ALO Law Office- IDT Tax I Arbitration I Litigation

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CESTAT Kolkata Clarifies Interest Liability in Provisional Customs Assessments

In a significant ruling, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Kolkata, has delivered a judgment that clarifies the applicability of interest liability under Section 18(3) of the Customs Act, 1962, in cases of provisional customs assessments. The decision, pronounced on August 5, 2025, in the case of *M/s NHPC Limited vs. Commissioner of Customs (Port), Kolkata*, addresses key issues surrounding the retrospective application of interest provisions and penalties in customs law.

Background of the Case

The appellant, NHPC Limited, a public sector undertaking under the Ministry of Power, imported equipment and spare parts for the Teesta Hydroelectric Project in Sikkim between April 2004 and April 2008. These imports were provisionally assessed under Section 18(1) of the Customs Act, 1962, and classified under CTH 9801, availing a NIL rate of Basic Customs Duty (BCD). However, the Department later issued a show-cause notice in May 2019, alleging that the value of spare parts imported exceeded 10% of the value of the main equipment, violating the conditions of the customs notification. Consequently, differential duty was demanded, along with interest and penalties.

NHPC promptly paid the differential duty of Rs. 12.51 crore in August 2019, prior to the finalization of the provisional assessment. However, the Department imposed interest under Section 18(3) for the period post-13.07.2006 and under Section 28AB for the period prior to 13.07.2006, along with a penalty of Rs. 25,000. NHPC challenged the order, arguing that interest liability was not applicable for provisional assessments finalized before the introduction of Section 18(3) on 13.07.2006 and that no interest was payable when duty was paid prior to finalization.

Key Issues Addressed

The Tribunal examined two critical issues:

1. **Retrospective Application of Section 18(3):** The Tribunal ruled that Section 18(3), introduced on 13.07.2006, is a substantive provision and cannot be applied retrospectively to provisional assessments finalized before its effective date. This aligns with previous judicial precedents, including rulings by the Karnataka High Court and the Supreme Court, which held that fiscal provisions imposing liabilities cannot be applied retrospectively unless explicitly stated.
2. **Interest Liability for Duty Paid Before Finalization:** The Tribunal held that no interest is payable under Section 18(3) when the differential duty is paid before the finalization of provisional assessments. It emphasized that interest liability arises only when duty is payable at the time of finalization. Since NHPC had already paid the differential duty prior to finalization, no interest could be demanded. This interpretation was supported by rulings from the Bombay High Court and the Supreme Court in similar cases.

Tribunal's Observations

The Tribunal relied on several judicial precedents, including:

- *M/s Century Pulp & Paper vs. Commissioner of Customs (Port), Kolkata*
- *Principal Commissioner of Customs, Bengaluru vs. M/s Cisco Systems Pvt. Ltd.*
- *CEAT Limited vs. Commissioner of Central Excise & Customs, Nashik*

These rulings consistently held that interest liability does not arise for provisional assessments finalized before the introduction of Section 18(3) or when duty is paid prior to finalization.

Final Verdict

The Tribunal set aside the impugned order, ruling that:

- No interest is payable for the period prior to 13.07.2006 under Section 18(3) or Section 28AB.
- No interest is payable post-13.07.2006 when duty is paid before finalization of provisional assessments.
- Consequently, no penalty is imposable on the appellant.

Implications of the Ruling

This judgment is a landmark decision that provides clarity on the applicability of interest provisions in customs law. It reinforces the principle that fiscal provisions imposing liabilities cannot be applied retrospectively and that interest liability arises only when duty is payable at the time of finalization. Importers and exporters can now rely on this precedent to challenge unwarranted interest demands in similar cases.

Conclusion

The CESTAT Kolkata's ruling in the NHPC case is a significant step in ensuring fairness and consistency in the application of customs law. By upholding established legal principles and judicial precedents, the Tribunal has provided much-needed clarity on the scope of interest liability in provisional assessments. This decision will undoubtedly serve as a guiding light for future cases in customs litigation.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Kolkata

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75629 of 2021

(Arising out of Order-in-Appeal No.Kol/Cus(Port)/AKR/325/2021 dated 24.03.2021 passed by Commissioner of Customs (Appeals), Kolkata)

M/s NHPC Limited
[NHPC Office Complex, Sector 33, Faridabad (Haryana)-121003]

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
(15/1, Stand Road, Kolkata-700001)

Respondent

APPERANCE :

S/Shri Deepro Sen & Vasudeb A, both Advocates for the Appellant
S/Shri Kaushik Dey & Tapan Bhanja, Special Counsels for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77143/2025

DATE OF HEARING : 29 JULY 2025

DATE OF PRONOUNCEMENT : **05 AUGUST 2025**

Per Ashok Jindal :

The appellant is in appeal against the impugned order where the demand of interest has been raised against the appellant after finalization of the provisional assessment of the Bills of Entry and penalty of Rs.25,000/- was also imposed on the appellant.

2. The facts of the case are that the appellant is a Public Sector Undertaking under the Ministry of Power, Government of India, primarily engaged in the business of construction, operation and maintenance of hydroelectric power plants spread across the various states of India.

2.1 The appellant was engaged in the construction, operation and maintenance of Teesta Hydroelectric Project, Stage-V (510 MW) ('Teesta HE Project') in Singtam, East Sikkim. The said hydroelectric project was certified as an inter-State Mega Hyder Power Plant by the Joint Secretary to the Government of India, Ministry of Power vide Office Memorandum No.8/1/99 DO (NHPC) dated 25.09.2000. Vide the said Office Memo, the Appellant was allowed to import goods required for initial setting up of the Teesta HE Project at NIL rate of Basic Customs Duty as per Sl. No. 338 r/w condition 80(b) of Notification No. 16/2000-Cus dated 01.03.2000which was rescinded and subsequently replaced by Sl.No. 400(b) of Notification No.21/2001-Cus dated 01.03.2001.

