HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Custom Appeal No. 1/2025
CNR: RJHC020055552025 | URN: CUSTA / 1U / 2025

Commissioner Of Customs (Preventive), Jaipur NCR Building, Statue Circle, C Scheme, Jaipur-302005.

----Appellant

Versus

M/s Acme Aklera Power Technology Pvt. Ltd., Plot No. 152, Sector-44, Gurugram, Haryana-122002.

----Respondent

For Appellant(s)	:	Mr. Akshay Bhardwaj with Mr. Anand Singh
For Respondent(s)	:	Ms. Mannat Waraich Ms. Ananya Goswami Ms. Vidhi Maheshwari

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order(Oral)

Reportable

10/08/2026

Per: Arun Monga, J.

1. Appeal herein is directed against Final Order dated 30.07.2024 passed by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), New Delhi, whereby Order-in-Appeal dated 26.03.2024 passed by the Commissioner (Appeals), Customs, Jaipur was upheld.

2. The respondent-company imported certain capital goods, namely solar modules. The import was made under the Manufacture and Other Operations in Warehouse Regulations, 2019 (MOOWR, 2019), framed under Section 65 of the Customs Act, 1962. The goods were deposited

in the respondent's licensed customs bonded warehouse. The respondent thereafter filed 10 Ex-bond Bills of Entry for clearance of the goods from the warehouse.

2.1 The Customs Division, Barmer, within whose jurisdiction the warehouse is situated, reported that out of the goods covered by the said Bills of Entry, only 1,379 modules out of 7,728 solar modules had been installed. The respondent, vide letter dated 12.12.2023, stated that the remaining solar modules/goods were lying at the project site in the same condition as imported. The remaining goods had thus not been put to use.

2.2 In the premise, the Department took the view that interest was payable on the customs duty relatable to the solar modules which were not installed. This view rested on Section 61(2) of the Customs Act, 1962, read with paragraph 12 of CBIC Circular No. 34/2019 dated 01.10.2019. According to the Department, the goods had remained in the warehouse beyond the prescribed period of ninety days.

2.3 The Assistant Commissioner of Customs, Jodhpur, vide Order of Assessment dated 28.12.2023, held that an interest for a sum of Rs. 2,88,17,955/- was payable under Section 61(2).

2.4 The respondent had already submitted 10 Demand Drafts aggregating to ₹5,97,65,651/- towards payment of duty. However, subsequently, the applicable duty was subsequently paid online. Being apprehensive of coercive action, the respondent, therefore, requested adjustment of the interest amount from the Demand Drafts already submitted.

2.5 Aggrieved by the assessment order of payment of interest, the respondent preferred an appeal before the Commissioner (Appeals), Jaipur. The Commissioner (Appeals), vide Order-in-Appeal dated

26.03.2024, allowed the appeal. The Order of Assessment dated 28.12.2023 was set aside.

2.6 The Department carried the matter to the Customs, Excise and Service Tax Appellate Tribunal, New Delhi. The Tribunal, vide Final Order dated 30.07.2024, dismissed the Department’s appeal.

2.7 The Department has now challenged the aforesaid Final Order before this Court. The Tribunal examined the scope of Section 61(1)(a) and Section 61(2), with particular reference to the expression “intended for use”. It held that the capital goods were covered by the category of goods intended for use in a warehouse wherein manufacture or other operations had been permitted under Section 65. Reliance was placed on the decisions of the Hon’ble Supreme Court in State of Haryana v. Dalmia Dadri Cement Ltd. and BPL Display Devices Ltd., on the distinction between “intended for use” and “actual use”.

3. Mr. Akshay Bhardwaj, learned counsel for the appellant argues on the lines of the grounds taken in the appeal. He submits that the impugned Final Order dated 30.07.2024 is contrary to the provisions of the Customs Act, 1962. It is also contrary to the clarification issued by the CBIC vide Circular No. 34/2019-Customs dated 01.10.2019. He submits that the Tribunal failed to appreciate Section 68 of the Act, particularly clause (b) thereof. The said clause contemplates clearance of warehoused goods for home consumption upon payment of import duty, interest, fine and penalty, as applicable. He further submits that paragraph 12 of the Circular clarifies that a warehouse operating under Section 65 also functions as a warehouse licensed under Section 58. Goods may therefore be cleared as such for home consumption under Section 68 on payment of import duty along with interest in terms of Section 61(2). According to him, where warehoused goods remain

beyond the prescribed period of ninety days, interest is payable on the duty payable at the time of clearance.

