CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHANDIGARH

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60002 of 2026

[Arising out of Order-in- Appeal No. LUD-EXCUS-001-APP-271-272/2025 dated 06.10.2025 passed by the Commissioner (Appeals), CGST, Ludhiana

M/s Khurana Oleo Chemicals ......**Appellant**
MRZ Honda Building, GT Road
Village Ram Talai, Amritsar, Punjab – 143001

VERSUS

Commissioner of Customs, Ludhiana ......**Respondent**
GRFL, Sahnewal, Ludhiana - 141120

WITH

Customs Appeal No. 60003 of 2026

[Arising out of Order-in- Appeal No. LUD-EXCUS-001-APP-271-272/2025 dated 06.10.2025 passed by the Commissioner (Appeals), CGST, Ludhiana

M/s Khurana Oleo Chemicals ......**Appellant**
MRZ Honda Building, GT Road
Village Ram Talai, Amritsar, Punjab – 143001

VERSUS

Commissioner of Customs, Ludhiana ......**Respondent**
GRFL, Sahnewal, Ludhiana - 141120

APPEARANCE:

Shri Amar Pratap Singh and Shri Niren Sharma, Advocates for the Appellant

Shri S.K. Meena, Authorized Representative for the Respondent

CORAM: HON’BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON’BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60505-60506/2026

DATE OF HEARING:29.07.2026
DATE OF DECISION: 11.08.2026

P. ANJANI KUMAR:

The Appellant, Khurana Oleo Chemicals, filed these two appeals i.e. Appeal No. C/60002/2026 & C/60003/2026 challenging the impugned orders-in-appeal, dated 15.09.2023 and 06.10.2025 respectively.

Appeal No. C/60002/2026

2. Brief facts of the case are that the appellants have imported "Lauryl Alcohol Ethoxylate AE-1", "Dehydol LS2 TH (Fatty Alcohol Ethoxylate) (LAE 2 MOLE)" and "C12-14 Alcohol Ethoxylate AE 1", from Singapore and filed provisional B/e No.616828 dated 08.11.2021, classifying the goods under CTI 38249900. On noticing that the Department had issued SCNs to other importer disputing the classification of impugned goods under CTI 34024200, the appellants have paid duty of Rs.3,92,942/- under Protest in order to avoid litigation, interest and penalty, if any, that may be fall upon them, should the Department issue a SCN to them also; after due verification regarding the designated signatory in Singapore, who signed the Form-AI and after according an opportunity of personal hearing on 03.08.2023, impugned OIO was passed classifying the goods under CTI 34024200.

2.1. The appellants challenged the OIO by an appeal dated 14.11.2023 and filed an appeal addressed to Commissioner (Appeals), Central Excise, Customs & Service Tax, Ludhiana;

however, inadvertently, submitted the appeal papers to the Commissioner of Customs, ICD, GRFL, Sahnewal, G.T. Road, Ludhiana; as the appellants have not heard anything from the Department even after multiple inquiries, they addressed a letter dated 05.06.2025 to the Commissioner of Customs, Sahnewal to grant a personal hearing; vide letter dated 18.07.2025, Commissioner of Customs (Appeals), Rishi Nagar informed the appellants that no appeal appears to have been filed by the appellant in their office; the appellants received the letter on 26.07.2025. Accordingly, the appellant submitted a copy of the appeal, on 13.08.2025 with the Appellate Authority with a request to condone the delay of 18 days calculated from the date of receipt of the letter dated 18.07.2025. The Appellate Authority passed the impugned order rejecting the appeal filed by the appellant on the ground of limitation. Hence, this appeal No. C/60002/2026.

Appeal No. C/60003/2026

3. Briefly stated the facts of the case are that the appellants have imported "Lauryl Alcohol Ethoxylate AE-1", "Dehydol LS2 TH (Fatty Alcohol Ethoxylate) (LAE 2 MOLE)" and "C12-14 Alcohol Ethoxylate AE 1", from Singapore, Thailand and China, during 14.01. 2021 to 17.08.2024 and filed 81 Bills of entry (B/e); the appellants made payment of Basic Customs Duty (BCD) amounting to Rs. 5,44,02,175/- under protest as the Department had issued Show Cause Notices to other importers holding that the impugned goods merit classification CTI 34024200 in place of CTI 38249900 declared by the appellants. The goods if classified under CTH 3824 are

exempted from BCD if imported from Thailand & Singapore & are chargeable to BCD @ 7% if imported from China. If classified under CTH CH 3402 are chargeable to BCD @ 5% if imported from Thailand & Singapore and @10% if imported from China. The appellants paid BCD @ 5%, in terms of entry 399 of Notification 46/2011-Customs dated 01.06.2011, on goods imported from Singapore & Thailand and @ 10% on goods imported from China. The Appellant claim that they paid BCD under protest in order to avoid litigation and save interest liability, if any, that may befall on them.

