

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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76415 of 2025

(Arising out of Order-in-Appeal No. KOL/CUS/Port/KS/350/2024 dated 29.05.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Agarwal Graphic Machinery Private Limited : Appellant
108, Patparganj Industrial Area,
Delhi – 110 092

VERSUS

Commissioner of Customs (Port) : Respondent
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Rathindra Nath Banerjee, Advocate,
Smt. Sukanya Ray, Consultant,
For the Appellant

Shri Faiz Ahmed, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NO. 77781 / 2025

DATE OF HEARING: 11.11.2025

DATE OF DECISION: 26.11.2025

ORDER: [PER SHRI R. MURALIDHAR]

The appellant is agitated by the fact that they have not been granted the interest in respect of the encashed FDs by the Revenue. After the basic amount was granted by the Adjudicating authority vide Order-in-Original dated 29.05.2023, they filed their request letter to grant the interest. Vide Order-in-Original dated 27.07.2023, they were granted the interest of Rs.55,635/- for the 26 days' delay after the three months period of filing the refund claim. Being

aggrieved they filed their appeal before the Commissioner (Appeals), who vide the impugned Order-in-Appeal dated 29.05.2024, dismissed their appeal. Therefore, the appellants are before the Tribunal.

2. The Ld. Counsel and the Consultant appearing for the appellant submit the chronological event of the case by way of the following Table:

DATE	PARTICULARS
17.01.2008	The DRI, EZU conducted search at the godown of the Appellant and seized 56 nos. of old and used offset printing Machines and were kept in appellant's godown against Supardnama.
09.07.08	Provisional released allowed on seized goods except 26 seized machines which were clandestinely removed by appellant
09.05.2008	One FIR under Section 400/34 of IPC was lodged by DRI at Anant Bihar Police Station in Delhi for clandestine removal of 24 seized machines from the place of seizure
15.01.2009	The DRI Authority issued show cause notice bearing DRI F. No. 04/KOL/APP/2008 dated 15.01.2009 in respect of 26 offset printing machine out of 56 No seized machines.
06.11.2009	Hon'ble Delhi High Court dismissed the quashing petition filed by the appellant against the FIR.
04.03.2010	The appellant preferred settlement application before the Customs and Central Excise Settlement Commission (Principal Bench), New Delhi in respect of the said DRI show cause notice dated 15.01.2009 against 26 nos. of offset machines.
21.04.2010	Hon'ble Supreme Court admitted the SLP and directed deposit of Rs.32,68,725/-

	with the Registry in the form of a fixed deposit and the appellant deposited Rs.32,68,725/- vide Demand Draft No. 003761 thereafter upon verification of compliance, Hon'ble Supreme Court granted stay till final disposal of the matter.
03.05.2010	As directed by SC, appellant deposited Rs.32,68,725/-in FD in the name of Hon'ble Register ,SC, in respect of the goods value amount of Rs 1,55,42,831/-
11.08.2010	The Customs and Central Excise Settlement Commission (Principal Bench) vide its Final Order No. F=893/CUS/10-SC(PB) quantified and disposed of the application filed by the appellant.
22.05.2012	DRI, Kolkata issued Show Cause Notice No. DRI F. No. 04/KOL/APP/2008 Pt. Agarwal-II/1856 in respect of 39 machines (27 seized +11 past clearances +1 live consignment). The appellant contested the said SCN
17.01.2014	Commissioner of Customs (Port) passed Order-in-Original No. KOL/CUS/PORT/07/2014 confirming the demand of total differential customs duty Rs.1,00,42,831/- and total penalty Rs.1,55,12,831/- under Sections 114(a), 112(a) and 112(b). Balance amount of Rs 73,87,504/-was appropriated after deducting the BG and surety paid earlier along with liability in term of Settlement Order (Rs.25,80,240/-)
27.01.2016	CESTAT, Kolkata granted stay in appeal filed against Order-in-Original dated 17.01.2014 vide Stay Order No. FO/A/75099-75101/2016
07.11.2017	Hon'ble Supreme Court (Criminal Appeal No. 1907 of 2017 arising out of SLP (Crl) No. 2216/2010) allowed the appeal, set aside the Delhi High Court order, and quashed FIR No. 244/2008. Since an