3.1 He next contends that the imported solar modules were never installed or utilised for the purposes contemplated under Section 61(1)(a). They were ultimately cleared for home consumption. Except for 1,379 modules covered by Ex-bond Bill of Entry dated 02.12.2023, the remaining goods lay at the project site in the same condition as imported. This position was admitted by the respondent itself. The goods having remained in the warehouse beyond ninety days, they were liable to be treated as goods falling under Section 61(1)(c). Interest under Section 61(2) was therefore attracted. He submits that the Tribunal erred in holding that mere "intention to use" was sufficient to bring the goods within Section 61(1)(a). The goods were, in fact, never so used.

3.2 Learned counsel further submits that **Pratibha Processors and Ors. v. Union of India and Ors.**[1], **Kesoram Rayon v. Collector of Customs, Calcutta**[2] **and SBEC Sugar Limited and Anr. v. Union of India and Ors.**[3] recognise the statutory liability to pay interest on duty relatable to warehoused goods which remain beyond the permissible period. The object of the MOOWR scheme is to defer customs duty on capital goods intended for use in permitted operations. The scheme does not permit goods to remain unutilised indefinitely without payment of interest. Permitting such a course would defeat Section 61(2). The distinction between "intended use" and "actual use" cannot be applied mechanically, particularly when the goods were ultimately cleared for home consumption.

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1 (1996) 11 SCC 101
2 (1996) 5 SCC 576
3 (2011) 4 SCC 668

3.3 Lastly, he submits that the appeal raises substantial questions of law. First, whether capital goods imported under the warehousing provisions and cleared for home consumption under Section 68 can remain in the warehouse beyond ninety days without payment of interest under Section 61(2). Second, whether the goods were rightly classifiable under Section 61(1)(a) rather than Section 61(1)(c). Third, whether interest was leviable on the customs duty payable at the time of clearance. He would submit answers to all these questionsare in favour of the Revenue Department and therefore, the impugned order be set aside.

4. Ms. Mannat Waraich, learned counsel for the respondent vehemently supports the impugned order. She relies upon the reasons contained therein, and upon the case law referred therein.

4.1 She further submits that the questions framed in the grounds of appeal are, in substance, questions of fact. Every question hinges on whether the imported goods were intended for use in a warehouse wherein manufacture or other operations were permitted under Section 65, as envisaged under Section 61(1)(a).

4.2 She also submits that the respondent intended to use the imported goods for a solar power project. Such a project falls within the meaning of "manufacture or other operations" permitted under Section 65, read with MOOWR, 2019.

5. We have heard the rival contentions and gone through the material on record. We have also perused the impugned Final Order of the learned CESTAT and the order dated 26.03.2024 of the Commissioner (Appeals).

6. Let us first have a look at the relevant portion of the order of the learned CESTAT which reads as under:

"22. In the present case, as noticed above, it is not in dispute that the capital goods, namely solar modules, that remained in the warehouse were permitted for manufacture for other operations under section 65 till clearance from the warehouse. A categorical finding has been recorded by the Commissioner (Appeals) that out of 8,37,288 Solar Modules only 48,742 Solar Modules could not be installed due to subsequent change in design, layout of the project and these were removed from the site by filing ex-bond Bills of Entry on payment of applicable duties of customs. These 48,742 solar modules contributed to only 5.82 percent of total imported Solar Modules. The Commissioner (Appeals) formed an opinion that the solar modules that were imported were 'intended for use' in the project...

