

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal Nos. 75851 to 75854 of 2022

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/AKR/409-412/2022 dated 10.08.2022 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Commissioner of Customs (Port)

Custom House, 15/1, Strand Road,
Kolkata – 700 001, West Bengal

: Appellant

VERSUS

M/s. Shalimar Wires Industries Limited

77, Netaji Subhas Road, Uttarpara,
District: Hooghly, PIN – 712 258, West Bengal

: Respondent

APPEARANCE:

Shri Faiz Ahmed, Authorized Representative, for the Appellant / Revenue

Smt. Shubhangi Lata, Chartered Accountant, for the Respondent

CORAM:

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

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOS. 77708-77711 / 2025

DATE OF HEARING / DECISION: 12.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

These appeals have been filed by the Revenue against the Order-in-Appeal No. KOL/CUS/PORT/AKR/409-412/2022 dated 10.08.2022 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001.

2. The brief facts of the case are that M/s. Shalimar Wires Industries Limited (hereinafter referred to as the "respondent") are engaged in the business of importation of Polyester Monofilament Yarn and Polyamide (Nylon) Monofilament Yarn and in usual course of business imported four consignments from

M/s. Shakespeare Monofilament (UK) Ltd., Enterprise Way, Off Venture Road, Fleetwood, FY7 8RY, Lancs, United Kingdom and filed four Advanced Bills of Entry viz. Nos. 6484530 and 6484128 both dated 01.12.2021 [for POLYESTER MONOFILAMENT YARN]; 6483643 and 6485158 both dated 01.12.2021 [for POLYAMIDE (NYLON) MONOFILAMENT YARN].

2.1. Due to the global COVID-19 pandemic situation, the respondent was unable to keep a regular watch in the System on their industrial activities and were also facing financial crisis for payment of the duty for the above mentioned four consignments. After regularization of their business and arranging the money for payment of duty, the respondent instructed the CHA, M/s. Anil Krishna Datta, to pay the duty money for clearance of the goods.

3. The CHA made an enquiry and came to know that all the four Advanced Bills of Entry bearing Nos. 6484530, 6484128, 6483643 and 6485158 all dated 01.12.2021 were not available in the ICEGATE System. The CHA also issued a mail to ICEGATE for the solution of the matter, but the ICEGATE Authority advised the CHA to re-assess the Bills of Entry and the respondents were advised to file fresh Bills of Entry for clearance of the goods. Accordingly, four Bills of Entry No. 7139057 and 7139117 both dated 19.01.2022 [earlier filed Bills of Entry Nos. 6484530 and 6484128 both dated 01.12.2021 (for POLYESTER MONOFILAMENT YARN)], 7139082 and 7139106 both dated 19.01.2022 [earlier filed Bills of Entry Nos. 6483643 and 6485158 both dated 01.12.2021 (for POLYAMIDE (NYLON) MONOFILAMENT YARN)] were filed by the respondent. The aforesaid System assessed all the four Bills of Entry automatically after

imposition of late fine of Rs.4,65,000/- in each case, without considering the duty amount. The details of the Bills of Entry are provided in the following table: -

New Bill of Entry No. and date	Previous Bill of Entry No. and date	IGM No. and date	Invoice No. and date
7139082 dated 19.01.2022	6483643 dated 01.12.2021	2298060 dated 01.12.2021	46205 dated 21.09.2021
7139057 dated 19.01.2022	6484530 dated 01.12.2021	2298060 dated 01.12.2021	46206 dated 21.09.2021
7139106 dated 19.01.2022	6485158 dated 01.12.2021	2298060 dated 01.12.2021	46218 dated 21.09.2021
7139117 dated 19.01.2022	6484128 dated 01.12.2021	2298060 dated 01.12.2021	46207 dated 21.09.2021

4. The respondent, vide letter no. SW: PUR: 21 - 22:11183 dated 21.01.2022, requested the Ld. Joint Commissioner of Customs, Appraising Gr. - III to waive the late fine. The respondent placed reliance upon the order of Hon'ble Supreme Court in *RE: COGNIZANCE FOR EXTENSION OF LIMITATION* wherein the Hon'ble Apex Court has established a period of limitation extension from 15.03.2020 to 28.02.2022, due to the COVID-19 pandemic for calculating limitation periods, for cases whose limitation would have expired in that timeframe. In view of the exemption provided by the Hon'ble Supreme Court, the respondent filed their representation against the imposition of late fine and prayed for total waiver of the late fine imposed on them. They also took the stand that the assessing officer had not issued a Speaking Order under Section 17(5) of the Customs Act, 1962.

4.1. In response to the above, the Ld. Deputy Commissioner of Customs, Appraising Gr. III, vide his letter dated 02.02.2022, rejected the request made for waiver of late fine in respect of all the four Bills of Entry. However, the late fine amount was restricted to the duty amount, as indicated in table below: -

Sl. No.	Bill of Entry No.	Bill of Entry Date	Duty	Revised Late Fine Amount
1	7139082	19.01.2022.	Rs. 132425/-	Rs. 132425/-
2	7139057	19.01.2022.	Rs. 476101/-	Rs. 465000/-
3	7139106	19.01.2022.	Rs. 93670/-	Rs. 93670/-
4	7139117	19.01.2022.	Rs. 225418/-	Rs. 225418/-

5. On appeal, the Ld. Commissioner of Customs (Appeals), Kolkata held that the respondent is not liable to pay the fine for the late filing of the said Bills of Entry as the same had occurred due to an error manifest in the ICEGATE system, for which the respondent could not be held accountable. Accordingly, the late fine imposed on the respondent has been set aside vide the impugned order.

5.1. Aggrieved by the setting aside of the late fine, the Revenue has filed the present appeals.

6. The Revenue has filed the appeals against the setting aside of late fine, *inter alia*, on the following grounds: -

(i) In the present case the Bill of Entry was filed by importer on 01.12.2021. When the importer intended to make duty payment on 17.01.2021, the Bill of Entry was not available. After consulting with ICEGATE helpdesk, the importer re-filed the Bills of Entry for clearance of goods. Since the new Bill of Entry was incurring huge late fine charge, the late fine was reduced equal to the duty amount by the proper officer.

(ii) Commissioner (Appeal) in para-18 of OIA observed that the lower authority has imposed the fine on appellant. In this regard, it is mentioned that late fine charges are automatically calculated and levied by EDI system in the Bill of Entry. Commissioner (Appeal) has failed to appreciate that the lower authority has waived the fine already.

(iii) From the screen-shot copy uploaded in para-11 of OIA of Bill of Entry No. 6483643 dated 01.12.2021, it is found that the Bill of Entry was filed in advance.

(iv) Advance Bill of Entry can be regularized by entering Entry Inward Date within 30 days. In case of non-regularisation within 30 days, the Bill of Entry will get deleted/purged.

(v) In the present case, prior/advance Bill of Entry was filed on 01.12.2021 thereafter the importer tried to pay the duty on 17.01.2021. There is nothing on record to establish that the importer had regularized the Bill of Entry within 30 days from 01.12.2021. Since the importer tried to pay the duty on 17.01.2021 i.e. more than 30 days from the date of filing; the Bill of Entry got deleted/purged.

(vi) In terms of proviso to Regulation 2(3) of Bill of Entry (Electronic Integrated Declaration) Amendment Regulations, 2017 issued vide Notification No. 26/2017-Customs (N.T.) dated 31.03.2017, where the proper officer is satisfied with the reasons of delay, he may waive off the charges referred to in the second proviso to sub-

section (3) of section 46 of the Customs Act, 1962 (52 of 1962).

(vii) In terms of Notification No. 40/2012-Customs (N.T.), as amended, Additional/Joint Commissioner has been appointed as the proper officer for considering the requests for waiver of late charges under second proviso to sub-section (3) of section 46 of the Customs Act, 1962.

(viii) In the present case, the proper officer after considering the facts of the case has reduced the late fine charges.

(ix) Para-6 of Circular No. 12/2017-Customs dated 31.03.2017 states inter alia Board expects that this power is invoked in cases where there is no wilful delay in filing the BoE so that waiver is granted only in bonafide cases.

(x) Public Notice No. 79/2017 dated 16.11.2017 inter alia states 'Therefore, where the importer files an Advance/Prior Bill of Entry, it will be responsibility of the importer to get the same regularized in the ICES within 24 hours of entry inward. In case, it's not automatically regularised by the system, such cases should be brought to the notice of Asst./Deputy Commissioner of Customs (Docks/CF5s). However, if it is found that advance / prior Bill of Entry is deleted/purged due to the non-regularization of the same due to inaction on the part of the importer, waiver of late filing charges shall not be considered. Thus, the proper authority has rightly denied full waiver from late fine.

(xi) As discussed above the late fine charge in the present case was not waived fully as the same was imposed due to inaction on the part of importer and not because of any system error/malfunction of the ICEGATE system. Hence, Commissioner (Appeal)'s order to set aside the late fee without considering the true facts is in violation of Circular No. 12/2017-Customs dated 31.03.2017.

(xii) The Learned Appellate Authority appears to have erred in citing case-laws which are irrelevant, inappropriate and out of context with respect to the instant case-matter/issue.

7. The respondent has submitted that they had filed the advance Bills of Entry Nos. 6484530, 6484128, 6483643 and 6485158 all dated 01.12.2021, well in time; however, the said advance Bills of Entry were unavailable in the ICEGATE system owing to an error in the system. It is further submitted that they were not able to follow up with the system due to the outbreak of the COVID-19 during the said period; therefore, the Ld. Commissioner (Appeals) has considered their submissions and rightly set aside the late fine imposed. Accordingly, the respondent prays for rejection of the appeals filed by the Revenue.

8. Heard both sides and perused the appeal records.

9. We observe that in this case, the respondent had filed four advance Bills of Entry, viz. Bills of Entry Nos. 6484530, 6484128, 6483643 and 6485158 all dated 01.12.2021, but the same were not available in the ICEGATE system, due to an error in the system. Under such circumstances, the respondent cannot be

held responsible for disappearance of the aforesaid advance Bills of Entry due to a systemic error. We find that the Ld. Commissioner (Appeals), considering the submissions made by the respondent, has rightly set aside the late fine imposed. We do not find any infirmity in the order passed by the Ld. Commissioner (Appeals) in setting aside the fine.

10. We also take due note of the fact that the delay, if any, happened at a time when the entire country was suffering from the outbreak of the COVID-19 pandemic. The Hon'ble Supreme Court in *RE: COGNIZANCE FOR EXTENSION OF LIMITATION* held that the period from 15.03.2020 to 28.02.2022 should not be considered for the purpose of counting the period of limitation. Thus, we find that the delay, if any, that occurred during this period cannot be considered as a delay on the part of the respondents in filing the said Bills of Entry.

11. In view of the above, we find that the Ld. Commissioner (Appeals) has rightly set aside the late fine imposed on the respondent. Consequently, we do not find any infirmity in the said order.

12. Resultantly, we uphold the impugned order passed by the Ld. Commissioner (Appeals) and reject the appeals filed by the Revenue.

(Operative part of the order was pronounced in open court)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)