2.2 The appellant entered into a contract with the overseas supplier, Mitsui & Co. Ltd. for the supply of such goods required for setting up the Teesta HE Project and such contract was registered under the Project Import Regulations, 1986. The appellant also submitted a bond for the value of Rs.2,17,55,76,500/- before the Ld. Deputy Commissioner of Customs (Project Import), Kolkata and accordingly the Appellant was allowed to provisionally assess the goods under Section 18(1) of the Customs Act, 1962.

2.3 In this regard, the appellant imported the main equipment which includes turbines, governors, generators etc, ('main equipment') duly classifying them under CTH 9801 and availing benefit of NIL rate of Basic Customs Duty('BCD') and additional duty. Further, along with such main equipment, the Appellant also imported spare parts ('subject

goods') by classifying them under CTH 9801 and availing the benefit of NIL rate of BCD and additional duty.

2.4 All such imports were carried out by the Appellant between April 2004 and April 2008 and despite submitting all documents by the Appellant, the provisional assessment with respect to such imports were never finalized by the Department.

2.5 Under the aforementioned circumstances, after multiple correspondences including issuance of a pre-consultative letter, the underlying SCN dated 29.05.2019 was issued to the Appellant demanding customs duty on the spare parts imported by the Appellant, along with applicable interest under Section 18(3) and penalty under Section 117 of the Customs Act, 1962. It was alleged that as per CTH 9801 there exists a condition that spares cannot be imported classifying under CTH 9801 and availing benefit of NIL rate of BCD and additional duty, with respect to the value of such spares exceeding 10% of the value of the main equipment imported.

2.6 Since the Appellant had imported such spares the value of which were in excess of 10% of the value of the main equipment, demand of BCD and additional duty was proposed on such value of spare parts which were in excess of the 10% of the value of the main equipment. It is pertinent to note that such data, including the value of the spare parts, was provided by the Appellant itself to the Department and that no dispute was ever raised at the time of importation of the goods.

2.7 Immediately on receipt of the underlying show-cause notice, the Appellant deposited such differential duty of Rs.12,51,93,030/- vide demand draft no. 156566 dated 12.08.2019 and duly intimated the

same to the Department vide letter dated 12.08.2019. It is again pertinent to note that the appellant was unaware of such a statutory limit of 10% with respect to the import of the spare parts and immediately once the same was brought to the notice of the appellant, it was paid. Also, such payment was made prior to the finalization of the provisional assessment.

2.8 The appellant duly replied to the underlying show-cause notice and submitted that the demand of interest and penalty cannot sustain since the Appellant had duly deposited the applicable customs duty prior to the finalization of provisional assessment and Section 18(3) of the Customs Act, 1962 is not applicable for levy of interest wherein the demand has been paid prior to the finalization of provisional assessment. Further, it was submitted that Section 18(3) of the Customs Act, 1962 cannot be invoked for the bills of entry filed and provisionally assessed prior to 13.07.2006 since during such period Section 18(3) was not existing, and that the operation of such provision is prospective in nature.

2.9 However, without considering the submissions of the appellant, the underlying Order dated 28.11.2019 was passed finalizing the provisional assessment, and appropriating the BCD and additional duty paid by the Appellant on the spare parts and charging of interest under Section 18(3) for the period post 13.07.2006 and imposition of penalty. Further, the underlying Order travelled beyond the Show Cause Notice and confirmed charging of interest under Section 28AB of the Customs Act, 1962 for the Bills of Entry filed and provisionally assessed before 13.07.2006. Thus, the underlying Order confirmed an interest

amounting to Rs.20,48,05,179/- with respect to the Bills of Entry filed prior to 13.07.2006 and Rs.4,68,25,793/- for the period post 13.07.2006.

2.10 The appellant being aggrieved by such underlying Order dated 28.11.2019 preferred an appeal before the Ld.Commissioner of Customs (Appeal), Kolkata. However, without appreciating the detailed submissions made by the appellant, the Ld. Commissioner of Customs (Appeal) vide the impugned Order upheld the underlying Order.

2.11 Being aggrieved with the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that Section 18(3) of the Customs Act, 1962, is not applicable for the period prior to 13.07.2006. The said provision came into Statute Book on 13.07.2006. To support his contention, he relies on the decision of this Tribunal in the case of M/s. Century Pulp & Paper Vs. Commissioner of Customs (Port), Kolkata – 2024 (3) TMI 508 – CESTAT Kolkata, wherein it has been held that Section 18(3) of the Customs Act, 1962 is not retrospectively applicable and cannot be applied for provisional assessments made prior to its effective date, i.e., 13.07.2006. He further relies on the following decisions :

(i) Principal Commissioner of Customs, Bengaluru v. M/s. Cisco Systems Pvt. Ltd. – 2024 (10) TMI 845 – Karnataka High Court

(ii) Commissioner of Customs v. CESTAT, M/s. Sterlite Industries India Ltd. – 2020 (2) TMI 770 – Madras High Court

(iii) Jaswal Neco Ltd. v. Commissioner of Customs, Visakhapatnam – 2015 (322) E.L.T. 561 (S.C.)

The said provisional assessments carried out prior to 13.07.2006, therefore, the demand of interest is not sustainable.

3.1 He further submits that the demand of interest has been made under Section 28AB of the Customs Act, 1962 for the period prior to 13.07.2006, which is beyond the scope of the show-cause notice as in the show-cause notice, interest proposed to be recovered from the appellant under Section 18 (3) of the Customs Act, 1962. To support his contention, he relies on the decision of the Hon'ble Supreme Court in the case of Commissioner of C. Ex., Nagpur v. Ballarpur Industries Ltd. – 2007 (215) E.L.T. 489 (S.C.). Therefore, the demand of interest under Section 28AB of the Customs Act, 1962, for the period prior to 13.07.2006, is not sustainable.

3.2 He further submits that no interest is payable under Section 18(3) of the Customs Act, 1962 where the differential duty has been deposited prior to finalization of the provisional assessments. Therefore, the demand of interest is not sustainable. It is his submission that the appellant has deposited the differential duty on 12.08.2019 whereas the provisional assessments were finalized only on 28.11.2019. Therefore, no interest is payable.

3.3 In this regard, he submitted that Section 18(3) of the Customs Act, 1962 is *pari materia* to Rule 7(4) of the Central Excise Rules, 2002 as for the provision of Section 18(3) of the Customs Act, 1962, the importer or exporter shall be liable to pay interest on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order under Sub-section (2), at the rate fixed by the Central Government under Section 28AA from the first day of the

month in which the duty is provisionally assessed till the date of payment thereof. Admittedly, the liability of interest arises if the duty is payable on finalization of provisional assessment and not duty was payable by the appellant on finalization of provisional assessment. Therefore, they are not liable to pay interest at all. To support his contention, he relies on decision of the Hon'ble Bombay High Court in the case of CEAT Limited v. Commr. of Central Excise & Customs, Nashik – 2015 (317) E.L.T. 192 (Bom.) which has been affirmed by the Hon'ble Supreme Court in 2016 (334) E.L.T. A161 (S.C.), 2016 (342) E.L.T. A181 (S.C.) and 2018 (362) E.L.T. A32 (S.C). He also relies on the decision of this Tribunal in the case of Tata Motors Ltd. v. Commissioner of Central Excise & S.T. (LTU), Mumbai – 2016 (11) TMI 149 – CESTAT Mumbai. He further relies on the decision of the Hon'ble Bombay High Court in the case of Commissioner of Central Excise, Nagpur v. Ispat Industries Ltd. – 2010 (10) TMI 178 – Bombay High Court.

3.4 He further submits that it is pertinent to note that Rule 7(4) of the Central Excise Rules, 2002 was amended subsequent to the decision in CEAT (supra) with effect from 01.03.2016 vide Notification No. 8/2016 – C.E (N.T.) dated 01.03.2016, wherein the words "*whether such amount is paid before or after the issue of order for final assessment*" was added. However, the Section 18(3) of the Customs Act, 1962 was not amended till yet, therefore, the demand of interest does not arise. As no demand of interest is sustainable, no penalty is payable by the appellant.

4. On the other hand, the ld.Special Counsel for the respondent submits as under :

4.1 He submits that it is beyond dispute that the levy of differential duty on the impugned Bills of Entry is justified as the importer has categorically accepted the liability for the same and has deposited the differential duty amounting to Rs. 12,91,93,030.00 on 12.08.2019.

4.2 He submits that the importer has claimed, inter alia, that since section 18(3) of the Customs Act came into force on 13.07.2006, there would be no interest liability on short paid duty emanating from the same. This fundamentally flawed view which suffers from the misconception that the cause of action stems from the event of importation, which occurred before the insertion of the aforementioned provision in the Customs Act, 1962.

4.3 He further submits that when the goods were imported, the duty liability on the importer was lessened to the extent allowed by a Customs notification by virtue of the goods having been recommended to be eligible for assessment under CTH 9801 under Project Import Regulations, 1986, by a sponsoring authority, statutorily empowered under the same regulations read with Customs Act, 1962. The importer, in availing the benefits of the said notification, had also bound themselves to the conditions governing such availment. Only when the importer failed to fulfill the conditions of the notification but concession of duty was availed by them thereby violating the regulations in service of which such notification was issued, did they become liable to pay duty for such violation.

4.4 Further, he submits that the question of payment of interest came into being only. after the event of payment of duty was over. The day on which such duty is paid, interest becomes payable and therefore, in the present case, the primary cause of action is the date on which such duty was paid. The importer/appellant paid the duty on 12.08.2019, therefore the cause of action came into play on that date, which is long after amendments made in section 18 of the Customs Act. 1962, by insertion of sub- section 18(3) on 13.07.2006. So, even if it were to be conceded that the said provision is substantive in nature and not merely clarificatory and that is a significant assumption; and that the same can therefore only be applied prospectively in the present matter, the case is not at all made out by the importer that the charging provision of section 18(3) was not in force on the date of cause of action. Therefore, section 18(3) of the Customs Act, 1962, alone would impose an interest liability on the importer even for the imports affected before the introduction of the said statute.

4.5 He further submits that without prejudice to the above, the importer's contention that there existed no charging provision for levy of interest on the amount payable by an importer consequent to finalization of the provisional assessment also needs to be addressed. To that end, the erstwhile section 28AB of the Customs Act, 1962, bears quotation in its entirety:

> *"Where any duty has not been levied or paid or has been short-levied er short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2), or has paid the duty under sub-section (2-3), of section 28, shall, in addition to the duty, be hable to pay interest at such rate not*

below (ten per cent./ [Inserted by Act 22 of 1995, Section 51 (w.ef. 26.5.1995). [and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2), or sub-section (2-B) of section 28, till the date of payment of such duty:

Provided that in such cases where the duty becomes payable consequent to issue of an order, instruction or direction by the Board under section 151-A, and such amount of duty payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases the interest shall be payable on the whole of the amount, including the amount already paid."

4.6 The wording of the sub- section is crystal clear. The importer has chosen to focus the force of their argumentation almost entirely on the phrase *"... any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded..."*, and it is their case that no duty can be said to be short-levied or unpaid before an order for finalization/ re- assessment has been passed, which led them to the erroneous conclusion that since the differential duty was deposited before the passing of the finalization order, they would incur no interest liability.

4.7 It is his further submission that the above argument of the importer is fundamentally an unsound position because the differential

duty in question was payable even at the time of provisional assessment of goods. The order for finalization or reassessment of provisional assessment merely confirms the quantum of duty that would have been payable by the importer and does not absolve the importer from any interest that the short- paid or unpaid duty might have attracted in the period leading up to the final assessment.

4.8 It is also submitted that even after introduction of section 18(3) in the Customs Act, 1962, it would not make them liable to pay interest on the differential duty. The question hinges on the interpretation of the phrase "consequent to finalization", which the importer in their challenge to the department's position have chosen to stress upon. Now, it is self evident that the word consequent carries within itself the existence of a cause effect relationship. It is in this vital detail, in fact, that the difference between 'consequent' and 'subsequent lies. And the choice of using the former in the wording of the statute instead of the latter can be held to be no mere accident. The individual words in any given law are to be read and interpreted in the context of their precise semantic sense, or the entire edifice of the rule of law crumbles down into inchoate and undifferentiated rubble devoid of any enforceable meaning. The importer has conveniently reframed the entire question into one of chronology when it is, in matter of fact, one of causality.

4.9 He also submits that the fact of payment of differential duty prior to the passing of the finalization order, and not subsequent to it, therefore, is claimed by the importer to absolve them of any interest liability arising out of said differential duty. But the quantum of duty that was paid by the importer is determined to be duty payable by the

importer as a direct consequence of the order for finalization, which establishes a cause effect relationship between the two that is not negated by the importer's pre-emptive payment of such duty prior to the passing of the order. The importer, through clever jugglery of words, has conflated the precedence- subsequence dynamic with that of cause-effect and seeks to evade the interest liability with the aid of said conflation.

4.10 He also claimed that since the erstwhile section 28AB was never invoked in the Show Cause Notice, its application in the impugned Order-in-Original amounted to transgression of the said notice and was hence bad in law.

4.11 He further contended that the above contention of the appellant is not tenable in as much as in the show cause notice not only the allegations are made in detail but also relevant details have been provided and reasonable opportunity was provided to the appellant. In this regard it submitted that in the case of AVI Steel Traders -Vs- Commissioner of Central Excise reported in 2010(260) E.L.T 43 (Del.) the Hon'ble High Court, Delhi has held that in the show cause notice, not only the allegations are made in detail as to how the appellant removed the goods from its factory without invoice but it is also specifically mentioned that by the aforesaid act, the appellant had contravened the provisions of Rule 11 of the Rules. Thus, the appellant was put on clear notice as to what kind of violation it had made. The penalty is a consequence thereof and, therefore, non-mentioning of Rule 25 of the Rules was mere inadvertent omission.

4.12 In the case of Indus Integrated Information MGMT. Ltd. -Vs- Pr. Commr. Of S.T. Kolkata-1 reported 2018(14) G.S.T.L. 24(Cal), the Hon'ble Calcutta High Court has held as under :

> *"... The liability to pay Service Tax is admitted by the Assessee. The adjudicating authority is entitled to apply the law as applicable to the facts of the case, notwithstanding a show cause notice containing a different charging section. The applicability of the section under which the petitioners have been charged is not substantiated to be incorrect. Although there are differences between Section 73A and Section 73 of the Act of 1994, the Assessee was well aware of the charges levelled against it. The Assessee had answered the charges. The objections were duly considered and negated in the impugned order."*

4.13 He also relies on the decision of the Tribunal in the case Geedeelon Texo-Twist Pvt. Commissioner of central Excise and Customs, Surat-ll reported in 2009 (238) E.L.T 455 (Tri-Ahmd.) and in the case of Commissioner of Central Excise, Pune Vs. Lanjekar Sales Corporation, reported in 2007 (210) E.L.T. 79 (Tri-Mum) wherein it has been consistently held by the Tribunal' that the wrong quoting of the section or non-quoting of specific section of the Customs Act, 1962, does not vitiate the proceeding.

4.14 It is demonstrably true that the importer in the instant case was put on notice about the interest liability on the duty that was short-paid in the SCN, which also made them, in turn, aware of the exact charge against which they were required to defend. The mere omission of the exact sub- section under which said charge does not vitiate the

adjudication proceedings against the importer on the basis of said sub-section.

5.15 Finally, he claimed that "tax can only be per law. This position is laughably inapplicable in the present case because the issue relates with levy of interest and not any duty. The duty liability has already been conceded by the importer multiple times. The importer's embarrassing attempt to misguide the Tribunal by conflating tax and interest deserves to be dismissed without a second thought.

6. Heard both the parties and considered the submissions.

7. On going through the facts of the case and the arguments advanced before us and the various judicial pronouncements by the parties, the following issues emerges :

Whether in view of the finalization of the Bills of Entry provisionally assessed under Section 18 (3) of the Customs Act, 1962, the appellant is liable to pay interest for the period prior to 13.07.2006 or post 13.07.2006 where the duty demand has been paid prior to finalization of the assessment or not ?

8. Admittedly, the provisions of demand of interest on finalization of provisional assessments, were introduced on 13.07.2006 in the Customs Act, 1962, which are as follows :

> "*The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.*"

Admittedly, the said provisions has been brought under the Customs Act, 1962 only on13.07.2006. Therefore, the issue arises whether prior to the period 13.07.2006, the appellant is liable to pay interest or not ?