23. It is not possible to accept the contention of the learned authorized representative appearing for the department that if 48,742 solar modules were not 'intended for use', they should have been immediately ex-bonded and should not have remained in the warehouse for six to seven months. It is because of the fact that ACME could not adjust these 48,742 solar modules in the module mounting structure and the land was also not sufficient to accommodate the design of structure and modules, that it was left with no option but to ex-bond these solar modules from the warehouses. Such a decision could not have been taken by ACME immediately upon import of the solar modules. It is only when it realized that these 48,742 solar modules could not be utilized because of the layout that a decision was taken to ex-bond them from the warehouses and use them outside the warehouses. ACME did have the intention to use these solar modules also in their project for the reasons stated above. Such being the position, there is no error in the finding recorded by the Commissioner (Appeals) that these 48,742 solar modules were intended to be used in the project."

7. The controversy, in hand, turns on interpretation Section 61 of the Customs Act, 1962. Sections 65 and 68 of the Act also bear directly on the rival submissions. The relevant statutory provisions are also reproduced below for ready reference.

Section 65 of the Customs Act, 1962 :

"65. Manufacture and other operations in relation to goods in a warehouse.

(1)With the permission of the Principal Commissioner of Customs or Commissioner of Customs and (subject to the provisions of Section 65(a) and) such conditions) as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods:

(2) Where in the course of any operations permissible in relation to any warehoused goods under sub-section (1), there is any waste or refuse, the following provisions shall apply:-

(a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operation carried on in relation to the goods exported:

Provided that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form;

(b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in

so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption."

Section 68 of the Customs Act, 1962 :

"68. Clearance of warehoused goods for home consumption. Any warehoused goods may be cleared from the warehouse for home consumption, if-

(a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;

(b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and]

(c) an order for clearance of such goods for home consumption has been made by the proper officer.

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria: Provided further that the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon:

Provided also that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force."

8. Section 61 of the Act was substituted in its entirety by the Finance Act, 2016 with effect from 14.05.2016 which governs the present imports. However, we feel that a meaningful adjudication requires the provision to be noticed in both its forms. The unamended provision, as it stood immediately prior to its substitution, and the amended provision, are accordingly set out below by way of a comparative table:

Section 61, as it stood prior to the Finance Act, 2016 (unamended)	**Section 61, as substituted by the Finance Act, 2016 w.e.f. 14.05.2016 (amended)**
“61. Period for which goods may remain warehoused.— *(1) Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed,—* *(a) in the case of capital goods intended for use in any hundred per cent export-oriented undertaking, till the expiry of five years;* *(aa) in the case of goods other than capital goods intended for use in any hundred per cent export-oriented undertaking, till the*	*“61. Period for which goods may remain warehoused.—* *(1) Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed,—* *(a) in the case of capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till*

Section 61, as it stood prior to the Finance Act, 2016 (unamended)	**Section 61, as substituted by the Finance Act, 2016 w.e.f. 14.05.2016 (amended)**
expiry of three years; and *(b) in the case of any other goods, till the expiry of one year,* *after the date on which the proper officer has made an order under sub-section (1) of section 60:* *Provided that—* *(A) in the case of any goods which are not likely to deteriorate, the period specified in clause (a) or clause (aa) or clause (b) may, on sufficient cause being shown, be extended—* *(i) in the case of such goods intended for use in any hundred per cent export-oriented undertaking, by the Commissioner of Customs, for such period as he may deem fit; and* *(ii) in any other case, by the Commissioner of Customs, for a period not exceeding six months and by the Chief Commissioner of Customs for such further period as he may deem fit;* *(B) in the case of any goods referred to in clause (b), if they are likely to deteriorate, the aforesaid period of one year may be reduced by the Commissioner of Customs to such shorter period as he may deem fit:* *(2) Where any warehoused goods—* *(i) specified in clause (a) or clause (aa) of sub-section (1), remain in a warehouse beyond the period specified in that sub-section by reason of extension of the aforesaid period or otherwise, interest at such rate as is specified in section 47 shall be payable on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said warehousing period till the date of payment of duty on the warehoused goods;* *(ii) specified in clause (b) of sub-section (1), remain in a warehouse beyond a period of ninety days, interest shall be payable at such rate or rates not exceeding the rate specified in section 47, as may be fixed by the Board, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods:* *Provided that the Board may, if it considers*	*their clearance from the warehouse;* *(b) in the case of goods other than capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their consumption or clearance from the warehouse; and* *(c) in the case of any other goods, till the expiry of one year from the date on which the proper officer has made an order under sub-section (1) of section 60:* *Provided that in the case of any goods referred to in this clause, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, by not more than one year at a time:* *Provided further that where such goods are likely to deteriorate, the period referred to in the first proviso may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.* *(2) Where any warehoused goods specified in clause (c) of sub-section (1) remain in a warehouse beyond a period of ninety days from the date on which the proper officer has made an order under sub-section (1) of section 60, interest shall be payable at such rate as may be fixed by the Central Government under section 47, on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods:* *Provided that if the Board considers it necessary so to do, in the public interest, it may,—* *(a) by order, and under the circumstances of an exceptional nature, to be specified in such order, waive the whole or any part of the interest payable under this section in respect of any warehoused goods;* *(b) by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section;* *(c) by notification in the Official Gazette, specify the class of goods in respect of*