3.1. Out of 81 B/e, 8 B/e were provisionally assessed and as there was an inordinate delay in finally assessing those B/e, the Appellant filed a writ petition bearing no. 11631/2023 before the Hon'ble Punjab & Haryana High Court; in respect of 3 B/e bearing nos. 5263997, 7812988 and 7305304, final Assessment orders are under challenge before Hon'ble High Court of Punjab and Haryana vide CWP No. 18963/2023; in respect of 2 B/e bearing no. 6694393 & 2183993, the final assessment orders are under challenge before the First Appellate Authority; 1 B/e bearing no. 4266750, no hearing notice has been issued for final assessment despite specific direction by Hon'ble High Court vide order dated 26.08.2025 in CWP 11631/2023 and in respect of 1 B/e no. 5968284 dated 16.05.2023, the final assessment is still pending; in respect of 1 B/e bearing no. 6162828, order passed by appellate authority i.e. Commissioner (Appeals) is under challenge before this Bench in C/60002/2026.

3.2. The Appellant filed a refund application, dated 22.10.2024, seeking refund of Rs.5,44,02,175/- paid under protest. Deputy

Commissioner passed order in original, dated 21.12.2004, rejecting the claim without adjudicating the application on the ground that the refund claim filed by the Appellant was pre-mature and holding that the refund claim can only be filed in case the Appellant challenges the assessment done by appraisement section before appellate authority and the same is allowed by the authority in favour of the Appellant and the Bills of entry are re-assessed to that effect.

3.3. The Appellant filed an appeal, on 19.02.2025, before Commissioner (Appeals), within the statutory time period of 60 days, through e-mail at commr-gstappeals.ldh@gov.in and sent the through speed post on the same day. The Appellate Authority issued a letter, dated 15.04.2025, seeking explanation from Appellant as to whether the appeal was filed within the statutory period.

3.4. The Appellant replied vide letter dated 13.05.2025, responded to the above letter clarifying that the appeal was filed through e-mail dated 19.02.2025. Commissioner (Appeals) passed the impugned Order, dated 06.10.2025, rejecting the appeal filed by the Appellant. Hence, this appeal.

Submission in Appeal No. C/60002/2026

4. Shri Amar Pratap Singh, learned Counsel for the appellant, submits that learned Commissioner erred in holding that the benefit of Section 14 of the Limitation Act, 1963 was not available to the appellant as the appellant filed their appeal before Commissioner of Customs and not before the Commissioner of Customs (Appeals). He submits that impugned OIO was passed on 15.09.2023; the appeal was filed on 14.11.2023 within the stipulated period of 60 days; the

only mistake on the part of the appellant was that the appeal was submitted in the office of Commissioner of Customs, ICD, Sahnewal, who accepted the appeal and issued an acknowledgment; on a representation given by the appellants that their appeal is not getting listed, Commissioner of Customs, ICD, Sahnewal vide letter dated 18.07.2025 (received by the appellant on 26.07.2025) informed the appellant that the appeal appears to have been filed in a wrong Forum; immediately on receipt of the letter, the appellant has filed an appeal along with an application for condonation of delay of 18 days from date of receipt of the communication to the date of filing of the appeal again before the appropriate Forum; the appeal was filed along with the plea that while computing the period of limitation, the period during which the appeal was lying in the wrong Forum needs to be excluded under Section 14 of the Limitation Act. He submits that Tribunal and High Courts have held this principle that the period for which the appeal was pending before a wrong Forum should be excluded. He relies on the following cases:

- Maruti Udyog Ltd. – 2009 (1) TMI 264-CESTAT Ahmedabad.
- Broekman Logistics India Pvt. Ltd. – 2025 (10) TMI 1330- CESTAT Chennai.
- Sonia Overseas Pvt. Ltd. – 2015 (316) ELT 578 (P&H)
- Prime Mettalloys Pvt. Ltd. – 2017-TIOL-2092-CESTAT-DEL.
- S.R. Enterprises – 2014 (11) TMI 247- CESTAT Bangalore

5. Learned Counsel further submits that a look at the relevant tariff entries shows that the impugned product can fall under 3402

only if it is soluble in water; however, documents/ reports detailed below indicate that the impugned goods are not water soluble and therefore, they have to be classified under CTH 3824.

