

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

E-HEARING

CUSTOMS APPEAL NO. 50595 OF 2024

[Arising out of the Order-in-Original No. 14/2023 dated 20/11/2023 passed by The Commissioner, Customs, Jodhpur, Jaipur – 302 005.]

M/s JLC Electromet Private Limited

.....Appellant

Road No. 11-H,
Vishwakarma Industrial Area,,
Jaipur.

Versus

**Commissioner, Customs,
Jodhpur, Headquarters Jaipur,**

....Respondent

NCRB, Statue Circle, C-Scheme,
Jaipur – 302 005.

APPEARANCE:

Shri Yash Dhaddha and Ms. Shradha Agarwal, Advocates for
the appellant.

Shri Rajesh Singh, Authorized Representative for the
Department

CORAM:

HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50499/2025

DATE OF HEARING : 27.02.2025

DATE OF DECISION: 17.04.2025

P.V. SUBBA RAO

The Order dated 20.11.2023 passed by the
Commissioner of Customs (Preventive), Jodhpur whereby he
appropriated the amounts paid as IGST on the goods

imported by M/s. JLC Electromet Pvt. Ltd.¹ towards IGST and appropriated the amount paid as interest towards interest is assailed in this appeal to the extent it holds that interest was payable on the IGST paid imported goods after a delay and the amount paid as interest was appropriated.

2. The facts which led to the issue of the impugned order are that the appellant had imported and cleared goods using 13 Advance Authorisations without paying either the basic customs duty² or the integrated goods and services tax³ on them. The Directorate General of Revenue Intelligence⁴ investigated the matter and found that while the appellant had correctly availed exemption from BCD, it had wrongly claimed exemption from IGST because exemption from IGST under the scheme was available subject to 'actual user' condition which the appellant had, undisputedly, not fulfilled.

3. On being pointed out, the appellant had paid IGST on the imported consignments with interest. Thereafter, DRI issued a show cause notice dated 3.10.2019⁵ which culminated in the impugned order.

4. The appellant does not contest that it was liable to IGST and had incorrectly claimed the exemption and therefore, it paid the IGST on being pointed out by DRI. The only

1. appellant

2. BCD

3. IGST

4. DRI

5. SCN

contention is that although it had paid IGST with delay, it was not liable to pay any interest on the ground that IGST is an Additional Duty of Customs levied under section 3 of the Customs Tariff Act, 1975 and the provisions of interest do not apply to Additional Duty of Customs as held by the Bombay High Court in **Mahindra & Mahindra Ltd.**⁶, which decision was upheld by the Supreme Court⁷.

5. Both sides fairly submit that an identical question in respect of the same appellant for a different period had come before this Tribunal in Customs Appeal No. 51895 of 2021 which was decided against the appellant by Final Order Nos. 58005-58006/2024 dated 12.8.2024. The appellant had appealed against the Final Order before Rajasthan High Court but the final order has not been stayed.

6. Learned counsel for the appellant prayed that this appeal may be adjourned and taken up after the decision of the Rajasthan High Court. Learned authorised representative for the Revenue, on the other hand, submits that since the matter has already been decided by this Tribunal and the order of this Tribunal still holds the field and it has not been stayed or set aside by any higher court, there is no reason to adjourn the matter.

6. **TIOL-1319-HC-MUMCUS**

7. **2023(386) E.L.T. 11 (S.C.)**

7. After considering the submissions of both sides, we proceed to decide the matter.

8. We have heard both sides at length and perused the records. The submission of the learned counsel for the appellant is that IGST levied on goods which are imported is an additional duty of Customs and therefore, the judgment in **Mahindra and Mahindra** would apply.

9. In our Final Order in the earlier appeal, we had examined at length the nature of IGST levied on imports and held that it is not an additional duty of Customs and since interest is payable on IGST, it has to be paid on IGST levied on supply in the course of international trade as well.

10. We proceed to discuss the provisions related to the IGST below so that the distinction between the Additional Duty of Customs and IGST is clear.

Constitutional provisions

11. As per Article 265 of the Constitution of India, no tax shall be levied or collected except by authority of law. The power of the Parliament and State Legislatures to make the laws flows from Article 246 which reads as follows:

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh

Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

12. Thus, Parliament can only levy taxes which are covered by the Union List (List I) and State legislatures can levy taxes which are covered by the State List (List II). **Duties of Customs are covered by entry 83 of list I and the Union can levy them.** They could be levied on imports or on exports. They could be basic customs duties or additional duties of Customs or other forms of Customs duties such as anti-dumping duty, safeguard duty, countervailing duty, etc.

13. Goods and Services Tax, on the other hand, is neither in the Union List (List I) nor in the State List (List II) nor in the concurrent list (List III) nor is it covered by Article 246. The power to levy GST was conferred by inserting a new Article 246A in the Constitution which empowered both the Union and States to levy GST and only the Union to levy GST on inter-state supply of goods. The term inter-state supply has been expanded to include supply in the course of international trade through Article 269A. **Therefore, IGST on imported goods is levied exercising the powers under Article 246A and Article 269A.**

14. Thus, while duties of Customs are levied under Article 246 of the Constitution read with entry 83 of List I (Union List), IGST on imports is levied under Article 246A and Article 269A of the Constitution.

TAXABLE EVENT

15. The nature of any tax or duty can be determined by the taxable event, i.e., that action or event which makes the tax payable. For instance, earning of income is the taxable event to levy income tax, sale or purchase is the taxable event for levy of sales tax or VAT, manufacture is the taxable event which makes excise duty payable. If there is no manufacture, for instance, no excise duty can be charged even if the goods are processed and sold. In case of Customs duties, the act of

importation (i.e., bringing into India from outside) or the act of exportation (i.e., taking goods out of India from India) is the taxable event. Sale, purchase, etc. are irrelevant. If one brings one's own goods from outside into India, for instance, Customs duties are chargeable although no sale or purchase is involved.

