exemption from IGST leviable on importing goods. The condition was subsequently withdrawn on 10 January 2019.
- During the period in question, the appellant imported various inputs without paying IGST, as the proper customs officers allowed exemptions based on final assessments. However, objections were later raised by the Directorate of Revenue Intelligence (DRI) for non-compliance with the pre-import condition, leading to the issuance of show cause notices and subsequent adjudication by the Principal Commissioner.

Issue raised before the CESTAT

- Is the appellant liable to pay duty, interest, redemption fine, and penalties for allegedly violating the 'pre-import condition' under the AA scheme for imports made between 13 October 2017 and 9 January 2019?

Appellant's contention

- The appellant argued that all the imported goods under the AA scheme were fully utilised to manufacture finished products that were exported.
- There was no breach of the AA scheme's core condition, as all imported goods were incorporated into the export goods, satisfying the fundamental requirements.
- The appellant acknowledged the payment of IGST as a bona fide citizen, following the directions of the SC and the CBIC circular dated 7 June 2023.
- The appellant emphasised that the situation was revenue-neutral, as they were allowed to claim input credit for the IGST paid, and the credit was utilised shortly after it was granted. The appellant did not contest the demand for duty, as they had already received credit for the paid IGST.
- The appellant contested the imposition of interest, redemption fine, and penalties, arguing that these were unsustainable in law. They asserted that:
 - No specific provision in the Customs Tariff Act, 1975 (CTA), authorises the imposition of interest, penalty, and fine for violations related to IGST.
 - Interest, penalty, and fine are separate levies that require a clear and specific charging provision within the statute, which was absent in this case.
 - The provisions of the Customs Act, 1962 (Customs Act), applied by the adjudicating authority, do not extend to the duties and taxes levied under Section 3(7) of the CTA, such as IGST.

CESTAT's observations and judgement [Customs Appeal no. 10228 of 2024, order dated 23 July 2024]

- **No statutory provision for recovery of interest, fine, and penalty on delayed payment of IGST:** The CESTAT found that there is no statutory provision under Section 3(7) or Section 3(12) of the CTA for the recovery of interest, fine, and penalty on delayed payment of the IGST. The CESTAT stated that interest, fine, and penalty are separate/independent financial levies, and as held by the SC and many HCs, a charging provision must be there in statute levying interest, fine, and penalty. Therefore, the recovery orders for interest, fine, and penalty on late payment of the IGST during the reassessment process from 13 October 2017 to 9 January 2019 were deemed unsustainable and were set aside.
- **Interpretation of provisions w.r.t judicial pronouncements:** The CESTAT analysed the statutory provisions under the CTA, and found no explicit authority for the recovery of interest, fine, or penalty related to the late payment of IGST under Section 3(7) or 3(12) of the Act. It made reference to key judicial precedents, including the Supreme Court's rulings, emphasising that any imposition of interest, fine, or penalty must have a clear statutory basis. The absence of such a provision renders the adjudicating authority's orders for interest, fine, and penalty legally unsustainable.
- **Revenue-neutral situation:** The CESTAT acknowledged that the appellant paid the IGST as per the directions of the SC and the CBIC's circular. The entire situation was revenue-neutral, as the Revenue had also allowed the credit of the entire amount of IGST with interest paid by the appellant, pursuant to the reassessment of the Bill of Entry in question after following the procedure laid down under Circular No.16/2023-Customs dated 7 June 2023.
- **Circular is contrary to provision for charging interest:** Circular No. 16/2023-Customs dated 7 June 2023 directing to charge applicable interest is ex-facie, contrary to the provision for charging interest /s 3(7) of CTA and decisions of the Supreme Court and many high courts. The CESTAT stated that the circular issued by the CBIC reflects the officers' view on any issue, and the decision by the courts will always prevail over the CBIC circular.
- **Ingredients for imposing penalty absent:** The CESTAT observed that there was no statutory provision for imposing penalty under Section 3(7) or 3(12) of the CTA. Further, there was no evidence showing intention to evade duty. Imposition of penalty requires malafide intention to evade duty, which was not found in the present case. Therefore, the CESTAT held that as the necessary ingredients for imposing a penalty were not found in the present case, the orders for imposing a penalty were not sustainable.
- **No substantive provision for confiscation or imposing a redemption fine:** The CESTAT observed that this was a case of revenue neutrality and interpretation of provisions. There was no substantive provision for confiscation or imposing a

redemption fine in CTA. Also, there was no evidence showing an intention to evade duty. Therefore, there was no justification for confiscating goods or imposing a redemption fine, where the goods in question were released on final assessment and unavailable for release.

- **Invocation of an extended period of limitation not valid:** The CESTAT observed that there was no suppression of fact, and show cause notices were issued beyond two years from import. Therefore, the entire demand was time-barred. The CESTAT also affirmed the appellant's contention that the Revenue cannot invoke a larger period of time limitation for duty demands in cases involving interpretation and resolution of the issues by higher courts up to the level of the apex court and in a revenue-neutral situation. Since the demand made against the appellant was barred by time limitation, the duty liability was illegal and liable to be set aside.

Our comments

In the case of J.K. Synthetics Ltd., the Supreme Court ruled that interest can be levied and charged on late tax payments only if the statute that levies and charges the tax makes a substantive provision in this regard. In the absence of a substantive provision requiring the payment of interest, the authorities may not charge interest on tax to collect and enforce payment.

Even in the case of Khemka and Co. (Agencies) Pvt Ltd, the Supreme Court held that a penalty is in addition to the tax and statutory liability. Hence, there must be a specific provision to levy a penalty.

The SC has also affirmed the Bombay HC's decision in the case of Mahindra & Mahindra Ltd., which held that interest and penalty could not be levied on the delayed payment of customs surcharge, CVD, and SAD in the absence of statutory provisions.

The above precedents are pivotal to the CESTAT's ruling, the basis on which it has set aside similar demands in the present case, reaffirming that only clear statutory mandates can justify such impositions. The importers can claim relief from the levy of interest and penalty on the IGST, and where interest and penalty have already been paid, the importers may claim a refund of the same.

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