(i) Lab report dated 27.04.2022 by M/S Fare Labs Pvt Ltd.
(ii) Expert opinion of Institute of Chemical Technology dated 13.03.2023
(iii) Test report dated 07.03.2023 issued by CRCL, on B/e no. 4266750 dated 20.01.2023 and Test reports dated 01.08.2024 by CRCL
(iv) Order dated 31.12.2021 in the case of Godrej Industries Ltd. passed by Commissioner of Customs Nava Sheva-I.
(v) Ruling in the case of Shell Eastern Petroleum (Pte) Limited by Singapore Customs Department.

6. Learned counsel submits, in addition, that Revenue was required to follow the order passed by Commissioner of Customs, Nhava Sheva in respect of M/s Godrej Industries Ltd; Revenue cannot take a different opinion at the same time in respect of different bills of entry. He also submits that classification of the impugned goods, cannot be decided on the basis of a test report in respect of goods imported another bill of entry i.e. No.5263997 dated 01.09.2021. He relies on the following cases.

- Saara Sales Pvt. Ltd. – 2013 (295) ELT 724 (Tri. Del.)
- Vishal G Trivedi & Anr. – 2019 (367) ELT 660 (Tri. Ahmd.)
- Kamlakshi Finance Corporation Ltd. – 1991 (55) ELT 433 (SC)
- Himgiri Buildcon & Industries Ltd. – 2021 (376) ELT 257 (Bombay)

Submission in Appeal No. C/60003/2026

7. Learned Counsel for the appellant adopts the arguments as above in Appeal No. C/60002/2026 as far as classification is concerned and as far as limitation and other issues are concerned submits that one of the grounds on which the Appellate Authority rejected the appeal filed by the Appellant, was limitation; impugned order holds that the order-in-original was passed on 21.12.2024 and thus, the last date to file appeal was 19.02.2025 (60 days from 21.12.2024); however, the said appeal was received on 24.02.2025, through post, thus, there is a delay of 5 days; the delay in filing of appeal was conveyed to the appellant vide letter dated 15.04.2025 but the Appellant did not file any rely to the same. He submits that the Appellant filed the appeal through e-mail at commr-gstappeals.ldh@gov.in on 19.02.2025 and send through speed post on the same day; the Appellant clarified the same vide letter dated 13.05.2025; without prejudice to the above, the Appellate Authority had the power to condone the delay of 5 days.

8. Learned Counsel for the appellant submits further that the Appellate Authority has held that the refund application filed by the Appellant was pre-mature as refund claim can only be filed in the case where the assessment done by the appraisement section is challenged before the Appellate Authority and the same is allowed by the said authority and the relevant Bills of entry are re-assessed to that effect; learned Adjudicating Authority relies on the judgement of ITC Ltd [2019 (368) ELT 216 (SC)].

9. Learned counsel submits that judgement in ITC in fact supports the case of the Appellant; Hon’ble Supreme Court held that without

challenging the Assessment Order, refund cannot be allowed; in the instant case, the Appellant is not seeking to challenge 73 BOEs which have been finally assessed under CTH 38249900 by the Customs Department; by applying the ratio laid down by the Hon'ble Supreme Court, it is clear that refund cannot be denied to the Appellant when the 73 B/e which have been finally assessed by the Customs Department under CTI 38249900 allowing exemption/concessional rate on BCD; Appellate Authority has misinterpreted and wrongly applied the ratio laid down by the Hon'ble Supreme Court.

10. Learned Counsel for the appellant submits also that in the instant case, Deputy Commissioner has finally assessed all BOEs except BOE no. 5968284 dated 16.05.2023 (Sr. no. 44) and classified the Impugned Product under Customs Tariff Entry 38249900. As declared by the appellant; thus, benefit of entry no. 449 of Notification 46/2011-Customs dated 01.06.2011 (for imports from Thailand & Singapore) and concessional rate of BCD @ 7% in terms of entry no. 486 of Notification No. 50/2018–Customs dated 30.06.2018 (for import of goods from China) have been extended to the appellant and thus, there was no need to challenge the above stated finally assessed B/e by the Appellant.

11. Learned Counsel for the appellant submits further that the onus lies on the Customs Department to vacate the protest and the assessee cannot be put to disadvantage if Department fails to do so. He relies on Raymond Apparel Limited [2024 (6) TMI 310]-CESTAT Kolkata [2025 (8) TMI 421]- Calcutta High Court] and Sakthi Sugars Ltd. [2020 (372) E.L.T. 577 (Tri. - Chennai)]

12. Shri S.K. Meena, Learned Authorised Representative for the department reiterates the findings of the impugned order and submits that the issue has not reached finality as the appeal filed by the appellants themselves is pending before Hon'ble High Court of Punjab & Haryana.

13. Heard both sides and perused the records of the case. **Coming to Appeal No. C/60002/2026,** it is not denied that the delay occurred due to submission of the appeal papers before a wrong Forum; the appellants has submitted the papers in the office of Commissioner of Customs, Sahnewal, Ludhiana instead of Commissioner of Customs (Appeals), Rishi Nagar, Ludhiana. The receiving office i.e the office of the Commissioner of Customs, Sahnewal could have noticed that the appeal, though, was submitted in their office, was not in fact addressed to their office; under such circumstances, the office of the Commissioner of Customs, Sahnewal could have immediately transferred the appeal papers to the proper authority i.e. Commissioner of Customs (Appeals), Rishi Nagar, Ludhiana in case they had any sympathy or empathy with the appellants; if not, even in the worst scenario, they should have immediately returned the papers to the appellant stating that the same have been wrongly submitted. Thus, a mistake committed by the appellant has been converted into a mishap by the Department. Learned Commissioner (Appeals) could have considered the request of the appellant that the time for which the appeal was lying with the wrong Forum/ office needs to be excluded from the period of limitation. Be it so, we find that the issue is no longer res integra in view of the cases cited by

the learned counsel for the appellants. We find that Tribunal in the case of Prime Metalloys Pvt. Ltd. (supra) held as follows:

> 12. We further find that the Ld. AR relied on the various judicial pronouncement cited during the course of arguments. All these decisions of the Hon'ble High Courts and the Hon'ble Apex Court deals with the circumstances where appeal has not been filed within time. Therefore, the delay cannot be condoned by invoking section 5 of the Limitation Act, 1963. We are bound by the above judicial pronouncement but the facts of this case are somehow different. In this case, the appeal was filed within time but before the wrong Commissionerate. In that situation the provision of section 14 of the limitation act are applicable to the facts of this case. Therefore, the period between 15.03.2012 to 18.07.2013 is required to be excluded. In the said situation the appeal was filed by the appellant before the Ld. Commissioner (A) is within time. In that scenario, we set aside the impugned order and hold the appeal was filed by the appellant within time.

14. In view of the above, we are of the considered opinion that there is no delay in fling of the appeal on the part of the appellants. Even if it is opined otherwise, the period for which the appeal was lying with the Commissioner of Customs, Sahnewal, Ludhiana requires to be excluded for arriving at limitation. We find that learned counsel for the appellants has given submissions on classification of the impugned goods. However, we find that the learned Commissioner has not dealt with the case on merits. Therefore, we cannot sit in judgement of the impugned order on this count. We find that, in the interest of justice, the matter should go back to the Commissioner (Appeals) to record his findings and to decide the issue on merits.

15. Coming to **Appeal No. C/60003/2026**, we find that the appellants imported "Lauryl Alcohol Ethoxylate AE-1", "Dehydol LS2 TH (Fatty Alcohol Ethoxylate) (LAE 2 MOLE)" and "C12-14 Alcohol Ethoxylate AE 1", from Singapore, Thailand and China, during 14.01. 2021 to 17.08.2024 and filed 81 Bills of entry (B/e). The goods if classified under CTH 3824 are exempted from BCD if imported from Thailand & Singapore & are chargeable to BCD @ 7% if imported from China. If classified under CTH CH 3402 are chargeable to BCD @ 5% if imported from Thailand & Singapore and @10% if imported from China. The appellants paid BCD @ 5%, in terms of entry 399 of Notification 46/2011-Customs dated 01.06.2011, as applicable to on goods imported from Singapore & Thailand and @ 10% on goods imported from China. The rate applied by the appellants is applicable if the goods are classified under CTH 3402. However, the appellants declared the classification under CTH 3824, but paid duty, under protest, as applicable to CTH 3402, under the apprehension that the department may revise the classification and they may have to pay differential duty and interest. The bills of entry in question have been assessed finally declaring the goods under CTH 3824. The appellants accordingly, filed the refund claim which came to be rejected on the ground of limitation and on the ground that no appeal is filed against the bills of entry.

16. Brief issues involved in the case are as to whether

(i). the Commissioner (Appeals) was correct in rejecting the appeal on the ground of limitation?

(ii). The appellants are eligible for grant of refund as claimed by them?

(ii). whether the impugned goods are classifiable under CTH 3824 as declared by the appellant or under CTH 3402 as sought to be classified by Revenue in respect of other importers.

17. Coming to the first issue, we find that the OIO in the case was passed on 21.12.2024 and the appellants filed the appeal through e-mail 19.02.2025; in reply to a query dated 15.04.2025 by the office of the Commissioner (Appeals), the appellants replied that the appeal was filed through e-mail on 19.02.2025 and was sent through speed post on the same day. The impugned order was passed on 06.10.2025. The order records that the appeal was filed on 24.02.2025. Learned Commissioner rejected the appeal finding the as follows:

> 3.2 I find that the appeal filed by the appellant against the letter dated 21.12.2024 has been received on 24.02.2025 through Post. The appellant, at S. No.4 of appeal Form CA-1 has mentioned that the said decision was communicated to them on 21.12.2024. Hence, the appellant was required to file appeal by 19.02.2025 (i.e. within 60 days from 21.12.2024). I find that there is a delay of 05 days in filing of the said appeal i.e. the appeal is time barred. The delay in filing of appeal was conveyed to the appellant vide letter dated 15.04.2025, but the appellant neither bothered to reply to the said letter nor bother to file any condonation of delay application. Hence, the appeal does not merit acceptance on this count.

18. We find that learned Commissioner himself admits that there is delay of 05 days. He finds that the delay cannot be condoned as there is no application for condonation of delay and therefore, the

appeal is liable to be rejected. We find that the appeal has been filed through e-mail within time and the hard copy has been also sent by speed post on the same day. It is recorded that the appeal was received by the Commissioner (Appeals) on 24.02.2025. Looking into this fact, learned Commissioner could have held that there is no delay. Even if he assumed that there was delay, it was only of mere 05 days which could have been easily condoned. We find that the coordinate Bench at Kolkata, in the case of Tata Motors, vide final order No.75908/2026 dated 20.07.2026, has set aside the order impugned therein by condoning the delay of 8 days and proceeded to decide the issue on merits. In the instant case too, we find that there is no delay in filing the appeal and even if there is a delay, it was within the period condonable by learned Commissioner (Appeals). Though, learned Commissioner (Appeals) has rejected the appeal on the ground of limitation, he has also gone into the merits of the case and has given his findings on the merits also. Therefore, we find that this appeal does not require to be remanded back to the appellate authority. Therefore, we find that the answer to question no. (i) as at Para 16 above, is answered in the Negative.

19. Coming to the merits of the case, we find that learned Commissioner finds as follows:

> 3.3 Further, on merits also this appeal does not sustain. In the instant appeal also, the appellant pleaded that similar issue was decided by the ld. Commissioner of Customs, Nava Sheva in the case of M/s Godrej Industries Limited in favour of the importer. But, the appellant has not brought any evidence on record to show that they have got favourable orders from appellant forum by challenging the Bills of entry.

The appellant in the present appeal has provided a list of 81 Bills of entry and has stated that in only one case (Bill of Entry No.6162828 dated 08.11.2021) they are in appeal with Commissioner (Appeals) (the said case, mentioned at S.No.2 of Table-1, is being taken up in this order itself). It is evident that, in none of the 81 bills of entry filed between Jan. 2021 to August 2024, the appellant has got any favourable order. Moreover, except for one Bill of entry, the appellant has not even challenged the assessment order and obtained favourable order. Hence, in the absence of any favourable order by challenging the assessed Bills of entry, no refund becomes due. The appellant has placed reliance on the judgement dated 30.11.2028 of Hon'ble Bombay High Court in the case of Micromax Informatics Ltd. Vs UOI 2019 (369) ELT543(Bom.) to drive home the point that refund of excess duty paid can be claimed without challenging the assessment or reassessment of bill of entry. However, the Hon'ble Supreme Court in its judgment dated 18.09.2029 in the case of ITC Ltd. Vs CCE Kolkata-IV reported as 2019(368) ELT216(SC) has held that the claim of refund cannot be entertained unless the order of assessment or self-assessment is modified accordance to law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 the Customs Act, 1962 to set aside order of self-assessment and reassess duty for making refund; and in case any person is aggrieved by any order including self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act. Thus, the assessment order has to be challenged by the importer in appellate forum and re-assessment be done afterwards commensurate with the order of the appellate authority and consequential refund, if any.

3.4 In view of the above, I find that the Deputy Commissioner has rightly held that the refund filed by the appellant is pre-mature and observed that refund claim can only be filed in the case where the assessment done by the appraisement section is challenged before the appellate authority and the same is allowed by the said authority and the relevant Bills of entry are re-assessed to that effect.

20. We find that learned Commissioner upholds the observation of the lower authority that as no appeal has been filed against the assessed bills of entry and as no re-assessment has been done, the refund application is premature and cannot be entertained. We find that the learned Commissioner relies on the decision of Hon'ble Supreme Court in the case of ITC Ltd. and that of Hon'ble Bombay High Court in the case of Micromax Informatics – 2019 (369) ELT 543 (Bom.) and finds that refund of excess duty paid can be claimed without challenging the assessment or re-assessment of B/e. We find that the learned Commissioner (Appeals) has misread the statutory provisions and the decisions cited as above. The appellant has filed the impugned bills of entry claiming the classification under CTH 3824. However, the appellants have paid duty as applicable to CTH 3402, with an apprehension that he may have to face the predicament of paying differential duty, interest and penalty at a future date as the Department proposed, change in classification, from CTH 3824 to CTH 3402, in respect of some other importers. The net result is that the appellant has classified the goods under CTH 3824 and the bills of entry have been finally assessed. Therefore, they have paid duty in excess of what is payable for the goods classifiable under CTH 3824 under Protest.

21. We find that the finding of the lower authorities is not inconsonance with the case of ITC Ltd. which they themselves are seeking to rely upon. We failed to understand as to why the

appellants should appeal against the impugned bills of entry which were finalized as per the classification declared by them. On the other hand, it was the Department which should have appealed against the assessment in case they felt that the assessment made in the bills of entry was not correct. The Department has neither filed any appeal against the assessment in the impugned bills of entry nor have they issued a SCN seeking to reclassify the goods under CTH 3402 from the declared CTH 3824. Thus, the principle enunciated in the case of ITC Ltd. is more applicable to the Revenue than the appellant. We find that precisely this is the issue that came for consideration before, Hon'ble High Court of Delhi in the case of B T India Ltd 2023-VIL-770-DEL-ST, affirmed by Hon'ble Supreme Court in SLP(CIVIL) Diary No(s)44385/2024, wherein it was held that before rejecting the refund claimed by the appellant therein, Revenue ought to have appealed against the bills of entry which were finally assessed. The jurisprudence that evolved on the subject established the principle that grant of refund is executionary in nature whereas as assessment is a judicial or quasi-judicial function. In the impugned case the assessment, the quasi-judicial function, has reached finality as the revenue has not appealed against the bills of entry and the same have been finally assessed.