Section 61, as it stood prior to the Finance Act, 2016 (unamended)	Section 61, as substituted by the Finance Act, 2016 w.e.f. 14.05.2016 (amended)
it necessary so to do in the public interest, by order and under circumstances of an exceptional nature to be specified in such order, waive the whole or part of any interest payable under this section in respect of any warehoused goods."	*which the interest shall be chargeable from the date on which the proper officer has made an order under sub-section (1) of section 60.* *Explanation.—For the purposes of this section,—* *(i) "electronic hardware technology park unit" means a unit established under the Electronic Hardware Technology Park Scheme notified by the Government of India;* *(ii) "hundred per cent. export oriented undertaking" has the same meaning as in clause (ii) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944); and* *(iii) "software technology park unit" means a unit established under the Software Technology Park Scheme notified by the Government of India."*

9. A comparative reading of the two provisions brings out distinct following statutory changes which bears directly on the present controversy.

10. First, as regards the permissible period of warehousing. Under the unamended provision, every category of goods was subject to an outer time limit. Capital goods intended for use in a 100% export-oriented undertaking could remain warehoused for five years. Other goods intended for such use could remain for three years. All other goods could remain for one year. Extensions were possible, but only by an order of the specified authority.

Whereas, under the amended provision, this architecture stands consciously altered. Capital goods falling under clause (a) may now remain in the warehouse "till their clearance from the warehouse". Parliament has thus removed the outer time limit altogether for clause (a) goods. No period is "prescribed" for such goods. A fixed period of one year survives only for the residuary category in clause (c).

10.1 Second, the unamended clause (a) covered only capital goods intended for use in a 100% export-oriented undertaking.

Whereas, the amended clause (a) expressly extends the same treatment to capital goods intended for use in "any warehouse wherein manufacture or other operations have been permitted under section 65". The MOOWR, 2019 regulations are framed under Section 65. A Section 65 warehouse (in the case in hand, respondent's warehouse is admittedly one) is thus brought within clause (a) by the express words of the amended provision. No such warehouse found any place in the unamended provision.

10.2 Third, and most significantly, as regards interest. Under the unamended sub-section (2), interest was chargeable across the board. Clause (i) thereof levied interest even on EOU goods falling under the erstwhile clauses (a) and (aa), once the warehousing period expired. Clause (ii) levied interest on residuary goods beyond ninety days.

Whereas, the amended sub-section (2) is materially different. It opens with the words "Where any warehoused goods specified in clause (c) of sub-section (1)". The charge of interest is thus textually confined to clause (c) goods alone. Parliament has deliberately omitted any corresponding charge of interest on goods falling under clause (a) or clause (b). This omission is not accidental. It is the very design of the amended scheme, which seeks to permit deferment of duty on capital goods used in bonded manufacture, without the burden of interest, so long as the goods remain warehoused. It seems so that the 2016 substitution, followed by MOOWR, 2019, was/is intended to make bonded manufacturing an attractive scheme. Duty stands deferred until clearance. Interest attaches only to the residuary category.

10.3 Fourth, as regards the trigger of ninety days. The ninety day trigger in the amended Section 61(2) operates, by its plain terms, only "where any warehoused goods specified in clause (c) of sub-section (1)" remain beyond ninety days. The ninety day period is therefore wholly irrelevant to clause (a) goods. For clause (a) goods, there is no period whose expiry could set interest running. The premise of the Department's demand, namely that the goods "remained beyond the prescribed period", presupposes the existence of a prescribed period. For clause (a) goods, none exists.

