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

REGIONAL BENCH – COURT NO. 1

Customs Early Hearing Application No. 75115 of 2026
(on behalf of Appellant)
In
Customs Appeal No. 75217 of 2026

(Arising out of Order-in-Appeal No. 256-258/CUS/CCP/2025 dated 10.12.2025 passed by the Commissioner (Appeals), C.G.S.T., C.X. and Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Saraogi Udyog Private Limited **: Appellant / Applicant**
Centre Point, Suite No. 212,
2nd Floor, 21, Hemant Basu Sarani,
Kolkata – 700 001, West Bengal

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
Bhubaneswar Commissionerate,
C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007, Odisha

WITH

Customs Early Hearing Application No. 75116 of 2026
(on behalf of Appellant)
In
Customs Appeal No. 75218 of 2026

(Arising out of Order-in-Appeal No. 256-258/CUS/CCP/2025 dated 10.12.2025 passed by the Commissioner (Appeals), C.G.S.T., C.X. and Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Saraogi Udyog Private Limited **: Appellant / Applicant**
Centre Point, Suite No. 212,
2nd Floor, 21, Hemant Basu Sarani,
Kolkata – 700 001, West Bengal

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
Bhubaneswar Commissionerate,
C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007, Odisha

WITH

Customs Early Hearing Application No. 75117 of 2026
(on behalf of Appellant)
In
Customs Appeal No. 75219 of 2026

(Arising out of Order-in-Appeal No. 256-258/CUS/CCP/2025 dated 10.12.2025 passed by the Commissioner (Appeals), C.G.S.T., C.X. and Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Saraogi Udyog Private Limited **: Appellant / Applicant**
Centre Point, Suite No. 212,
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VERSUS

Commissioner of Customs (Preventive) **: Respondent**
Bhubaneswar Commissionerate,
C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007, Odisha

APPEARANCE:

Shri Subrata Mukherjee, Advocate,
Shri I. Banerjee, Advocate,
Shri Anupam Kumar Jha, Consultant,
For the Appellant / Applicant

Shri Tariq Sulaiman, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NOs. 75874-75876 / 2026

DATE OF HEARING / DECISION: 13.07.2026

ORDER:

Considering the reason given by the appellant-applicant that the issue involved in these appeals is covered by the decision of this Bench in the case of *M/s. Kai International Private Limited v. Commissioner of Customs (Preventive), Bhubaneswar [Final Order Nos. 75440-75441 of 2026 dated 25.03.2026 in Customs Appeal Nos. 75944 & 75945 of 2025 – CESTAT, Kolkata],* the request of the appellant for early hearing of these appeals is allowed.

1.1. As the issue involved is in a narrow compass, with the consent of both the sides, the appeals itself are taken up for final disposal.

2. Briefly stated, the facts of the case are that M/s. Saraogi Udyog Private Limited [hereinafter referred to as the "appellant"] is engaged in the business of import and trading of coal and is a regular importer holding a valid Importer Exporter Code (IEC), undertaking imports through Paradeep Port. During the relevant period, the appellant imported bulk consignments of Steam Coal of South African origin through various vessels and filed the corresponding Bills of Entry for clearance of the quantities declared in the respective Import General Manifests (IGMs).

3. The aforesaid Bills of Entry were duly assessed by the Customs authorities and the appellant cleared the manifested quantities of coal upon payment of the applicable customs duties. At the time of such clearance, no dispute was raised by the Department with regard to the quantity, classification or valuation of the imported goods.

3.1. Subsequently, upon clearance of the manifested quantity, it was noticed that a marginal quantity of coal continued to remain in the port stockyard. According to the appellant, such excess quantity arose due to unavoidable and inherent characteristics associated with bulk cargo, including variations in moisture content, differences in draught survey and physical weighment, which are beyond the control of the importer and are well-recognized phenomena in the trade.

4. In order to regularize the clearance of the said excess quantity, the appellant approached the jurisdictional Customs authorities and, after obtaining the requisite permission and completion of joint stack survey in terms of the applicable Public Notice and

Standard Operating Procedure governing clearance of excess dry bulk cargo, filed Supplementary Bills of Entry for the excess quantity of coal. The said Supplementary Bills of Entry were duly assessed to duty by the proper officer and the appellant discharged the applicable customs duty thereon. While assessing the Supplementary Bills of Entry, however, the Department additionally levied late filing fee under Section 46(3) of the Customs Act, 1962 read with Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, by computing the alleged delay from the date of filing of the original Import General Manifest relating to the vessel. The appellant paid the said late filing fee under protest in order to secure clearance of the goods and to avoid further port charges and deterioration of the cargo.

5. Thereafter, the appellant requested the jurisdictional Customs authorities to amend the Supplementary Bills of Entry under Section 149 of the Customs Act, 1962 and to waive the late filing fee, contending, inter alia, that the excess quantity formed part of the very same imported consignment, that the variation was attributable solely to the peculiar nature of bulk cargo, and that there was neither any deliberate delay nor any mala fide intention on its part in filing the Supplementary Bills of Entry. The jurisdictional Assistant Commissioner, vide separate speaking orders as specified in the table *supra*, rejected the appellant's request holding, inter alia, that the excess quantity could not be treated as part of the original manifested consignment, that the appellant had neither sought provisional assessment nor intimated the Department regarding any possible

quantity variation at the relevant time, and that the levy of late filing fee under Section 46(3) of the Customs Act, 1962 was legally sustainable. The details thereof have been tabulated below: -

Sl. No.	Original BE No./Date	IGM No./Date	Name of Vessel	Type of Cargo	Quantity (in MT) in original BE	Supplementary BE No./Date	Quantity in Suppl. BE (in MT)	Late Fee imposed (in Rs.)
1	3927119, 3927346, 3927162 and 3927343 all dated 27.12.2022	2330600 dated 23.12.2022	MV STAR ANGIE	Steam Coal (non-coking) of South African origin	85900	123362 dated 23.02.2024	4611	4155000
2	8077958, 8077962 both dated 29.09.2023	2355683 dated 25.09.2023	MV SAFEEN AL AMAN		49233	2263592 dated 23.02.2024	2516.43	1455000
3	5865837, 5866810 both dated 09.05.2023	2342848 daed 04.05.2023	MV STRATTON		40000	2263610 dated 23.02.2024	1996.8	2282683

5.1. Aggrieved thereby, the appellant preferred appeals before the Ld. Commissioner (Appeals), C.G.S.T., C.X. and Customs, Bhubaneswar, who, by the common impugned Order-in-Appeal, upheld the rejection orders and affirmed the levy of late filing fee. The Ld. Commissioner (Appeals), inter alia, held that the excess quantity of coal could not be regarded as forming part of the manifested cargo, that the levy of late filing fee under Section 46(3) of the Customs Act, 1962 was mandatory, that the appellant had failed to establish sufficient cause for the delayed filing of the Supplementary Bills of Entry, and that the excess quantity ought to have been dealt with in accordance with the statutory provisions governing uncleared goods.

5.2. Against the said order, the appellant has preferred the present appeals before this Tribunal.

6. The Ld. Counsel appearing on behalf of the appellant submitted that the levy of late filing fee under Section 46(3) of the Customs Act, 1962 is wholly unsustainable in the facts and circumstances of the present case. It was contended that the excess quantity of coal arose solely on account of the inherent characteristics of bulk cargo, such as variation in moisture content, differences in draught survey and physical weighment, which are natural and unavoidable incidents of importation of bulk commodities and are entirely beyond the control of the importer. It was further submitted that there was neither any deliberate delay nor any mala fide intention on the part of the appellant in filing the Supplementary Bills of Entry and that the same were filed only after obtaining due permission from the jurisdictional customs authorities in accordance with the prescribed procedure. It is submitted that the issue is no longer res integra and stands squarely covered in favour of the appellant by the decision of this Tribunal in *M/s. Kai International Private Limited v. Commissioner of Customs (Preventive), Bhubaneswar [Final Order Nos. 75440-75441 of 2026 dated 25.03.2026 in Customs Appeal Nos. 75944 & 75945 of 2025 – CESTAT, Kolkata]*. Accordingly, the Ld. Counsel for the appellant prayed for setting aside the impugned orders and allowing the appeals, with consequential relief.

7. The Ld. Authorized Representative for the Revenue reiterated the findings and reasoning contained in the impugned Order-in-Appeal and prayed for dismissal of the appeals.

8. Heard both the sides and perused the records of the case.

9. The short issue arising for consideration in the present appeals is whether the levy of late filing fee under Section 46(3) of the Customs Act, 1962 read with Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, in respect of the Supplementary Bills of Entry filed for clearance of excess quantity of imported coal, is legally sustainable in the facts and circumstances of the present case, or not.

10. At the outset, it is pertinent to note that it is an undisputed position that the original Bills of Entry covering the entire manifested quantity declared in the Import General Manifest were filed within the prescribed time and duly assessed by the Customs authorities, whereafter the appellant cleared the imported cargo on payment of the applicable customs duties. The Supplementary Bills of Entry came to be filed only upon discovery of a marginal excess quantity of coal remaining in the port stockyard after completion of clearance of the manifested cargo, pursuant to the requisite permission granted by the jurisdictional Customs authorities and after conduct of the prescribed joint stack survey. The record further reveals that the excess quantity arose on account of factors inherently associated with bulk cargo, such as variation in moisture content, differences in physical weighment and draught survey, all of which are recognised commercial incidents in the importation of bulk commodities like coal and are manifestly beyond the control of the importer. In such circumstances, it cannot be said that the appellant had deliberately withheld the filing of the Supplementary Bills of Entry or had acted with any mala fide intention so as to attract the consequences contemplated under Section

46(3) of the Act. Significantly, there is no allegation whatsoever of suppression of facts, misdeclaration, undervaluation or any attempt to evade payment of customs duty. On the contrary, the appellant discharged the applicable customs duty on the excess quantity immediately upon assessment of the Supplementary Bills of Entry. The levy of late filing fee, therefore, appears to have been imposed solely on account of circumstances arising from the peculiar nature of bulk cargo imports, without adequately considering whether the appellant had sufficient cause for not filing the Supplementary Bills of Entry earlier. I find substance in the appellant's contention that the authorities below have proceeded on an unduly technical interpretation of Section 46(3), while overlooking the practical realities governing importation of bulk cargo as well as the absence of any revenue loss to the exchequer.

10.1. I also find that the issue arising in the present appeals stands squarely covered by the decision of this Bench in the case of *M/s. Kai International Private Limited v. Commissioner of Customs (Preventive), Bhubaneswar [Final Order Nos. 75440-75441 of 2026 dated 25.03.2026 in Customs Appeal Nos. 75944 & 75945 of 2025 – CESTAT, Kolkata],* wherein, under identical facts and circumstances, it has been held as under: -

> *"7. I find that the appellant has imported consignments of steam coal and filed the original Bills of Entry Nos. 121907 dated 27.09.2023 and 8085274 dated 30.09.2023 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 in the port. Subsequently, the appellant had requested for amendment of the IGM and*

amendment of the earlier Bills of Entry filed by them. The appellant were 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 bearing Nos. 121907 on 27.09.2023 and 8085274 on 30.09.2023.

8. From the facts and evidence available on record, I 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, on 27.09.2023 and 30.09.2023. 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]

8.1. 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.*

9. 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."

9.1. 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.

10. 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.

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 walve 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."*
>
> *10.1. I find that the ratio of the decision cited supra is squarely applicable to the facts of the case on hand.*
>
> *11. In view of the foregoing, I hold that the late fees imposed on the appellant in the present cases are not sustainable. Consequently, I set aside the same."*

10.2. The ratio laid down in the aforesaid decision is squarely applicable to the facts and circumstances of the case on hand as the factual matrix before me is substantially identical, inasmuch as the Supplementary Bills of Entry came to be filed only upon ascertainment of excess quantity of bulk cargo arising due to natural and unavoidable variations, without any allegation of suppression, fraud or deliberate delay attributable to the importer. No distinguishing feature, either on facts or in law, which would warrant taking a view different from that already adopted by this Tribunal, has been brought on record by the Revenue.

11. Therefore, in view of the discussion in the foregoing paragraphs and respectfully following the ratio laid down in the aforesaid decision, I hold that the levy of late filing fee in the present case is unsustainable. Consequently, the impugned Order-in-Appeal cannot be sustained and is accordingly set aside.

12. In the result, the appeals filed by the appellant are allowed, with consequential relief, if any, in accordance with law.

(Dictated and pronounced in the open court)

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

Sdd