22. Learned counsel for the appellants submits that the appellant has paid duty under Protest and such Protest has not been vacated by the Department by taking any of the steps like filing an appeal, issuing a demand notice etc. It has been held in a number of cases that the onus to get the stay vacated was on the Revenue. We find

that Hon’ble Kolkata High Court in the case of Raymond Apparel Ltd. (supra) upheld the order passed by the Kolkata Bench of the CESTAT. Hon’ble High Court held that:

> The learned Tribunal considered the said contention raised by the revenue and rejected the same after taking note of the decision of the coordinate Bench of the learned Tribunal. Identical issue came up for consideration in the case of Kisan Cooperative Sugar Factory Ltd. Vs. Commissioner of Central (2018) 8 GSTL 365 (All.). In the said case the assessee filed refund application after four years in the year 2009 and the same was rejected invoking the provisions of section 11B of the Central Excise Act, 1944.
>
> In the said case though the Tribunal found that the assessee therein had made the deposit of the disputed demand of duty amount under protest rejected the refund application on the ground of limitation because, according to the Tribunal, the assessee therein made the refund application belatedly after expiry of one year from the date of the judgment of the Court. The Court took into consideration of the decision of the Hon'ble Supreme Court in Mafatlal Industries Ltd. Vs. Union of India, 1997 (89) ELT 247 (SC) and held that in view of the specific finding recorded that duty amount has been paid under protest, limitation of one year to make the claim of refund under section 11B would not apply at all to such a case and, therefore, the amount is liable to be refunded to the appellant therein along with interest excluding the period for which the appellant therein had not applied, that is, upto 2009 from the date it became liable to be refunded. Direction was issued to the effect that the principal amount is to be refunded but no interest be given from the date the writ petition was allowed to the date when the appellant therein made the application for refund, that is, 2009 and the interest beyond that time may be given.
>
> There are other decisions of the Tribunal on the very issue holding that the assessee paying duty under protest and intimating to the Assistant commissioner by letter that since

it required consignment urgently for its product it would be clearing payment of duty under protest and such protest alleged by the assessee would remain till the disputed issue was settled finally by higher appellate forums and in the absence of any order indicating vacating of protest on an adverse order having been passed against the assessee, duty having been paid under protest would not be hit by limitation prescribed under section 27 of the Customs Act. Furthermore, in Sinkhal Synthetics & Chemicals Ltd. Vs. CCE, Aurangabad, 2002 (143) ELT 17 it was held that the refund of duty paid under protest will not be hit by the bar of unjust enrichment. The third Principal Bench of the Tribunal in the case of Collector of C. Ex Vs. Prestige Engineering (India) Pvt. Ltd., 1989 (41) ELT 530 (Tribunal) held that once a protest has been lodged, it became the duty of the Assistant Collector to dispose of the protest by an appealable order so that the assessee could go in appeal against those orders. Unless the Assistant Collector disposes of the protest in the aforesaid manner, as enjoined under Rule 2338, The protest cannot be deemed to have subsided.

The co-ordinate Bench of the Tribunal in the case of Commissioner of Commissioner of Customs, Tuticorin vs. Sakthi Sugars Ltd., 2020 (372) ELT 577 (Tri. Chennai) held that the marking of protest itself gives information to the department that there is no requirement for reassessment. The assessment under Section 17 of the Customs Act, 1962 cannot be said to be finalised when the respondent therein has marked the protest while paying duty. It was further held that mark of protest is an information to the department that the assessee is not making payment of cess/duty voluntarily and then department has to initiate proceedings to vacate the protest and pass speaking order of reassessment. Similar view was taken by the co-ordinate Bench of the Tribunal in HDFC Bank Ltd. Vs Principal Commissioner of GST & CE, 2020 (7) TMI 362-CESTAT-Chennai

23. We also find that in the above case the Tribunal in 2024 (6) TMI 310-CESTAT Kolkata, the Co-ordinate Bench held that:

> 11.3.We do agree with the observations made by the Ld. Commissioner (Appeals) in the impugned order and hold that as there was a protest, duty was paid under protest, by the respondent. Therefore, the refund claims cannot be held as barred by the limitation and cannot be rejected on the ground that the refund claims were filed without challenging the assessment as assessment was not final.

24. We find that learned Authorized Representative for the Revenue submits that the refund claimed by the appellants cannot be sanctioned as the issue is pending finalization. We find that various bills of entry filed by the appellants are at various stages; a writ petition bearing no. 11631/2023 filed by the appellants, in respect of 3 B/e bearing nos. 5263997, 7812988 and 7305304, is pending before the Hon'ble Punjab & Haryana High Court; in respect of 2 B/e bearing no. 6694393 & 2183993, the final assessment orders are under challenge before the First Appellate Authority; in respect of 1 B/e bearing no. 4266750, is pending before the Original Authority; in respect of 1 B/e bearing no. 6162828, order passed by appellate authority i.e. Commissioner (Appeals) is under challenge before this Bench in C/60002/2026, as discussed above.

25. We find that it has been held by various Courts and Tribunals that as far as taxation matters are concerned, each assessment order, each bill of entry is a separate legal proceeding in itself. Therefore, we find that the outcome in the proceedings pending before various Fora, as mentioned above, have no bearing on the impugned bills of entry. These bills of entry, as discussed above, have

been finally assessed and no appeal has been filed and no SCN has been issued to change the classification. Therefore, for all practical and legal purposes, there is no reason as to why a decision in these bills of entry should await the outcome in respect of other bills of entry, as each bill of entry has a separate legal existence of its own.

26. We find that Kolkata Bench of the Tribunal in the case of M.P Mica Enterprises Pvt Ltd. – Final Order No. 75654/2026 dated 26.05.2026 held that:

> 9.2. In support of the above view, we rely upon the decision in the case of *Stonex India Pvt Ltd. V. Commissioner of Customs, Mundra, reported in 2025 (391) E.L.T. 652 (Tri. – Ahmd.),* wherein the Tribunal at Ahmedabad has held as under:
>
> > *"….. we find that demand of Customs duty of past imports under Annexure B and C to SCN is also not sustainable on the ground that goods were not tested by department in respect of past imports in respect of which demand is made in Annexure-B and C to SCN. It is settled position of law that each Bill of entry is a separate assessment and test report of one bill of entry cannot be made applicable to the goods imported under another bill of entry."*
>
> 9.3. In the case of *Penshibao Wang P. Ltd. V. Commissioner of Customs as reported in 2016 (338) E.L.T. 597 (Tri. – Chennai),* the demand in respect of past clearances purely based on test report of live consignment was set aside by the Tribunal.
>
> 9.4. Thus, by relying on the ratio of the decisions cited supra, we hold that the Test Reports obtained in respect of the two live consignments cannot be made applicable to the goods cleared under the past 72 consignments.

27. We further find that Hon'ble Supreme Court, in the case of BSNL-2006 (2) STR 161 (SC), held that principle of *res judicata* does not apply to tax matters as cause of action of each assessment is

different. We further find that the principle was also followed by the Tribunal in the case of Maldhari Sales Corporation-2016(334) E.L.T 418 (Del), it was upheld by Hon'ble Supreme Court in - 2017 (349) E.L.T A102 (SC). Thus, the above judgments support our assertion that each bill of entry is a separate entity and assessment of one bill of entry cannot affect the assessment in other bills of entry. Therefore, we are of the considered opinion that the appellants are eligible for refund as claimed on this point also, notwithstanding the outcome in respect of other bills of entry. Therefore, we find that the answer to question no. (ii) as at Para 16 above, is answered in the affirmative.

28. We find that other than the two issues discussed as above, no other issue has been raised in the Original Communication rejecting the refund claim filed by the appellant and the impugned order. Learned Counsel for the appellants made his submissions on classification of the impugned product. However, we find that classification is not in dispute in the present appeal. The appellants declared the classification of impugned goods under CTI 38249900 but have paid duty, under protest, as applicable to CTI 34024200 and are seeking refund of the duty paid in excess as the assessments are final. Understandably, the appellants are not disputing the assessment. The assessments are finalized and Revenue has not preferred any appeal. Therefore, we find that it is not necessary to in to the issue of classification and give any findings on classification in the case before us.

29. The present appeal is with respect to rejection of refund of excess duty with respect to 81 Bills of entry. However, Learned Counsel for the appellants fairly submits that they accept that among the 81 bills of entry, 8 bills of entry are provisionally assessed; therefore, they are eligible for refund of Rs. 4,93,34,45 paid on 73 Bills of entry which were finally assessed and on which excess duty was paid under protest.

30. In view of the above

(i). Appeal No. C/60002/2026 is allowed by way of remand to the appellate authority with a direction to decide the issue on merits.

(ii). Appeal No. C/60003/2026 is partly allowed restricting the refund amount to the duty excess paid, under protest, for the impugned Bills of entry which are finally assessed.

(Order pronounced in the open court on 11/08/2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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