16. The taxable event to levy IGST is the inter-state supply of goods and services (including supplies in the course of international trade). If there is no supply, there is no scope to levy IGST even if goods are imported.

17. **Thus, the taxable event for levy of Customs duties is the act of importation while the taxable event for levy of IGST is the supply in the course of international trade.**

Accounting and use of Customs duties and IGST

18. As per Article 266 of the Constitution, all Revenues collected by the Central Government shall form part of the Consolidated Fund of India along with certain other amounts. Duties of Customs also are credited to the Consolidated Fund of India accordingly. **The Customs duties become part of divisible pool of taxes which are divided between the Centre and States as per the recommendations of the Finance Commission constituted under Article 280 of the Constitution.**

19. IGST, on the other hand, cannot form part of the Consolidated Fund of India. As per Article 269A, **IGST has to be divided between the Centre and the State as per the recommendations of the Goods and Services Tax Council constituted under Article 279A of the Constitution.**

20. Thus, the accounting and use of Customs duties and IGST are quite different as per the Constitution. Even how the amounts should be divided between Centre and States has to be based on two different constitutional bodies- based on recommendations of Finance Commission in case of duties of Customs and other Revenues credited to the Consolidated Fund of India and based on the recommendations of the GST Council in case of IGST. It is for this reason, they are credited to different budget heads as follows:

"5. Customs

5.01. Import Duties

5.01.01. Basic Duties (including through Debit of Scrips)

5.01.01.01. Other than debits of Scrips 0037

5.01.01.02. Through Debit in Ledger due to various scrip based schemes 0037

Total-Basic Duties (including through Debit of Scrips)

5.01.02. Additional Duty on Customs(CVD) 0037

5.01.03. National Calamity Contingent Duty 0037

5.01.04. Primary Education Cess 0037

5.01.05. Secondary and Higher Education Cess 0037

5.01.06. Social Welfare Surcharge 0037

5.01.07. Health Cess 0037

5.01.08. Agriculture Infrastructure and Development Cess (AIDC) 0037

Total-Import Duties**5.02. Export Duty 0037**

5.03. Cesses on Exports 0037

5.04. Other Receipts 0037

5.05. Sale of Gold by Public Auction 0037

5.06. Sale Proceeds of Confiscated Goods 0037

5.07. Customs Duty on Gold 0037

5.08. Receipt of advance payment of Assessments 0037

5.09. Safeguard Duty 0037

5.10. Road and Infrastructure Cess 0037

5.11. Anti-dumping Duty 0037

Total-Customs

8. Goods and Services Tax (GST)

8.01. Central Goods and Services Tax (CGST) 0005

8.02. Integrated Goods and Services Tax (IGST) 0008

8.03. GST Compensation Cess 0009

Total-Goods and Services Tax (GST)."

Charging sections

21. Section 12 of the Customs Act, 1962 is the charging section for basic customs duties. Additional duties of customs can be levied under various provisions of the Customs Tariff Act 1975.

22. The charge of IGST is not just under section 3 of the Customs Tariff Act but under this section read with section 5 of the IGST Act. Therefore, unlike in the case of customs duties, no rate of IGST is prescribed either in the schedules to the Customs Tariff Act or under any notification issued under the Customs Tariff Act. Section 3 of the Customs Tariff Act refers

to the IGST payable under section 5 of the IGST Act. In other words, whatever is payable under the IGST Act on inter-state supplies within India is payable under section 3 of the Customs Tariff Act read with section 5 of the IGST Act if the supplies are in the course of importation.

Interest on delayed payment

23. The undisputed legal position is that if there is delayed payment of IGST under Section 5 of the IGST Act, interest is payable. Section 20 of IGST Act, 2017 made several provisions of the CGST Act applicable to IGST including section 50 of CGST Act, 2017 which provides for interest. There is no reason to treat IGST paid on goods supplied in the course of international trade differently than the IGST paid on inter-state supply of goods. If there is delay in payment of IGST, interest as per Section 50 of the CGST Act, 2017.

24. To sum up, Additional duty of Customs is levied on the act of importation or the act of exportation under the Customs Tariff Act, 1975 in exercise of the powers under Article 246 read with entry 83 of List I (Union List) of the Seventh Schedule to the Constitution. IGST is levied on the supply in the course of imports under section 3 of the Customs Tariff Act, 1975 read with Section 5 of the IGST Act in exercise of the powers under Article 269 of the Constitution. While Additional duty of Customs gets credited to the Consolidated Fund

of India and the divisible pool of tax revenues divided between the States and Union as per the recommendations of the Finance Commission, IGST does not get credited to the Consolidated Fund of India and gets divided between the State and Union as decided by the Parliament on the recommendations of the GST Council.

25. Therefore, whatever rate of tax and interest apply to IGST in the course of inter-state trade also apply to supplies in the course of imports. Learned counsel for the appellant submits that in this case, the Commissioner did not apply the rate of duty applicable under section 50 of the CGST Act as made applicable to IGST through section 20 of the IGST Act. Instead, he confirmed interest as applicable under section 28AB of the Customs Act. It is his submission that for that reason alone, the demand of interest needs to be set aside.

26. On perusal of the impugned order, we find the appellant is correct in his submissions that interest was calculated as per the rates applicable under section 28AB.

27. In view of the above, we find that this matter deserves to be remanded to the Commissioner to re-determine the interest payable as applicable to the IGST.

28. The impugned order is set aside and the matter is remitted to the Commissioner to determine the interest as applicable to the IGST. The appeal is allowed by way of remand.

(Order pronounced in open court on 17/04/2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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