11. The imports in the present case were effected in February and March, 2023. The Ex-bond Bills of Entry were filed in December, 2023. The amended Section 61, as substituted w.e.f. 14.05.2016, therefore indisputably governs the case. The law applicable is the law as it stands on the relevant date. Neither side has contended otherwise.

12. Once the amended provision applies, the classification of the goods is decisive. Three facts are not in dispute. First, the goods are capital goods, namely solar modules meant for setting up a solar power plant. Second, the respondent's warehouse is licensed under Section 58 and permitted for manufacture and other operations under Section 65, read with MOOWR, 2019. Third, the goods were deposited in that very warehouse. On these admitted facts, the goods answer the description in the amended Section 61(1)(a), i.e., they are <u>"capital goods intended for use in... any warehouse wherein manufacture or other operations have been permitted under section 65".</u>

12.1 Clause (c) opens with the words "in the case of any other goods". It is a residuary clause. It takes in only such goods as do not fall within clause (a) or clause (b). Goods answering the description in clause (a) can never simultaneously fall in clause (c). The Department's attempt to relegate the goods to clause (c), merely because a part thereof was ultimately not installed, is impermissible. Clause (a) uses the expression "intended for use". It does not use the expression "actually used". If the legislature intended actual use as the criterion, it would have said so. In the context of distinction between "intended for use" and "actual use" reference may be had to the Hon'ble Supreme Court in **State of Haryana v. Dalmia Dadri Cement Ltd.**[4] and **BPL Display Devices Ltd. v. Commissioner of Central Excise, Ghaziabad**[5]**.** The intention is to be gathered at the time of import and warehousing. It is not to be judged retrospectively by the subsequent turn of events.

13. On facts, the concurrent findings of the Commissioner (Appeals) and the learned Tribunal are categorical. The respondent imported 8,37,288 solar modules for the project during September, 2022 to October, 2023. Only 48,742 modules, a mere 5.82% of the total import, could not be installed. The non-installation was occasioned by a subsequent change in the design and layout of the project, and by insufficiency of land to accommodate the mounting structures. Such a supervening development could not have been known at the time of import. The respondent ex-bonded these modules only upon realising that they could not be accommodated, and did so on payment of full applicable duty. These findings establish that the goods were, at all material times, intended for use in the Section 65 warehouse. The subsequent clearance for home consumption of unutilized small fraction (5.8%) does not alter that character. Nor does it convert clause (a) goods into clause (c) goods.

13.1. The goods in the case in hand, therefore, fall squarely under the amended Section 61(1)(a). The consequence follows inevitably. The amended Section 61(2) charges interest only on clause (c) goods. There

4 1987 SCC Online SC 14
5 (2005) 10 SCC 275

is no charging provision for interest on clause (a) goods. Interest, like tax, must be levied by clear and unambiguous words. In the absence of a substantive charge, no interest can be demanded. Thus, the respondent is entitled to the benefit of the amended Section 61. If the unamended provision were to apply, interest may would have been chargeable under the erstwhile Section 61(2)(i) upon expiry of the warehousing period even for capital goods. Parliament has consciously departed from that scheme by repealing the earlier provision.

14. Moving on now to reliance placed by revenue on clause 12 of CBIC Circular No. 34/2019-Customs dated 01.10.2019. Clause 12 of the circular is reproduced below for ready reference:

> *"12. Since the warehouse operating under section 65 also functions as a warehouse licensed under section 58, the licensees can also import goods and clear them as such, for home consumption under section 68 on payment of import duties, along with interest as per subsection (2) of section 61 of the Act or clear them as such for export under section 69 of the Act. The licensees shall also be required to submit monthly returns in "Form B" as prescribed under Circular No. 25/2016-Cus dated 8th June 2016 in case the warehouse is used for such purposes i.e. non-section 65 purposes. This is being allowed to enable optimum utilization of available infrastructure."*

Having perused the above, we find that the reliance thereof by the department is also misplaced. Let us see why and how?

14.1. The circular, *ibid,* must be read on its own terms. Clause 12, supra, addresses a narrow situation. Perusal thereof reveals that it envisages that a warehouse licensed under Section 58 does not lose that character merely because permission under Section 65 has additionally been granted to it. It permits the licensee of such a dual character warehouse to also import goods and "clear them as such". The expression "as such" is the key. It denotes goods which are cleared in the very form in which they were warehoused, without being subjected to any manufacturing process or other operation under Section 65. Such goods are, by definition, not capital goods intended for use in a Section 65 warehouse. They fall in the residuary clause (c) of Section 61(1). Interest under Section 61(2) attaches to them, and to them alone. Hence, the circular says nothing more than what the statute already says.

14.2. Furthermore, the concluding portion of paragraph 12 places the matter beyond doubt. It requires monthly returns in Form B only "in case the warehouse is used for such purposes i.e. non-section 65 purposes". In other words, the circular therefore itself draws a clear line between goods warehoused for Section 65 operations and goods warehoused for purposes other than Section 65. It is the latter category alone which clause 12 governs. In fact, the Department seeks to obliterate the very distinction which the circular, it relies upon, expressly preserves.

14.3. Even assuming, though we are not holding it so, that clause 12 of the circular admits of the construction canvassed by the Department, the circular does not sustain the demand even then. A circular issued under Section 151A of the Customs Act, 1962 is an instrument of administrative uniformity. It merely binds officers of the Department in the discharge of their functions. It certainly does not bind this Court in exercise of writ jurisdiction. A circular which is contrary to a statutory provision cannot whittle down, supplant or travel beyond the statutory provision it purports to explain.

14.4. Moreover, the Department's interpretation of the circular, if accepted, would also lead to an incongruous consequence. Parliament, by the Finance Act, 2016, consciously withdrew the charge of interest on capital goods of the description now contained in clause (a). If clause 12 of the circular issued in the year 2019 were to be read as reviving that charge, the executive would restore to itself, by administrative fiat, a levy which the legislature had deliberately repealed. Such a recourse is impermissible in law.

15. The decisions in **Pratibha Processors and Ors. v. Union of India and Ors.**, **Kesoram Rayon v. Collector of Customs, Calcutta and SBEC Sugar Limited and Anr. v. Union of India and Ors.,** ***(supra)*** relied upon by the Department, do not assist it. All three decisions were rendered in the context of the unamended Section 61 and the scheme then prevailing. Under that scheme, every category of warehoused goods was subject to a fixed warehousing period. Interest attached upon expiry of that period. The ratio of those decisions, that interest is a statutory accessory to duty on goods overstaying the permitted period, presupposes the existence of a permitted period. Under the amended clause (a), no such period exists for capital goods in a Section 65 warehouse. The goods may remain "till their clearance". The foundation of the cited decisions is thus absent in the amended scheme. The decisions are, therefore, clearly distinguishable and inapplicable.

16. The argument of learned counsel for the appellant, that the amended provision would permit goods to remain warehoused indefinitely without interest on first blush seems attractive, but the same is a submission on policy. The policy choice has been consciously made by Parliament. At times, such benevolent provisions are made in law by the lawmakers with full consciousness. The purpose is to promote investment in certain business sectors and industries in the larger public interest. Duty on clause (a) goods is deferred until clearance, and stands fully secured, as it is payable in full at the time of clearance. The respondent has, in fact, paid the entire applicable duty. Revenue has suffered no loss of duty. What the Department seeks is

interest, for which the amended statute provides no charge in respect of clause (a) goods.

17. As an upshot, the concurrent findings of fact recorded by the Commissioner (Appeals) and the learned Tribunal, that the goods were intended for use in the project and that only 5.82% thereof could not be installed for supervening reasons of design and layout, call for no interference. The questions of law urged by the appellant are, in substance, questions of fact.

18. Consequently, no substantial question of law arises. The impugned appellate Order dated 30.07.2024 passed by the learned CESTAT, New Delhi warrants no interference. The appeal fails and is hereby dismissed. No order as to costs. All pending applications also stand disposed of.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

35/AARZOO/TUSHAR