	adjudication in the case has been completed by the order of the Settlement Commission, ordered that the amount lying in deposit in the registry of this court after deduction/adjustment of the duty, interest, penalty, etc and all other dues, duly certified by the Customs Authority will be refunded to the appellants.
08.08.2019	Commissioner of Customs, Kolkata withdrew the amount of Rs.32,68,725/- along with accumulated interest culminating to amount to Rs.60,75,515/- from the Registry of the Hon'ble Supreme Court. The Department vide Order-in-Original No. KOL/CUS/PORT/07/2014 dated 17.01.2014 had already confirmed the demand of total differential customs duty Rs 1,00,42,831/- and total penalty Rs 1,55,12,831/- under Sections 114(a), 112(a) and 112(b)
23.02.2022	CESTAT, Kolkata disposed of appeal against O-I-O No. KOL/CUS/PORT/07/2014 vide Final Order No. 75131-75136/2022, setting aside the O-I-O on jurisdictional grounds in light of Hon'ble Supreme Court judgment in Canon India; appeal allowed with consequential relief.
03.02.2023	Appellant submitted refund application for Rs.1,30,17,176/- after adjustment
29.05.2023	Deputy Commissioner sanctioned Rs.1,30,17,176/- vide O-I-O No. KOL/CUS/DC/ARS(PORT)/326/20236 dated 29.05.2023 (Refund Order No. (108),
26.06.2023	Appellant filed application before Commissioner of Customs (Port), Kolkata claiming interest of Rs.14,58,123/- on Rs.60,75,515/- (from the date of realisation i.e., 08.08.2019 by the Department till the refund sanctioned

	i.e., 29.05.2023) on the principle of banking fixed deposit without preferring appeal against O-I-O No. KOL/CUS/DC/ARS(PORT)/326/20236 dated 29.05.2023
25.07.2023	Again vide O-I-O No. KOL/CUS/AC/ARS (PORT)/408/2023 the Department sanctioned only Rs.55,635/- as interest (26 days @6% p.a.) vide Refund Order No.144 ignoring appellant's claim of Rs.14,58,123/-calculating from the application dated 03.02.2023 till the date of refund i.e., 29.05.2023
Department Appeal against Additional O-I-O No. KOL/CUS/AC/ARS (PORT) /408/2023 dated 25.07.2023	Department reviewed the additional O-I-O No. KOL/CUS/AC/ARS (PORT)/408/2023 dated 25.07.2023 submitting there is no provision of filing supplementary refund application under section 27 of CA'62. The appellant did not challenge the refund order O-I-O No. KOL/CUS/DC/ARS (PORT)/326/20236 dated 29.05.2023 and neither preferred appeal against it where interest was not sanctioned.
29.05.2024	Commissioner (Appeals), Customs House, Kolkata vide O-I-A No. KOL/CUS/Port/KS/350/2024 dated 25.07.2023 upheld the lower authority's order O-I-O No. KOL/CUS/AC/ARS(PORT)/408/2023 dated 25.07.2023 for the sanctioned interest amount of Rs 55,635/-
28.11.2024	The appellant filed an appeal before the CESTAT, EZB, Kolkata against Order-in-Appeal along with Condonation of Delay Petition.

2.1. It is submitted that as per the directions of the Hon'ble Supreme Court, the appellant deposited Rs 32,68,725/- by way of FD on 03.05.2010, in respect of the Show Cause Notice bearing DRI F.NO. 04/KOL/APP/2008 dated 15.01.2009 in respect of 26 offset printing machine out of 56 seized machines. The appellants after their unsuccessful litigation at the High Court, approached the Settlement Commission, who had finalized the issue vide their Order No.F-893/Cus/Cus/10-SC (PB) dated 11.08.2010, finalizing the total liability @ Rs.25,80,240/-.

2.2. Subsequently one more SCN proceeding was initiated for another set of imported goods. After the confirmation of the Duty vide the Adjudication order, the issue was pending before the CESTAT. In the meanwhile, the Hon'ble Supreme Court vide their Order dated 07.11.2017, noted that the issue in respect of the first SCN stood settled vide the Order dated 11.08.2010 of the Settlement Commission. The Hon'ble Supreme Court further directed that the amount due on account of duty, interest, penalty is to be retained out of the deposit made and the balance is to be returned to the appellant.

2.3. It is also submitted by the appellant that though as per the directions of the Hon'ble Supreme Court the Revenue was required to retain Rs.25,80,240/- out of the FD of Rs.32,68,725 and was required to return the balance FD amount, along with the accrued interest, to the appellant, this was not done. On 08.08,2019, the Commissioner of Customs, Kolkata encashed the entire amount [the basic FD plus the accrued interest] of Rs.60,75,515, whereas they were entitled for only Rs.25,80,240 out of the total amount of the FD.

2.4. The subsequent proceedings initiated against the appellant got closed with the CESTAT passing the Final Order No.75131-15136 of 2022 dated 23.02.2022, with the appeal filed by the appellant being allowed. No further appeal was preferred by the Revenue. Therefore, the proceedings have reached finality. In respect of the second SCN proceedings getting closed on 23.02.2022, the appellant had deposited Rs.95,21,901/-, which was required to be refunded to the appellant as a consequential relief.

2.5. Vide the Order-in-Original dated 25.07.2023, the adjudicating authority granted the refund of Rs.95,21,901/- + Rs.60,75,515/- deducting from therein Rs.25,80,240/-, thus granting refund of Rs.1,30,17,176/-. This refund of Rs.1,30,17,176/- was granted without any interest. After their reminder letter to this effect, vide Order-in-Original dated 27.07.2023, the interest of Rs.55,635/- for the delay of 26 days over the three month's period, but no interest was granted for the excess amount encashed by the Revenue in 2019. Their appeal was dismissed by the Commissioner (Appeals), without actually appreciating the factual details.

2.6. In view of the foregoing, the appellant prays that they may be granted the interest on the additional amount realized by the Revenue in 2019.

3. The Ld. Authorized Representative representing the Revenue submits that at the time of encashment, the second proceedings had commenced against the appellant, wherein more Rs.1.04 crores worth demand along with interest and penalty got imposed on the appellant; as per the Order of the Supreme Court, the Revenue encashed the FD. It is submitted that after the second litigation got closed, the deposits

made during that proceedings plus the encashed amount was added and the amounts due on account of the first litigation was deducted and the net balance amount was refunded to the appellant, which fully meets the direction given by the Hon'ble Supreme Court. He also submits the requisite interest of Rs.55,635/- for the delayed refund was also granted to the appellant. Hence, he justifies the rejection of the appellant's request for any further interest in this case. He prays that the appeal may be dismissed.

4. We have heard both the sides. We have gone through the Appeal papers, the submissions made and the chronology of the events unfolding in respect of the two proceedings initiated against the appellant.

5. From the above Table, it gets clarified that the first SCN proceedings were initially directly agitated before the Hon'ble High Court, which has dismissed the Appeal. On further Appeal before the Hon'ble Supreme Court, the appellants were directed to create one FD for Rs.32,68,725/-, which was done by them on 03.05.2010. The appellants approached the Settlement Commission, who vide their Final Order No.F.393/Cus/10-SC(PB) dated 11.08.2010, arrived at the liability of the appellant @ Rs.25,80,240/-. Therefore, in respect of the first SCN, the only recoverable amount was Rs.25,80,240/- by the Revenue. When the Supreme Court passed their order dated 07.11.2017, they have noted the issue getting resolved by way of Settlement Commissions's order dated 11.08.2010. The relevant portion of the Hon'ble Supreme Court's Order is reproduced below:

"6. That apart, the materials on record indicate that an adjudication in the present case has been completed by an order of the Settlement Commission. The duty, interest, penalty, etc. have been quantified and ordered to be deducted from the amount lying in deposit with the Commissioner of Customs. to be If the matter has viewed from the aforesaid perspective, we find that there is no live cause of action in the instant matter to proceed any further.

7. Consequently and in the light of the above we allow this appeal; set aside the order of the High Court and quash the impugned proceedings registered and numbered as FIR No.244/2008 under Section 409 read with Section 34 IPC at Police Station Anand Vihar, Delhi.

8. Registry The amount lying in deposit in the of this Court after deduction/adjustment of the duty, interest, penalty, etc. and all other dues, duly certified by the Customs Authority will be refunded to the appellants forthwith."

5.1. From the above portion of the Hon'ble Supreme Court's Order, it is clear the Revenue is entitled only for the Duty, Interest and Penalty as decided by the Settlement Commission and this amount is to be adjusted against the deposit made [by way of FD], while granting the refund. There is no other authority given to the Revenue to make any adjustment towards any other dues on account of any other litigation in the Order.

5.2. We find that the as on 08.08.2019, the FD has grown to Rs.60,75,515/- [also admitted in the Order-in-Original granting the refund]. Out of this amount, the Revenue could have withdrawn only Rs.25,80,240/-. In the first place, only partial withdrawal should have been made towards this amount. However, if it was not permitted to be done by the bank, after encashing Rs.60,75,515/-, the balance amount of Rs.34,95,275/- should have been immediately refunded to the appellant, as has been directed by the Hon'ble Supreme Court at paragraph 8 of their Order. Since this is the normal FD amount to be returned after deducting the dues of the Revenue, there would have been no necessity for the appellant to file any separate refund claim for this amount. Non-refunding of the amount of Rs.34,95,275/-, would give rise to two situations. Firstly, this amount could have been used by the appellant for their commercial transactions; secondly, it would have cut down their interest burden on the borrowed amounts from the bank. We hold that the retaining of the Rs.34,95,275/- from 08.08.2019 to 29.05.2023 by the Revenue was without any authority of law.

6. The Adjudicating authority in his Order in Original dated 29.05.2023, has given the following Table for arriving at the amount refunded to the appellant:

Amount Deposited by Applicate vide DD	95,21,901.00
Amount transferred by Hon'ble Supreme Court	60,75,515.00
Total Deposit	1,55,97,416.00
Liability in term of Settlement Order	25,80,240.0 0
Amount refundable	1,30,17,176.0 0

7. Clubbing of Rs.60,75,515/- pertaining to the first SCN along with the deposit made for the second SCN of Rs.95,21,901 and deducting the due of the first SCN amounting to Rs.25,80,240 is not the correct procedure at all. The refund accruing on account of the second SCN is independent of the refund accruing on account of the first litigation. As per us, the refund of Rs.34,95,275/- became eligible on 08.08.2019, by which time the litigation in respect of the SCN had already reached finality on 11.08.2010 [Settlement Commissioner's Order] and the directions of the Hon'ble Supreme Court vide their order dated 07.11.2017. Once the refund is payable on 11.08.2010 itself, the Revenue would be required to pay the interest for the period for which they have illegally held back the same, i.e. from 08.08.2019 till 29.05.2023.

7.1. The issue as to whether any interest is payable for the amount held back by the Revenue was decided by the Hon'ble Supreme Court in the case of *Sandvik Asia Ltd. v. CIT, Pune - 2007 (8) S.T.R. 193 (S.C.)* wherein it was held that :-

"45. The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992, dated 30-4-1997. Interest on delayed payment of refund was not paid to the appellant on 27-3-1981 and 30-4-1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assessee, the Department first adjusts the amount paid towards interest so that the principal amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of assessee's funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assesseees. Very large number of assesseees are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesseees amounts of interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs. 40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

COMPENSATION :

46. The word 'Compensation' has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows :

"An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; something given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

47. There cannot be any doubt that the award of interest on the refunded amount is as per the statute provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the Court has to take all relevant factors into consideration while awarding the rate of interest on the compensation.

48. This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior to. A copy of this judgment will be forwarded to the Hon'ble

Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially.

49. By allowing this appeal, the Income-tax Department would have to pay a huge sum of money by way of compensation at the rate specified in the Act, varying from 12% to 15% which would be on the high side. Though, we hold that the Department is solely responsible for the delayed payment, we feel that the interest of justice would be amply met if we order payment of simple interest @ 9% p.a. from the date it became payable till the date it is actually paid. Even though the appellant is entitled to interest prior to 31-3-1986, Learned Counsel for the appellant fairly restricted his claim towards interest from 31-3-1986 to 27-3-1998 on which date a sum of Rs. 40,84,906/- was refunded.

50. The assessment years in question in the four appeals are the assessment years 1977-78, 1978-79, 1981-82 and 1982-83. Already the matter was pending for more than two decades. We, therefore, direct the respondents herein to pay the interest on Rs. 40,84,906 (rounded off to Rs. 40,84,900) simple interest @ 9% p.a. from 31-3-1986 to 27-3-1998 within one month from today failing which the Department shall pay the penal interest @ 15% p.a. for the above said period."

[Emphasis supplied]

7.2. Since for all the pre-deposits and deposits being made during the litigation are being ordered to be refunded with interest @ 6% per annum in the present dispensation by the High Courts and Tribunals, in the present case, we order the Revenue to calculate the interest @ 6% for the period from 08.08.2019 till 29.05.2023 on the amount of Rs.34,95,275/- and grant the same to them based on our present order, without them having to make any special request to grant this interest.

8. As the appellant has been deprived of the lawful refund for many years and no interest has been paid for a long period, the Revenue authorities are directed to grant the interest within 8 weeks from the date of receipt of this order.

9. The appeal stands allowed as per the above terms.

(Order pronounced in the open court on 26.11.2025)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd