

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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76044 of 2024

(Arising out of Order-in-Appeal No. 14/CUS/CCP/2023 dated 29.05.2024 passed by Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar.)

M/s Agarwal Coal Corporation Pvt. Ltd,

(Agarwal House, 2nd Floor, 5,
Yeshwant Colony, indore-452003)

..Appellant

VERSUS

Commissioner of Customs (Prev.), Bhubaneswar.

(C. R. Building, GST, Bhawan, Rajaswa Vihar,
Bhubaneswar, Odisha-75100)

..

...Respondent

With

Customs Appeal No. 76049 of 2024

(Arising out of Order-in-Appeal No. 06-10/CUS/CCP/2024 dated 13.05.2024 passed by Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar.)

M/s Agarwal Coal Corporation Pvt. Ltd,

(Agarwal House, 2nd Floor, 5, Yeshwani Colony,
Indore-452003.)

..Appellant

VERSUS

Commissioner of Customs (Prev.), Bhubaneswar.

(C. R. Building, GST, Bhawan, Rajaswa Vihar,
Bhubaneswar, Odisha-75100)

..

...Respondent

And

Customs Appeal No. 76052 of 2024

(Arising out of Order-in-Appeal No. 06-10/CUS/CCP/2024 dated 13.05.2024 passed by Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar.)

M/s Agarwal Coal Corporation Pvt. Ltd,

(Agarwal House, 2nd Floor, 5,
Yeshwant Colony, indore-452003)

..Appellant

VERSUS

Commissioner of Customs (Prev.), Bhubaneswar.

(C. R. Building, GST, Bhawan, Rajaswa Vihar,
Bhubaneswar, Odisha-75100)

..

...Respondent

Customs Appeal Nos. 76044,76049,76052,76054,76061,76073 of 2024

And
Customs Appeal No. 76054 of 2024

(Arising out of Order-in-Appeal No. 06-10/CUS/CCP/2024 dated 13.05.2024 passed by Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar.)

M/s Agarwal Coal Corporation Pvt. Ltd,
(Agarwal House, 2nd Floor, 5,
Yeshwant Colony, indore-452003)

..Appellant

VERSUS

Commissioner of Customs (Prev.), Bhubaneswar.
(C. R. Building, GST, Bhawan, Rajaswa Vihar,
Bhubaneswar, Odisha-75100)

..

...Respondent

And
Customs Appeal No. 76061 of 2024

(Arising out of Order-in-Appeal No. 06-10/CUS/CCP/2024 dated 13.05.2024 passed by Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar.)

M/s Agarwal Coal Corporation Pvt. Ltd,
(Agarwal House, 2nd Floor, 5,
Yeshwant Colony, indore-452003)

..Appellant

VERSUS

Commissioner of Customs (Prev.), Bhubaneswar.
(C. R. Building, GST, Bhawan, Rajaswa Vihar,
Bhubaneswar, Odisha-75100)

..

...Respondent

And
Customs Appeal No. 76073 of 2024

(Arising out of Order-in-Appeal No. 06-10/CUS/CCP/2024 dated 13.05.2024 passed by Commissioner (Appeals), CGST, Central Excise & Customs, Bhubaneswar.)

M/s Agarwal Coal Corporation Pvt. Ltd,
(Agarwal House, 2nd Floor, 5,
Yeshwant Colony, indore-452003)

..Appellant

VERSUS

Commissioner of Customs (Prev.), Bhubaneswar.
(C. R. Building, GST, Bhawan, Rajaswa Vihar,
Bhubaneswar, Odisha-75100)

..

...Respondent

APPERANCE :

None, for the Appellant

Shri Tariq Suleman, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

Final Order No.75694-699/2026

DATE OF HEARING : 15.05.2026

DATE OF PRONOUNCEMENT:16.06.2026

PER R. Muralidhar:

No one has appeared on behalf of the appellant. The Ld. A R appearing for the Revenue submits that the issue on hand in these appeals already stands decided by this Bench vide Final Order Nos.75440-75441/2026 dated 25.03.2026. Therefore, in the interest of justice, the appeals have been taken up for hearing with the consent of the Ld. A R.

2. These appeals have been filed by M/s Agarwal Coal Corporation Pvt Ltd. Yashwant Colony, Indore [hereinafter referred to as the "appellant"] against the imposition of late fee on them under Regulation 4(3) of the Bill of Entry (Electronic Integrated Declaration) Regulations, 2018 read with Section 46(3) of the Customs Act, 1962, which has been upheld vide the impugned Orders in Appeal. The details pertaining to the present appeals have been summarized in the following table: -

Customs Appeal Nos. 76044,76049,76052,76054,76061,76073 of 2024

Sr. No.	Appeal No.	OIA No.	Date	Duty Amount (Rs.)	Bills of Entry No.	Date	QTY	Suppl. Bills of Entry No	Date	Quantity
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	76061/24	06-10/CUS/CCP/2024	13.05.2024	1395967	3674516	09/12/2022	21000 MTS	8071527	29/09/2023	996.154 MTS
2	76052/24	06-10/CUS/CCP/2024	13.05.2024	628151	4047213	05/01/2023	10000 MTS	8115317	03/10/2023	482.598 MTS
3	76049/24	06-10/CUS/CCP/2024	13.05.2024	3525000	2981510	21/10/2022	50000 MTS	8138511	04/10/2023	2463.696 MTS
4	76044/24	14/CUS/CCP/2023	29.05.2024	2088660	4116421	10/01/2023	30000 MTS	4117635	10/01/2023	32401 MTS
								8678146	08/11/2023	1538.012 MTS
5	76054/24	06-10/CUS/CCP/2024	13/05/2024	3975000	2130162	23/08/2022	15000 MTS	000179	26/09/2023	-
								2130095	23/08/2022	11000 MTS
6	76073/24	06-10/CUS/CCP/2024	13/05/2024	2445000	4342041	25/01/2023	25000 MTS	4342042	25/01/2023	25000 MTS
								8034434	27/09/2023	2453.147 MTS

3. The facts of the case are that the appellant had filed the original Bills of Entry as per (6) of the above Table. However, after clearance of the goods, from the Draft Surveyor’s Report, it was found that there were some amounts of excess coal available in the port. The appellant requested for amendment of the IGM and the connected Bills of Entry and came forward to pay the Customs duty for the excess amounts of coal available.

4. However, the Proper Officer has not allowed the amendment of the Bills of Entry already filed. Therefore, the appellant filed Supplementary Bills of Entry as per (9) of the above Table. Since these Bills of Entry were filed beyond the prescribed time-limit provided under Section 46 of the Customs Act, 1962, the appellant was charged late fee in respect of the said Supplementary Bills of Entry filed by them, which was communicated by the Ld. Assistant Commissioner, Paradeep Customs Division. The appeals filed by the appellant against such imposition of late fee have also been rejected by the Id. lower appellate authority. Hence, these appeals.

5. The appellant in the grounds of appeal, submits that Section 46 of the Customs Act allows the Proper Officer to waive the late fee in deserving cases; that in the present cases, the excess quantities were found in respect of the same consignments for which they had also filed the original Bills of Entry within the proper time. Therefore, it is their contention that the delay, if any, in filing the Bills of Entry was not on account of any fault of the appellant. Accordingly, it is contended that the Proper Officer should have allowed the amendment or waived the late fees, as imposed on the appellant in the present cases.

5.1. In support of their above stand, the appellant has placed reliance on the following case-law: -

- i. *Blueleaf Trading Company v. Commissioner of G.S.T. & C.Ex., Tiruchirapalli [Final Order Nos. 40772-40780 of 2019 dated 08.05.2019 in Customs Appeal No. 42670 of 2018 & ors. - CESTAT, Chennai]*
- ii. *Order-in-Appeal No. KOL/CUS(PORT)/DC/163/2025 dated 23.05.2025 [Commissioner of Customs (Appeals), Kolkata]*

5.2. Further, the appellant has also referred to the Standard Operating Procedure (SOP) dated 19.05.2023 issued by the Customs Department in respect of allowing clearance of excess cargo claimed by a consignee; that the lower authorities have erred by not applying their mind and not adhering to the guidelines contained in the above Standard Operating Procedure.

5.3. In view of the above, the appellant prays for setting aside the late fees, as imposed on the appellant in these cases and for allowing their appeals, with consequential relief.

6. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. He submits that there was a delay in filing the Supplementary Bills of Entry by the appellant; accordingly, the system has automatically calculated the delay arising on account of such late filing. Hence, he submits that late fee is payable in these cases. Therefore, he justifies the imposition of late fees on the appellant.

7. Perused the appeal papers the records of the case.

8. We find that the appellant has imported consignments of steam coal and filed the original Bills of Entry as per (6) of the Table at Para 1 above, for clearance of the same within the stipulated time. However, after clearance of the said goods, during the Draft Survey, it was found that there was some excess quantity of coal remained in the port which was part of the said consignment. Subsequently, the appellant had requested for amendment of the IGM and amendment of the earlier Bills of Entry filed by them. The appellant was also willing to pay the Customs duty for the excess coal found in the port area. However, the Proper Officer has disallowed the appellant's request for amendment of the Bills of Entry. Subsequent thereto, the appellant has filed the Supplementary Bills of Entry as per the column (9) of the above Table.

9. From the facts and evidence available on record, we find that the delay in filing the Supplementary Bills of Entry in question is not on account of any fault on the part of the appellant. The appellant had filed the original Bills of Entry within the stipulated time-frame and the

excess cargo found was part of the same cargo for which the appellant had already filed the Bills of Entry. Late fee chargeable for the delay in filing the Bills of Entry is to be considered judiciously and not imposed in a routine manner. Section 46(3) and the second proviso to the said Section, which deals with the charges for late presentation of Bills of Entry, is reproduced below: -

"(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

.....

*Provided further that where the bill of entry is not presented within the time so specified and **the proper officer is satisfied that there was no sufficient cause for such delay**, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.* [Emphasis supplied]

9.1. From a reading of the above proviso to Section 46(3) reproduced above, it is clear that the Proper Officer has the authority to waive the late fee in deserving cases. In the present case, the late filing of the Bills of Entry cannot be attributed due to any act or fault accruing on the part of the appellant. Under such circumstances, considering the bona fides of the appellant, the imposition of late fee in the present cases is found to be unwarranted. Therefore, I find that it is a fit case for waiver of late fee.

10. It is relevant to refer to the guidelines envisaged by the Board in the Circular No. 14/2017-Customs dated 11.04.2017. The relevant portion of the said Circular reads as under: -

"2. In the Circular No. 13/2005-Customs, dated 11.3.2005, CBEC had categorised the amendments carried out in the IGMs as Major and Minor respectively. Further in the amending circular No. 44/2005-Customs, dated 24-11-2005, it was provided that the need for adjudication will arise only in cases of major amendment involving fraudulent intention or substantial revenue implication. It was the view of the CBEC that the penal action is not initiated mechanically in all cases of IGM amendment and that due consideration may be given to the circumstances of amendment."

10.1. Reference is also made to the Standard Operating Procedure (SOP) dated 19.05.2023 issued by the Commissioner of Customs (Preventive), Bhubaneswar Commissionerate on delivery of excess dry bulk cargo, wherein it is mentioned that the levy of applicable fine/penalty shall be applicable as 'deemed fit' by the Jurisdictional Officer. The same should not be imposed in a routine/mechanical manner.

11. A similar issue relating to penalty charges for late filing of Bills of Entry has been considered by the Tribunal in the case of *Blueleaf Trading Company v. Commissioner of G.S.T. & C.Ex., Tiruchirapalli* [Final Order Nos. 40772-40780 of 2019 dated 08.05.2019 in Customs Appeal No. 42670 of 2018 & ors. – CESTAT, Chennai]. The relevant observations in the aforesaid decision are reproduced below: -

"5.2 Considering the difficulties faced by the importers which had resulted in delayed presentation of Bill/s-of-Entry, the CBEC issued Instructions from time to time. One of such Instructions, Instruction No. 12/2017-Customs dated 31.08.2017 had instructed the officers jurisdictional Additional/Joint Commissioners of Customs to exercise power judiciously. The above instruction of the Board was clarified vide Standing Order No. 01/2017 dated 06.09.2017 by the Chief Commissioner of Customs (Preventive), Tiruchirappalli, wherein it was even suggested to waive off the late charges in respect of some of the cases specified therein."

Customs Appeal Nos. 76044,76049,76052,76054,76061,76073 of 2024

6. Subsequently, vide Notification No. 36/2018-Customs (N.T.) dated 11.05.2018 the 'Bill-of-Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018' was introduced. Regulation 4 of the Regulations (supra) deals with the delayed filing of Bill-of-Entry and the consequence thereto and proviso to Sub-Clause (3) authorizes the proper officer to even waive off the charges if he was satisfied with the reasons for the delay. It is quite clear that the provisions of Section 46 ibid nowhere mandate charging of late fee for the delayed filing of Bill-of-Entry as fee is charged subject only to the 'non-satisfaction' of the proper officer and the Board's Instructions, some of which are referred to herelnabove, also authorize the proper officer to wolve off subject to his satisfaction.

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7.3 The impugned order referring to this Order-in-Original dated 08.11.2017, has also not questioned the bona fides of the appellant. In his order, however, the Commissioner (Appeals) has only directed the adjudicating authority to charge the assessee the late fee from the date of agreement made between the shipper and the appellant, which was nobody's case and not even as per law. As discussed above, Section 46 ibid authorizes the proper officer to collect late fees subject to his 'non-satisfaction' of the cause shown and there is no via media. The appellant admittedly is not the first importer, but a saviour who came forward at a later stage. The Act only contemplates charging of late fee from the importer per se. It is clear from the impugned order as well as that of the Commissioner (Appeals) that there was no reason/question of 'non-satisfaction' as to the reasonable cause shown by the appellant. In the above factual background therefore, it is very difficult to accept as to how the Order-in-Original came to be passed against a Customs Broker just because it made a request. Appellant is clearly not the first importer, there is request for amendment in IGM on record, allowed by the Revenue after collecting requisite fees and these are clearly post-import developments. The subsequent developments, as observed supra, were perhaps necessitated because of the goods being perishable. Clearly, no mala fide is found in the above developments by the Revenue and therefore, it can be safely assumed that the Revenue was otherwise satisfied with 'sufficient cause'.

8. For the above reasons, I am of the view that the impugned order is not sustainable and hence, the same is set aside.

9. The appeals are allowed."

12. We find that the ratio of the decision cited supra is squarely applicable to the facts of the case on hand.

13. We also observe that this Bench in the case of **Kai International Pvt Ltd Vs CC (Prev), Odisha vide Final Order No.75440-75441/2026 dated 25.03.2026**, on identical matter, has set aside the late fee charged on the importers.

14. So far as the Customs Duty paid on the Supplementary Bill of Entry is concerned, we find that no side has contested the quantification. Hence, we hold that the same as been paid as required under the Customs Act, 1962 provisions.

15. In view of the foregoing, we hold that the late fees imposed on the appellant in the present cases are not sustainable. Consequently, we set aside the same.

16. As a result, we set aside the impugned orders qua imposition of late fees on the appellant herein and allow the appeals, with consequential relief, if any, as per law.

(Pronounced in the open court on...16.06.2026...)

SD/-
(R. Muralidhar)
Member (Judicial)

SD/-
(Rajeev Tandon)
Member (Technical)

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