



Apex Court upholds non-payment of interest on additional duties of customs

***Union of India & Ors. vs. Mahindra and Mahindra Ltd.*¹**

The Hon'ble Supreme Court, *vide* its recent order dated July 28, 2023, has dismissed the Special Leave Petition ('SLP') filed by the Revenue Department against the Bombay High Court's ('High Court') decision². The High Court had held that interest and penalty cannot be imposed on delayed / short payment of additional duties of customs (CVD, SAD, surcharge etc.), in absence of an enabling provision under the Customs Tariff Act, 1975 ('CTA').

Facts of the case:

- Mahindra and Mahindra Ltd ('the Respondent') is engaged in manufacture of vehicles in India. They had filed four applications before Settlement Commission ('Commission') for settlement of four Show Cause Notices ('Notices') which alleged undervaluation of the imported goods.
- Demand in all the Notices were confirmed by the Commission, along with interest. A partial penalty was also levied, whilst immunity was granted from prosecution.
- The Respondent approached the High Court challenging the levy of interest and penalty on CVD, SAD and surcharge, arguing that there is no

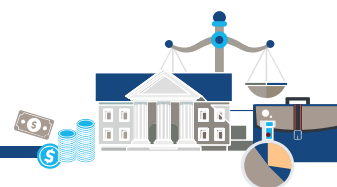
enabling provision under the Customs laws for imposition of interest and penalty on such additional duties of customs.

• **High Court ruling:**

- Additional duties of customs, such as CVD and SAD are levied under Section 3 and Section 3A of the CTA. There is no specific provision under CTA to levy interest and/or penalty on the same. Similar is the case with surcharge, levied as per Section 90 of the Finance Act, 2000.
- Interest and penalty provisions of Customs Act, 1962 are applicable against short payment of BCD only and do not extend to such additional duties.
- Section 3(12) of the CTA does not borrow provisions pertaining to imposition of interest and penalty from Customs Act, 1962.
- In the absence of any substantive provision under the Customs laws, interest or penalty cannot be levied on short paid CVD, SAD or surcharge on the import of goods.
- As per judicial precedents, a taxing statute must be construed strictly, and tax can be imposed

¹ 2023 (8) TMI 135 – SC Order

² 2022 (10) TMI 212 – Bom. HC



only when the language of the statute expressly provides for it.

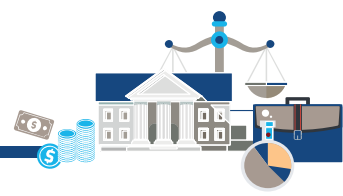
- Accordingly, the High Court quashed the orders of Commission levying interest and penalties on short payment of additional duties of customs i.e., CVD, SAD and Surcharge, and directed to refund the amount of interest and penalty so paid.
- Against this order, the Revenue Department preferred a SLP before the Hon'ble Supreme Court, which was dismissed by the Apex Court.

Dhruva Comments

This decision applies and reinforces a well-established principle that no demand can be sustained without necessary statutory provisions.

This dismissal of the Customs Department's SLP may cause taxpayers to evaluate seeking refund of interest and penalty paid on CVD and other levies, that are not BCD.

An intriguing issue that could surface in the present day context of imported goods, is interest and penalty on Integrated Goods and Services Tax ('IGST') that is levied, collected and administered by and under the CTA.



ADDRESSES

Mumbai

1101, One World Centre,
11th floor, Tower 2B, 841,
Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahladnagar, Corporate Road,
Ahmedabad 380015
Tel: +91-79-6134 3434

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana 122002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart, Baner,
Pune 411045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal 700016
Tel: +91-33-66371000

Abu Dhabi

Dhruva Consultants
1905 Addax Tower, City of Lights,
Al Reem Island,
Abu Dhabi, UAE
Tel: +971 26780054

Dubai

Dhruva Consultants
Emaar Square Building 4, 2nd Floor,
Office 207, Downtown,
Dubai, UAE
Tel: +971 4 240 8477

KEY CONTACTS

Dinesh Kanabar

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Niraj Bagri

niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

Kulraj Ashpnani

kulraj.ashpnani@dhruvaadvisors.com

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