9. The said issue has been examined by this Tribunal in the case of M/s Century Pulp & Paper (supra), wherein this Tribunal has observed as under :

> *"10. From the aforesaid it is evident that the court's have repeatedly held the amendment to Section 18 of the Act, as a substantive piece of legislation and it cannot be considered to be of a clarificatory nature. The same cannot be therefore given a retrospective effect. The provisions of Section 18(3) of the Act, would have no application to the present case and the Assessment Order demanding payment of interest, in respect of provisional assessment made prior to 13.07.2006 is not in accordance with law.*
>
> *11. The said issue being no more res integra, it need to be also pointed out that with the reference to similar provisions on the excise side, incorporated vide Rule 7(4) of the Central Excise Rules, 1944, the Board Vide Order- Instruction- Central Excise issued vide their Reference No.- F.No.354/66/2001-TRU dated 21.06.2001, had clarified that provisions relating to charging of interest will apply only to cases in which provisional assessment is resorted to after the date of promulgation and had specifically indicated the date 01.07.2001. It clarified that such provisions would not be applicable with respect to provisional assessments carried out in the past period, even if the assessments were finalized on or after the said date of incorporation of similar provisions on the excise side for charging of interest. This apart, from the rulings as held by various judicial authorities and as it is a cardinal principle of law that a different meaning cannot be assigned to similarly worded/placed provisions, and in the*

absence of any such specific expression, as discussed forgoing paras, we find no merit in the order of the lower authority."

10. Further, in the case of Cisco Systems Pvt. Ltd. (supra), wherein the Hon'ble Karnataka High Court has observed as under :

"7. The contentions and the question of law raised by the appellant- revenue is answered in favour of the assessee by the Gujarat High Court in the case of Commissioner of Customs Vs. Goyal Traders 2014 (302) E.L.T. 529. The relevant paragraphs 16 and 17 read as follows:

"16. Particularly, in fiscal legislation imposing liabilities generally governed by the normal rule is that it is not retrospective in nature. It is, however, equally undisputed that a procedural provision when made applicable to pending proceedings would not be viewed as given retrospective operation to the liability. In case of Govinddas and Ors. v. The Income Tax Officer and Anr. - AIR 1977 Supreme Court 552, the Apex Court was considering provision of Section 171 of Income-tax Act, 1961, in which the Legislature under sub-section (6) provided that even when no claim of total or partial partition is made at the time of making assessment under Section 143 or 144 of the Act, if it is found after the completion of assessment that the family has already effected as partition, total or partial, all the members shall be jointly and severally liable for the tax as payable by the joint family and the tax liable shall be apportioned among the members according to the portion of the joint family property allotted to each of them. The Apex Court was of the opinion that sub-section (6) of Section 171 thus, for the first time, imposed in the case of this kind joint and several liability on the members for the tax assessed on Hindu Undivided family and thus was personal liability as distinguished from the liability limited to the joint family

property received on partition. The Apex Court thereupon held and observed that:

"We cannot, therefore, consistently with the rule of interpretation which denies retrospective operation to a statute which has the effect of creating of imposing a new obligation or liability, construe sub-section (6) of Section 171 as embracing a case where assessment of a Hindu undivided family is made under the provisions of the old Act. Here in the present case, the assessments of the Hindu Undivided Family for the assessment years 1950-51 to 1956-57 were completed in accordance with the provisions of the old Act which included Section 25A and the Income Tax officer was, therefore, not entitled to avail of the provision enacted in sub-section (6) read with sub-section (7) of Section 171 of the new Act for the purpose of recovering the tax or any part thereof personally from any members of the joint family including the petitioners"

17. In the present case, we find that prior to introduction of sub-section (3) of Section 18 of the Act in the present form, there was no liability to pay interest on difference between finally assessed duty and provisionally assessed duty upon payment of which the assessee may have cleared the goods. It was only with effect from 13-7-2006 that such charging provision was introduced in the statute. Upon introduction therefor such provision created interest liability for the first time w.e.f. 13-7-2006. In absence of any indication in the statute itself either specifically or by necessary implication giving retrospective effect to such a statutory provision, we are of the opinion that the same cannot be applied to cases of provisional assessment which took place prior to the said date. Any such application would in our view amount to retrospective operation of the law."

8. Further, in the case of Reliance Industries Ltd., Vs. Union of India 2015 (326) E.L.T.664 (Guj.) at para No.14, it is specifically

held that Section 28 of the Customs Act only provides procedural aspects for recovery of duty and is not a substantive provision for levy of duty under the Act. The show cause notice also, accordingly, reveals that the interest on the differential amount is sought to be recovered under Section 18 (3) of the Act. That the provisions of Section 28 are resorted to only for the purpose of making such recovery. Therefore, the charge is under sub-section (3) of Section 18 of the Act and not under Section 28 of the Act.

9. The relevant findings of the Division Bench of the Gujarat High Court in the above Reliance Industries Ltd., at paragraph No.18 reads as follows:

> *"18. As noted hereinabove, the show cause notice has been issued for recovery of interest on differential customs duty as per the provisions of sub-section (3) of Section 18 of the Act, and resort has been made to Section 28 only for the purpose of recovery of such amount. Under the circumstances, unless it is held that the petitioner is liable to pay interest on the differential duty under Section 18 (3) of the Act, the question of making any recovery of such interest amount under Section 28 of the Customs Act would not arise. The impugned order, which proceeds on the basis that the recovery is only to be made under Section 28 of the Customs Act without reference to Section 18 (3) of the Act, therefore, not being in consonance with the show cause notice issued to the petitioner as well as the relevant statutory provisions, cannot be sustained."*

10. Thus, we do not find any merit in the appeal and accordingly, appeal stands rejected."

11. Further, the Hon'ble Madras High Court in the case of M/s Sterlite Industries India Limited (supra), has examined the issue and observed as under :

"4. In view of the aforesaid and having heard the learned Counsel for the parties, we are satisfied that prior to amendment of law, by insertion of Section 18(3) of the Act in the Customs Act, the Revenue could not demand any interest on the differential duty assessed upon final assessment where the goods have been cleared on provisional assessment under Section 18(1) of the Act. The retrospective levy is not intended and the amendment in Law is a substantive provision for making a provision for levy of interest in the present case. Therefore, for a period prior to 13.07.2006, such levy of interest cannot be imposed on the Assessee. Therefore, being in respectful agreement with the view of the Gujarat High Court, we do not find any merit in the present appeals filed by the Revenue and the order passed by the learned Tribunal is correct."

12. Further, in the case of Jaswal Neco Ltd. (supra), the Hon'ble Apex Court has examined this issue and observed as under :

"22. *Even though the Customs Act would necessarily become attracted to Section 9A of the Customs Tariff Act insofar as Anti-dumping duty is concerned, learned counsel further submitted that the Customs Act itself contained no provision for levy of interest until 13-7-2006. Section 18(3) was added only with effect from 13-7-2006 and reads as follows :-*

"(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order under sub-section (2), at the rate fixed by the Central Government under Section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof."

23. *It is clear that on the facts of the present case the provisional assessment had been made in 1998 and the final assessment only on 4-11-2004 by the Commissioner. Both these*

dates being prior to 13-7-2006, Shri Lakshmikumaran is right and no interest is chargeable under Section 18 of the Customs Act, for the period in question."

13. In view of the above observations, we hold that for the period of finalization of provisional assessments prior to 13.07.2006, no interest is payable by the appellant under Section 18 (3) of the Customs Act, 1962.

14. We also take note of the fact that the ld.Special Counsel for the respondent, has relied on the decision of the Hon'ble Supreme Court in the case of Dr.Poornima Advani & Anr. In Civil Appeal No.2643 of 2025 vide its order dated 18.02.2025 to say that the interest is payable by the appellant.

15. We have gone through the said decision. The facts of that case are as under :

"4. The facts giving rise to this appeal may be summarized as under:-

The appellants herein were desirous of purchasing an immovable property in New Delhi. For that purpose, they at purchased the e-stamp paper dated 06.07.2016 valued Rs.28,10,000/- (Rupees Twenty Eight Lakh Ten Thousand Only).The money for that purpose was paid from the joint bank account of the appellants being husband and wife respectively. The e-stamp paper which came to be purchased was dated 06.07.2016.

5. We borrow the other relevant facts from the judgment and order passed by the learned Single Judge dated 20th August, 2018 more particularly, from paragraph 4.3 therein:-

"4.3 Pertinently, the e-stamp paper dated 06.07.2016 purchased by the petitioners, sets down the following details:

(i) Particulars of the property, which was proposed to be purchased; (ii) the names of the parties, who intended to execute the sale deed; (iii) the consideration to be paid for consummating the sale transaction; and (iv) the value of e-stamp paper.

4.4 According to the petitioners, though initially, the intention was to execute the sale deed concerning subject property in July, 2016, since, there was some delay in closing the loan transaction via which the transaction was to be funded, the execution of the sale deed was delayed.

4.5 This delay proved to be fatal, inasmuch as, 4.8.2016, the petitioners were told by the broker, who had the custody of the e-stamp paper, that the e-stamp paper dated 6.7.2016 had been misplaced.

4.6 The petitioners realizing the enormity of the loss, filed a complaint with the Crime Branch, Delhi Police, on that very day i.e. 4.8.2016. As a follow up action, on 06.08.2016, the petitioners got public notices issued in two newspapers, namely, Asian Age (English edition) and Rashtriya Sahara (Hindi edition).

4.7 Since, the petitioners were desirous of taking the sale transaction in respect of subject property forward, they were left with no choice but to purchase a fresh e-stamp paper, which they did, on 6.8.2016.

4.8 This stamp paper bore the DL80452882772240. The money for this was also paid out from the joint account of the petitioners, maintained with the State Bank of India.

4.9 Consequent thereto, on 8.8.2016, the petitioners and the vendor i.e., M/s. Scud Finlease Limited executed a sale deed.

5. On 11.8.2016, the petitioners filed an application Collector with Stamps, the Sub-Divisional Magistrate, refund of stamp duty amounting of to Rs.28,10,000/- on account of loss of the e-stamp paper for dated 6.7.2016.

5.1 The prayer made in the application was that the amount be refunded to the petitioners after deducting the usual cancellation

charges if any. The application was accompanied by an affidavit of petitioner No.2 that the e-stamp paper dated 6.7.2016 has been lost and was not traceable despite best efforts.

5.2 Furthermore, an indemnity bond was also executed by petitioner No.2, whereby he undertook to indemnify the respondents, if the stand taken by him that the e-stamp paper dated 6.7.2016 had been lost, proved to be incorrect and, as a result thereof, any loss/damage, etc. was suffered by them.

5.3 Since no action was taken on the petitioners' application dated 11.8.2016, the petitioners addressed a letter dated 8.9.2016 to respondent No.2. In this letter, apart from anything else what was sought to be highlighted by the petitioners were aspects: first, given the fact that every transaction is made in electronic form, it could be verified almost instantaneously; and second, the misplaced or lost e-stamp paper dated 6.7.2016 could not be used for any other purpose except that, which stood specified in the e-stamp paper. It was emphasized that given that fact that via a fresh e-stamp paper dated 6.8.2016, transaction qua the stamp paper dated 6.7.2016 had been consummated, the lost e-stamp paper had lost its legal efficacy and thus, could not be misused by anyone else.

5.4 As is evidence that both these assertions were made by the petitioners to allay the apprehensions of respondent No.2.

5.5 However, the petitioners' plea for refund of stamp duty did not cut much ice with the respondents and, consequently, vide order dated 21.10.2018, Collector of Stamps (HQ) rejected the petitioners' application dated 11.8.2016 maintained for refund of stamp duty.

6. Aggrieved by the impugned order dated the 21.10.2016, the petitioners have preferred by instant writ petition."

16. Thereafter, the refund claim was allowed, but no interest was paid. The said order was challenged by the claimant in LPA No.288 of 2019 before the Hon’ble Delhi High Court and raised the issue of non-

payment of interest and the said LPA was missed. Against the said order, the claimant preferred SLP before the Hon'ble Supreme Court and in that case, the short issue was involved before the Hon'ble Supreme Court that in view of the facts and circumstances of the case, the appellant is entitled to claim interest on refunded amount and it was the submission of the ld.Counsel for the respondent that there is no provision in the Statute for payment of interest on refund of the amount of the e-stamp paper, which was lost by the appellants herein and in that circumstances, on the basis of entirety, the Hon'ble Supreme Court granted the interest to the claimant appellant. Admittedly, in the Customs Act, 1962, there is specific provision under which the interest has been demanded from the appellant and for better appreciation of facts of the case, the interest has been demanded in the show-cause notice, the relevant Paras are extracted below :

> *"20 (iv) The differential duty amounting to Rs. 12,51,93,030/- (Rupees twelve crore fifty one lakh ninety three thousand and thirty only) should not be paid by the importer under Section 18(2) of the Customs Act, 1962 along with applicable interest under Section 18(3) of the Customs Act 1962, on the grounds as discussed hereinabove."*

Admittedly, in this case, for demand of interest, the specific provisions of Section 18 (3) of the Customs Act, 1962, has been invoked, therefore, the decision of Dr.Poornima Advani & Anr., (supra) cannot be applied to this case.

17. We further take note of the fact that in the impugned order, the adjudicating authority has demanded interest for the period prior to

13.07.2006 under Section 28AB of the Customs Act, 1962. Admittedly, the show-cause notice is the foundation of the case. In the show-cause notice, no proposal has been made to demand the interest from the appellant under Section 28AB of the Customs Act, 1962. Therefore, the confirmation of demand of interest under Section 28AB of the Customs Act, 1962 is not sustainable. The same view was taken by the Hon'ble Supreme Court in the case of Ballarpur Industries Limited (Supra) wherein the Hon'ble Apex Court has observed as under :

> ***"21.*** *Before concluding, we may mention that, in the present case, the second and the third show cause notices are alone remitted. The first show cause notice dated 21-5-1999 is set aside as time-barred. However, it is made clear that Rule 7 of the Valuation Rules, 1975 will not be invoked and applied to the facts of this case as it has not been mentioned in the second and the third show cause notices. It is well settled that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest. If there is no invocation of Rule 7 of the Valuation Rules 1975 in the show cause notice, it would not be open to the Commissioner to invoke the said rule."*

18. In view of the above discussions, we hold that for the period prior to 13.07.2006, the demand of interest under Section 18(3)/28AB of the Customs Act, 1962, is not sustainable.

19. Now, we come to the issue whether post 13.07.2006, can interest be demanded when the demand of duty on finalization of assessment is nil. For better appreciation of facts, the provisions of Section 18 (3) are to be seen, which are as under :

> *"18 (3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order under sub-section (2), at the rate fixed by the Central Government under Section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof."*

Under Section 18(3) of the Customs Act, 1962, the demand of interest arises consequent to the assessment order or re-assessment order under sub-section (2) of Section 18. The interest is payable by the importer/exporter when duty is provisionally assessed till the date of payment thereof. Admittedly, consequent to the assessment, no duty is payable by the appellant. In that circumstances, the issue arises whether the interest is payable by the appellant from the date of provisionally assessed the Bills of Entry till the payment thereof. In this case, the appellant has paid the differential duty prior to finalization of the assessment and on the date of finalization of assessment, no duty is payable. Therefore, we hold that no interest is payable by the appellant, if duty has been paid prior to finalization of provisional assessment. The said issue has been examined by the Hon'ble Bombay High Court in the case of CEAT Limited (supra) although Rule 7(4) of the Central Excise Rules, 2002 and Section 18(3) of the Customs Act, 1962, which deal with the finalization of provisional assessments are pari-materia. For better appreciation of the facts, the same are extracted below :

Rule 7(4) of the Central Excise Rules, 2002	**Section 18(3) of the Customs Act, 1962**
The *assessee shall be liable to pay interest on any amount payable to Central Government,* ***consequent to order for final assessment*** *under sub-rule (3), at the rate specified by the Central Government by notification issued under Section 11AA or Section 11AB of the Act from the first day of the month succeeding the month for which such amount is determined, till the date of payment thereof.*	*The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government,* ***consequent to the final assessment order*** *or re-assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AA from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.*

and the Hon'ble Bombay High Court in the case of CEAT Limited (supra) has observed as under :

> ***"33.*** *We find from a reading of this judgment that the conclusion in the Larger Bench decision of the Tribunal cannot be applied to cases which are expressly noted in M/s. Ispat Industries Ltd. and Tata Motors Ltd. Rule 7 and its sub-rules if read together would denote as to how the Revenue secures itself against any provisional assessment. If on a provisional assessment, certain amount of duty is paid, but it is not accurate and correct, then, the final assessment is contemplated on a finalization of the assessment. Upon finalizing, it is possible that the Revenue will determine the duty liability and to that of something more that has been recovered in the provisional assessment. When that exercise is finalized and consequent thereon that the Assessee*

shall be liable to pay interest on any amount payable to the Central Government. Thus, the liability to pay interest arises on any amount payable to Central Government and consequent to order for final assessment under Rule 7 sub-rule (3). We are in agreement with the Assessee in the present case that the later part of sub-rule (4) is not attracted. The liability to pay interest on any amount payable to Central Government consequent to order for final assessment under Rule 7 sub-rule (3). We are in agreement with the assessee in the present case that the later part of sub-rule (4) is not attracted. The liability to pay interest on any amount payable to Central Government consequent to order for final assessment is not a situation to be found in the present case. It is not the argument of the Revenue that what was paid by the Assessee as differential duty and prior to finalizing of the assessment, is not correct, accurate or proper computation of the liability. Having found that the final assessment resulted in nothing due and payable to the Government, we do not find any justification then to recover interest. If the interest was to be recovered and was indeed payable on the date on which the Assessee made payment of differential duty and prior to finalization of the assessment, then, the Rule would have specifically said so. In the absence of any such stipulation in the Rules the dictum in the decision of the Hon'ble Supreme Court in J.K. Industries Ltd. would apply. If that principle can be applied, then, there was no liability to pay interest. If the liability to pay interest between the time or the period of provisional assessment and payment of differential duty until the final assessment has to be read in the Rule, that is not possible. The interest in this case is not payable merely on equitable considerations. Such being the position, we do not find that the Tribunal was justified in dismissing the Assessee's Appeal. The Tribunal was also not justified in placing reliance upon its Larger Bench decision. The Larger Bench decision took assistance of the substantive provisions and particularly Section 11A and Section 11AB of the

Act. We have already noted as to how Section 11A(1) operates. The notice under the same can be issued provided there is a satisfaction reached in terms of that provision. That notice need not be issued in the cases which are dealt with by sub-section (2B) as held in SKF India Ltd. (supra). Therefore, that sub-section together with the proviso and explanation making specific provision for recovery of interest and enabling the Revenue to recover it, that the Hon'ble Supreme Court reached a conclusion that on price revision the Assessee was liable to pay interest on the differential duty. That was because he not only recovered the revised price but passed on the burden of the differential duty paid on the customer. It was not his later act but his prior act of raising supplementary invoices and, then, paying the differential duty which enabled the Revenue to recover interest and relying on the substantive provisions. That is how both the judgments should have been read. If the Tribunal's conclusion is upheld, the Revenue would face proceedings for recovery of interest on the entitlement to refund in cases covered by Rule 7(5) of the Rules. If the differential duty paid and prior to finalization of assessment exceeds the duty leviable in law, then, on final assessment the Assessee is entitled to refund. He may interest on the sum refunded from the date of payment. However, Rule (6) cannot be construed in that manner. Hence, the words "such amount is determined" appearing in Rule 7(4) and "such refund is determined" in Rule 7(5) are crucial. The determination is thus a relevant factor."

The said decision of the Hon'ble Bombay High Court has been affirmed by the Hon'ble Apex Court holding that there is no liability to pay interest on the differential duty paid before finalization of provisional assessment. Admittedly, in this case, the appellant has paid differential duty before finalization of provisional assessment. In that circumstances, no interest is payable by the appellant. The same view

was taken by this Tribunal in the case of Tata Motors Limited Vs. Commissioner of Central Excise & Service Tax (LTU), Mumbai reported in 2016 (11) TMI 149-CESTAT Mumbai, wherein this Tribunal has observed as under :

> *"4. It is the case of the appellant that the provisions of Rule 7 of the erstwhile Central Excise Rules, 2001 can be invoked for demanding interest only if the differential duty is payable by an assessee on an amount which his confirmed on finalization of the assessment. It is also the case that in the case in hand, they have paid the amounts before the finalization of the assessment, hence there is no demand on finalization of the assessment. Both the lower authorities have relied upon circular No.354/81/2000-TRU dated 30.6.2000 for holding that the duty liability arises and needs to be discharged based upon Rule 8 of the Valuation Rules and the interest liability also arises.*
>
> *5. We find that the issue is no more res integra as the Hon'ble High Court of Bombay in the case of CEAT Ltd. vs. CCE, Nashik reported in 2015 (317) ELT 192 (Bom.), upheld the Tribunal's order that interest liability does not arise when the assessments are finalized and there is no demand of differential duty. The said judgment of the Hon'ble High Court of Bombay was carried in appeal by the Revenue to the Hon'ble Supreme Court and the apex court by an order dated 14.12.2015, after condoning the delay, dismissed the special leave petition filed by the Revenue. It would mean that the apex court has settled the law that the interest liability does not arise when the amount is paid before the finalization of the provisional assessment on its own by an assessee."*

20. The same view has been given by the Hon'ble Bombay High Court in the case of Commissioner of Central Excise, Nagpur Vs. Ispat

Industries Limited reported in 2010 (10) TMI 178-Bombay High Court, where the Hon'ble Bombay High Court has observed as under :

> *"3. Perusal of the order of the CESTAT (2007 (209) E.L.T. 280 (Tribunal)) shows that in the present case, differential duty was paid prior to the date of final assessment. Interest under Rule 7(4) of the Central Excise Rules, 2002 is payable from the first date of the month succeeding the month for which such amount is determined by the final assessment till the date of payment. Since differential duty was paid even before the final assessment was made, the Tribunal has held that the respondent assessee is not liable to pay interest. In our opinion, no fault can be found with the order of the Tribunal. Accordingly, question raised by the revenue is answered in favour of the assessee and against the revenue. The appeal is disposed of. No order as to costs".*

21. In view of the above discussions, we hold that no interest is payable by the appellant as they have paid the duty before finalization of provisional assessment of the Bills of Entry. Post 13.07.2006 also, no demand of interest is sustainable. As no demand of interest is sustainable, therefore, no penalty is imposable on the appellant.

22. In view of this, we set aside the impugned order and allow the appeal filed by the appellant.

(Pronounced in the open court on **05.08.2025**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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