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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75631 of 2026

(Arising out of Order-in-Appeal No. Kol/Cus/Port/DC/441/2026 dated 16.06.2026 passed by the Commissioner of Customs (Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Berger Painst India Limited, **: Appellant**
Plot No. 4, CF Block, New Town,
Action Area IC, Kolkata-700156

VERSUS

Commissioner of Customs, **: Respondent**
(Appraising Refund Section) (Port),
Custom House, 15/1, Strand Road, Kolkata-700001

APPEARANCE:

Shri Sudhir Mehta, Sr. Advocate
Smt Riya Debnath, Advocate for the Appellant
Shri S. Debnath,
Shri S. Chitkara, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75927/ 2026

DATE OF HEARING: 21.07.2026
DATE OF PRONOUNCEMENT: 22.07.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The facts of the case are that M/s. Berger Paint India Limited, Kolkata (hereinafter referred as the appellant) has imported mixed xylene isomers, which were classified under Customs Tariff Heading 2902.44.00 of the Customs Tariff Act 1975, which it purchased on the high seas. The bill of entry for warehousing was filed and assessed, and the goods were warehoused. The said assessment orders were not challenged, and goods were allowed to be warehoused, and thereafter the appellant filed an ex-bond bill of Entry. Upon payment of the duty, the goods were released for home consumption. The goods were imported and cleared between the years 2011 and 2014.

1.1. Thereafter, the officers of DRI Delhi initiated an investigation into the classification of goods being xylene isomers, which, according to the officers of the department, should be properly classified under the Customs Tariff reading 2707. There was a duty difference of Rs.7,44,493/- which the appellant was asked to deposit pending investigation, and **the appellant deposited the same 'under protest'** in the year 2014. Thereafter, on 25 October 2017, the adjudicating authority confirmed the demand and passed an order for appropriating the deposit as duty.

1.2. The appellant preferred an appeal to the CESTAT, which allowed the appeal of the appellant on 30 January 2025 and set aside the Demand Confirmation Order. The Department preferred an appeal to Supreme Court which was dismissed on 17-09-2025.

1.3. The Appellant claimed refund of the amount deposited by them during the course of investigation. Out of the amount deposited, 7.5% of the duty confirmed has been treated as pre-deposit and rest of the amount was considered as deposited during investigation. As the amount deposited during investigation was retained without authority of law, the Appellant prayed for refund of the amount deposited along with interest @12%. However, the lower authorities have granted the refund along with interest @6%. Aggrieved against the denial of 12% interest, the Appellant has filed this appeal.

2. In support of their claim for 12% interest, the Appellant cited the decision of the Hon'ble Supreme Court in the case of ITC Ltd. Reported in 179 ELT 15. The Appellant also relied upon the decision of the decision of the Calcutta High Court in *Madura Courts Private Limited versus Commissioner of Central Excise, reported in 285 ELT 188 (Kolkata),* wherein while refunding the amount deposited during investigation, interest at the rate of 12% per annum was directed to be paid for the delayed refund. The Appellant submits that the decision of the Hon'ble Calcutta High Court in the case of Rajendra Kumar Jain Vs Commissioner of Customs (Port), Kolkata & Others, wherein vide order dated 09.05.2024, the Hon'ble High Court has categorically held that interest @12% is payable on such cases. Accordingly, the Appellant prayed for granting interest @12% and allow their appeal.

3. The Ld. Authorized Representative reiterated the findings in the impugned order. The Ld. Authorized Representative submits that the amount deposited has been refunded along with 6% interest. The Ld. A.R submits that various High Courts have granted only 6% in such cases. Accordingly, he submits that the department has rightly paid interest @6%.

4. Heard both sides and perused the appeal documents.

5. We find that the issue involved in the present appeal is whether interest paid @6% to the

Appellant in the impugned order is legally sustainable, in respect of the delayed refund of the amount deposited during the course of investigation or interest is payable @12% as claimed by the Appellant, in such cases?

5.1. We find that the Appellant has relied upon the decision of the Hon'ble Calcutta High Court in the case of Rajendra Kumar Jain Vs Commissioner of Customs (Port), Kolkata & Others, wherein vide order dated 09.05.2024, the Hon'ble High Court has set aside the order of this Tribunal granting interest @6% and has categorically held that interest @12% is payable on delayed refund of the amount deposited during the course of Investigation. We have gone through the Order passed by the Hon'ble High Court. In that case, the department has paid interest @6% while refunding the amount deposited during the course of investigation. On appeal, the Hon'ble High Court has categorically held that there is no statutory provision available at present fixing the rate of interest for the refund of the amount deposited during investigations. Till such time a statutory provision granting interest is notified in law, interest @12% is payable. For ready reference, the relevant portion of the order passed by the Hon'ble High Court is reproduced below:

> 9. Learned senior standing counsel for the respondents now states that the Government of India, Ministry of Finance (Department of Revenue), New Delhi has issued a notification No. 70/2014/Customs (N.T.) dated 12.08.2014 in exercise of powers conferred under Section 129EE of the Customs Act, 1962 fixing the rate of interest @ 6% per annum for the purposes

> of the said Section and, therefore, the same rate of interest is applicable. We do not find any substance in this submission of learned senior standing counsel for the respondents. Reason is that the said notification is dated 12.08.2014. The rate of interest on delayed refund of pre-deposit shall be governed by the law laid down by Hon'ble Supreme Court in ITC Limited (supra) as well as a coordinated Bench of this Court in Madura Coats Private Limited (supra) till a statutory provision in the Act was enacted and a notification was issued thereunder providing for rate of interest on delayed refund of pre-deposit. With effect from the date on which the provision came in the statute, it shall hold the field and the rate of interest shall be governed by it. Since the period in question is prior to the notification providing for rate of interest on delayed refund of pre-deposit, issued under the Act, therefore, the case of the appellant shall be governed by the law laid down by the coordinate Bench of this Court in Madura Coats Private Limited (supra).

5.2. From the decision of the Hon'ble High Court extracted above, we find that the Hon'ble High Court has categorically held that interest @12% is payable in respect of refund of amount deposited during the course of investigation. In this regard, we find that there are different decisions by various High Courts on the issue of refund of the amount deposited during the course of investigation. However, the decision of the Jurisdictional High is binding on the Tribunals falling within it's jurisdiction, as held by the Larger Bench in the case of ***Collector of Central***

***Excise Chandigarh vs. Kashmir Conductors - 1997 (96) E.L.T. 257 (Tribunal)**,* wherein it is held as under:

> *"10. The question as to how the Tribunal should proceed in the face of conflicting decisions of High Courts has been considered in M/s. Atma Steels P. Ltd. and others v. Collector of Central Excise, Chandigarh reported in l984 (17) E.L.T. 331 wherein the Larger Bench consisting of five Members held that, in view of its All India jurisdiction and peculiar features, the Tribunal cannot be held bound to the view of any one of the High Courts, but has the judicial freedom, to consider the conflicting views, reflected by different High Courts, and adopt the one considered more appropriate to the facts of a given case before the Tribunal. The Tribunal also indicated that this should be so, irrespective of the fact whether one particular assessee was within the jurisdiction of a specified High Court or the original adjudicating authority was located there.*
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> *10.2 In a recent decision of the Tribunal in the case of Madura Coats v. CCE, Bangalore reported in 1996 (82) E.L.T. 512, it has been held that the decision of a particular High Court should certainly be followed by all authorities within the territorial jurisdiction of that High Court and that the authorities in another State are not bound to follow the views taken by a particular High Court in the absence of a decision by the jurisdictional High Court with regard to constitutionality of a provisions. The Tribunal has held that since the adjudication of vires of a provision of a statute or Notification is outside the jurisdiction of the Tribunal and the jurisdictional High Court i.e., the High Court having jurisdiction over the authority and the assessee, has not struck down the provision or Notification as*

> *ultra vires, the Tribunal has to follow the same and the assessee is entitled to take the stand that he is entitled to the benefit of the particular provision or Notification since the jurisdictional High Court has not struck it down, even though some other High Court may have done so. In case the conflict of decisions among High Courts does not relate to vires of any provision or Notification, it has been held that the Tribunal has to proceed in accordance with the decision in Atma Steels P. Ltd. in the light of the decision of Supreme Court in the East India Commercial Company case i.e. where the jurisdictional High Court has taken a particular view on interpretation or proposition of law, that view has to be followed in cases within such jurisdiction. If the jurisdictional High Court has not expressed any view in regard to the subject matter and there is conflict of views among other High Courts, then the Tribunal will be free to formulate its own view in the light of Atma Steels P. Ltd. case; however, there is a decision of only one High Court in regard to disputed interpretation or proposition of law, the Tribunal is bound to follow that order since it is not at liberty to disregard the solitary High Court decision."*

Thus, respectfully following the decision of the Larger Bench, we hold that the decision of the Hon'ble Calcutta High Court dated 09.05.2024, in the case of the case of Rajendra Kumar Jain Vs Commissioner of Customs (Port), Kolkata & Others, is squarely applicable to the facts and circumstances of this case. Accordingly, we hold that the Appellant is eligible for interest @12% in this case. Thus, we hold that the impugned order sanctioning refund @6% is legally not sustainable and hence we set aside the same.

6. In view of the above findings, we hold that the appellant is entitled to the interest @12%, for the

refund of the amount deposited during the course of investigation. The appeal filed by the Appellant is allowed on the above terms.

(Order Pronounced in Open court on 22.07.2026)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP