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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76508 of 2025

(Arising out of Order-in-Original No. KOL/CUS/PR.COMMISSIONER/ DBK/PORT/41/2025 dated 17.09.2025 passed by the Principal Commissioner of Customs (port), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal)

M/s. Terai Overseas Private Limited : Appellant
(IEC – 0293021031)
East India House, 30B, British Indian Street, 2nd Floor,
Esplanade, Kolkata – 700 069

VERSUS

Commissioner of Customs (Port) : Respondent
2nd Floor, Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Sudhir Mehta, Senior Advocate,
Ms. Sweety Jha, Advocate,
For the Appellant

Shri Subrata Debnath, Authorized Representative,
Shri Sameer Chitkara, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NO. 77801 / 2025

DATE OF HEARING: 11.11.2025

DATE OF DECISION: 27.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by M/s. Terai Overseas Private Limited, East India House, 30B, British Indian Street, Kolkata (hereinafter referred to as the "appellant") against the Order-in-Original No. KOL/CUS/PR.COMMISSIONER/DBK/PORT/41/2025da ted17.09.2025 passed by the Ld. Principal Commissioner of Customs (Port), Kolkata, wherein, in compliance with CESTAT Final Order No. 75487/2025

dated 28.02.2025, the Ld. Principal Commissioner has allowed conversion of shipping bills from Duty Exemption Entitlement Certificate (DEEC) Scheme to Drawback Scheme and determined admissible Drawback claim on the basis of classification of the goods determined by him. Aggrieved by the classification of the exported goods done by the Ld. Principal Commissioner and consequent fixing of drawback to the said goods exported, the appellant has filed this appeal.

2. The appellant submits that the drawback is to be given by the Custom authorities and shipping bill is to be treated as drawback claim. The appellant has mentioned that all the goods exported by the appellant are readymade garments and they are all eligible for classification under a single Tariff Heading and the drawback claim is to be fixed accordingly. However, in the impugned order, the Ld. adjudicating authority has classified the goods under various subheadings such as CTHs 6102, 6103, 6104, 6105 and 6106, without giving any proper reason for such classification and determined different rates of drawback.

2.1. It is the case of the appellant that the Department has not conducted any Test on the goods exported by them to ascertain the constituent materials; as per the description of the goods mentioned by them in the shipping bills, all the goods exported were 'ready-made garments' classifiable under the CTH 6102. It is their argument that the ld. adjudicating authority has not granted any opportunity to them before reclassifying the goods under the aforesaid CTHs.

2.2. Thus, the appellant prayed for allowing the drawback available to 'readymade garments' by classifying all the goods exported under the CTH 6102, for which the drawback rate eligible would be 10% of the FOB value subject to a maximum of Rs. 45/- per piece.

3. The appellant has also claimed interest for the delay in granting the drawback eligible to them. In this regard, the appellant narrated the sequence of events that ultimately led to the sanction of the drawback by passing the Order-in-Original No. KOL/CUS/PR.COMMISSIONER/DBK/PORT/41/2025 dated 17.09.2025. It has been submitted that their application for conversion of DEEC Shipping Bills into the Drawback Shipping Bills was not considered by the department immediately; out of the 34 shipping bills, the shipping bills mentioned at Sl. Nos. 1-8 of table in para 6.3 below, were already covered by the order of the Customs Excise and Gold (Control) Appellate Tribunal [CEGAT] vide Order No. A-1135/Kolkata/2001 dated 16.10.2001, wherein the Tribunal had directed conversion of the shipping bills; however, the Order No. KOL/CUS/COMMISSIONER/PORT/72/2018 dated 17.10.2018 was passed whereby the ld. adjudicating authority has rejected the claim of the exporter and denied the sanctioning of the drawback claims.

3.1. It is also submitted that, the CESTAT vide Final Order No. 75487 of 2025 dated 28.02.2025 held that the appellant is entitled for conversion of the shipping bills in question from DEEC scheme to drawback scheme and directed the adjudicating authority to finalize the drawback claim of the appellant in accordance with law; thereafter vide Order-in-Original

No. KOL/CUS/PR.COMMISSIONER/DBK/PORT/41/2025 dated 17.09.2025, the adjudicating authority allowed the conversion of the Shipping Bills in terms of the CESTAT Order dated 28.02.2025, while determining the drawback amount as indicated at Table-4 and Table-5 therein. However, he has not granted any interest for the delayed sanction of the drawback.

3.2. The appellant submits that from a perusal of the reasons given for non-conversion of the shipping bills by the lower authority would reveal that the appellant had in fact submitted all the documents required for conversion of the shipping bills; thus, the delay in conversion of the shipping bills cannot be attributed to be on the part of the appellant; the Department has delayed the conversion of the shipping bills and finally allowed the conversion vide the order dated 17.09.2025, on the basis of same set of documents furnished by them earlier.

3.3. Thus, it is the appellant's stand that they cannot be held responsible for the delay in conversion of the shipping bills in question and accordingly, have prayed for allowing interest thereon, from the date of the Order passed by the Tribunal allowing conversion of the 8 shipping bills, i.e., from 16.10.2001, in respect of all the 34 shipping bills.

4. The Ld. Authorized Representatives of the Revenue reiterated the findings in the impugned order. They submit that the adjudicating authority has classified the goods exported, on the basis of the details available in the shipping bills; as the goods were originally not exported under the claim of drawback, no tests were conducted. Thus it is their

submission that the adjudicating authority has no other option to classify the goods.

4.1. Regarding the claim of interest by the appellant, the Ld. Departmental Representatives submit that the shipping bills were finally allowed conversion into drawback shipping bills vide order dated 17.09.2025 only; there is no delay in granting the drawback from the date of conversion of the shipping bills. Accordingly, it is the Revenue's contention that the claim of interest by the appellant is not supported by the facts on record.

5. Heard both sides, perused the case records and the submissions made by both the sides.

6. We observe that the ld. adjudicating authority has already granted drawback to the Appellant as per the CESTAT Final Order No. 75487/2025 dated 28.02.2025. The appellant has challenged the rate of drawback determined by the Ld. adjudicating authority. It is the appellant's claim that all the goods exported by them were readymade garments and thus, are all eligible for classification under a single Tariff Heading and the drawback claim is to be fixed accordingly. However, in the impugned order, the ld. adjudicating authority has classified the goods under various subheadings such as CTHs 6102, 6103, 6104, 6105 and 6106, without giving any proper reason for such classification and determined different rates of drawback.

6.1. We find that the Department has not conducted any Test on the goods exported by them to ascertain the constituent materials, as the goods were not originally not exported under the claim of drawback. Thus, we find that the classification of the goods

exported have to be decided on the basis of the description of the goods mentioned by them in the shipping bills.

6.2. In this regard, we have perused the direction of this Tribunal in the Final Order dated 28.02.2025. The relevant paragraph of the aforesaid CESTAT order is reproduced below: -

> *"20. We further take note that it is the duty of the adjudicating authority under which chapter heading the case of the assessee falls for claim of drawback and same is to be finalized accordingly."*

6.3. From the above, it is evident that as directed by CESTAT, the adjudicating authority had to decide the chapter heading where the goods exported by the appellant would fall and then, on that basis, the eligible drawback was to be determined. The classification of the goods determined by the adjudicating authority along with the drawback rates fixed vide the impugned order are reproduced below:

Sl. No.	Shipping Bill No.	CTH	Drawback Serial No.	DBK Rate	Quantity (Pcs.)	Net Weight (Kgs.)	Drawback admissible (in Rs.)
1	DEEF-1128	610444.02	2706	Rs.22.2per Kg	6000	1425.00	31635.00
2	DEEF-1126	610444.02	2706		4100	563.75	12515.25
3	DEEF-1129	610444.02	2706		1900	376.80	8364.96
4	DEEF-1130	610444.02	2706		250	143.00	3174.60
5	DEEF-1131	610444.02	2706		1500	508.40	11286.48
6	DEEF-1127	610444.02	2706		5760	1954.8	43396.56
7	DEEF-1237	610452.00	2706		26000	3575.00	79365.00
8	DEEF-1236	610444.02	2706		12500	3250.00	72150.00
9	DEEF-212	610443.01	2706		10000	1130.00	25086.00
10	DEEF-213	610443.01	2706		5000	1491.00	33100.20
11	DEEF-214	610443.01	2706		5000	1491.00	33100.20
12	DEEF-215	610343.00	2705	Rs. 14.8 per Kg	35000	875.00	12950.00
13	DEEF-242	610230.01	2704	10% of FOB (max. Rs. 45/piece)	15900	3955.92	715500.00 [calculated for Rs. 45/pc.]
14	DEEF-243	610443.01	2706	Rs. 22.2 per Kg	5000	1491.00	33100.20
15	DEEF-244	610443.01	2706		5250	1565.55	34755.21
16	DEEF-245	610230.01	2704	10% of FOB (max. Rs. 45/piece)	12500	3110.00	562500.00 [evaluated for Rs. 45/pc.]
17	DEEF-924	610444.02	2706	Rs. 22.2 per Kg	10000	2488.00	55233.60
18	DEEF-925	610444.02	2706		10000	2488.00	55233.60
19	DEEF-926	610444.02	2706		4250	1267.35	28135.17
20	DEEF-927	610444.02	2706		10000	2408.00	53457.60

21	DEEF-928	610443.03	2706		4250	1267.35	28135.17
22	DEEF-929	610443.03	2706		4250	1257.35	27913.17
23	DEEF-409	610444.02	2706		2125	641.30	14236.86
24	DEEF-410	610444.02	2706		4900	1214.00	26950.80
25	DEEF-558	610250.01	2704	10% of FOB (max. Rs. 45/piece)	6240	2117.70	280800.00 [evaluated for Rs. 45/pc.]
26	DEEF-559	610520.01	2707(B)	2% of FOB (max. Rs. 8/piece)	8600	2042.50	67551.92 [evaluated for 2% of FOB]
27	DEEF-560	(a) 610620 (b) 610433 (c) 610453	2706	Rs. 22.2 per Kg	2000	590.00	13098.00
28	DEEF-561*	610620.01	--	N/A	3000	1637.50	NIL
29	DEEF-562	610443.01	2706	Rs. 22.2 per Kg	1225	472.50	10489.50
30	DEEF-563	610230.01	2704	10% of FOB (max. Rs. 45/piece)	2250	585.00	101250.00 [evaluated for Rs. 45/pc.]
31	DEEF-677	610444.02	2706	Rs. 22.2 per Kg	2125	641.20	14234.64
32	DEEF-670*	610620.02	--	N/A	5100	1268.80	NIL
33	DEEF-1128*	611010.02	--	N/A	6100	3965.00	NIL
34	DEEF-1130*	611010.02	--	N/A	2576	1684.40	NIL
	TOTAL						**24,88,699.69**

*** The corresponding Shipping Bills pertain to goods where no Drawback is admissible as per their declared classification as per P.N. 5/1995.**

6.4. From the above, it is evident that as directed by CESTAT, the adjudicating authority had to decide the chapter heading where the goods exported by the appellant would fall and then, on that basis, the eligible drawback was to be determined. However, we find that the ld. adjudicating authority has not given any specific reasoning to classify the goods exported under different subheadings such as CTHs 6102, 6103, 6104, 6105 and 6106. The submission of the Appellant is that all the goods exported were 'knitted ready-made garments' classifiable under the CTH 6102. Before going into the classification, we would like to examine the different rates of drawback available for the goods classifiable under the Chapter 61.

7. In the impugned order, the ld. adjudicating authority has mentioned the drawback rates for goods covered under Chapter 61, as per Public Notice No. 5/1995 dated 15.06.1995, which is reproduced below for ready reference: -

CTH	Drawback Sl. No.	Description of Goods	Rate of Drawback
6101	2701	Articles of Apparel and Clothing accessories, Knitted or Crocheted	Rate to be fixed on application from individual manufacturers/ exporters in accordance with Drawback Rules
6102	2704	Knitwear and articles of hosiery including ready-made garments made wholly or mainly from knitted/hosiery fabrics of cotton and/or cellulosic yarn	10% of FOB value subjectto a maximum of Rs. 45/- per piece
6103	2705	Knitwear and articles made wholly from hosiery/knitted fabrics of acrylic fibres/yarn	Rs. 14.80 per Kg
6104	2706	All wool knitwear and articles of hosiery made from woolen worsted yarn of above 18 BMS counts	Rs. 22.20 per Kg.
6105	2707(B)	Hand knitted cotton crocheted blouse, pullovers, and cardigans, if dyed	2% of FOB value subject to a maximum of Rs. 8/-per piece

8. We find that, in the present case, the goods exported being 'knitted readymade garments', have to be classified under any of the Tariff Sub-headings of Chapter 61 mentioned in the Table *supra*. In this regard, we find that the description of the goods have been listed in the CESTAT Final order dated 28.02.2025. For ready reference, the descriptions of the goods pertaining to the 34 shipping bills as observed therefrom are as under: -

S. NO.	SHIPPING BILL	DATE	QTY. (pcs)	DESCRIPTION
1	DEEF-1128	27-03-95	6000	Gents shirts
2	DEEF-1126		4100	Ladies dress sets
3	DEEF-1129		1900	Ladies coat
4	DEEF-1130		250	Ladies dress
5	DEEF-1131		1500	ladies dress
6	DEEF-1127		5760	Ladies long coat
7	DEEF-1237	29-03-95	13000	Ladies dress
8	DEEF-1236		12500	Ladies long coat
9	DEEF-212	07-08-95	10000	Ladies dress
10	DEEF-213		5000	Velvet dress
11	DEEF-214		10000	Ladies dress
12	DEEF-215		35000	Bermuda
13	DEEF-243	08-08-95	15900	Ladies long coat
14	DEEF-244		5000	Power loom Ladies dress(ladies dresses made of high quality velvet fabric
15	DEEF-245		5200	Ladies dress
16	DEEF-247		12500	Ladies long coat
17	DEEF-924	30-06-95	10000	Ladies long coat
18	DEEF-925		10000	Ladies long coat
19	DEEF-926		4250	Ladies dress
20	DEEF-927		10000	Ladies long coat
21	DEEF-928		4250	Ladies dress
22	DEEF-929		4250	Ladies dress
23	DEEF-409	14-06-95	2125	Ladies dress
24	DEEF-410		4900	Ladies long coat
25	DEEF-558	19-05-95	6240	Ladies coat
26	DEEF-559		8600	Gents polyester
27	DEEF-560		2000	Ladies dress
28	DEEF-561		3000	Ladies blouse
29	DEEF-562		1025	Ladies dress
30	DEEF-563		2250	Polyester coat
31	DEEF-677	22-06-95	5100	Power loom ladies dress
32	DEEF-670		2125	Power loom wind dress
33	DEEF-1128	30-12-94	6100	Power loom wind cheater
34	DEEF-1130	06-12-97	2576	Power loom wind cheater

8.. From the table reproduced under paragraph 6.3 of this Order, whereby the ld. adjudicating authority has classified the goods under various sub-headings, we find that most of the goods have been classified under the sub-headings of CTHs 6103, 6104, 6105 as well as 6106. However, we do not find any reasons being recorded by the Ld. adjudicating authority in the impugned order so as to justify the said classifications adopted by him. Therefore, we find merit in the submission of the appellant that the ld. adjudicating

authority has erred in classifying the said goods under the above chapter sub-headings without verifying the nature of the goods or conducting any verification therefor. In the absence of any evidence to substantiate the classification of the impugned goods under the said Chapter Headings, we agree with the submission of the appellant that these classifications adopted by the ld. adjudicating authority in the impugned order are factually incorrect.

9. From the descriptions of the goods as contained in the concerned shipping bills, it can be observed that the said goods, mostly including 'Gents shirts', 'Ladies dress', 'Ladies long coat', 'Ladies blouse', etc., are in the nature of knitted readymade garments, which squarely fall under the CTH 6102 [corresponding to Drawback Sl. No. 2704] as mentioned in the Public Notice No. 5/1995, which deals with 'ready-made garments'. Under the said entry pertaining to CTH 6102, the drawback rate would be 10% of FOB value subject to a maximum of Rs. 45/- per piece. In fact, we find that the ld. adjudicating authority, with respect to some of these goods under the shipping bills in question, has adopted the classification under CTH 6102. Having considered the documentary evidence available on record, we are of the view that all the knitted readymade garments exported by the appellant under the shipping bills in question are classifiable under the CTH 6102 and the drawback rate for the said goods are to be fixed as per the entry corresponding to the CTH 6102 [pertaining to Drawback Sl. No. 2704], as mentioned in paragraph 7 of this order (supra).

9.1. As far as the classification adopted by the adjudicating authority under CTH 6110, primarily in respect of 'Wind Cheaters' exported, we agree with the classification adopted by the Ld. adjudicating authority. Therefore, we uphold the classification and consequent calculation of drawback arrived at in the impugned order in respect of these goods.

10. In view of the above findings, we hold that the goods covered under the 34 shipping bills [as listed in the Table at paragraph 8 of this Order] are required to be classified as under for the purpose of computation of eligible amount of drawback: -

(i) Sl. Nos. 1 to 32: CTH 6102.

(ii) Sl. Nos. 33 and 34: CTH 6110.

11. Regarding the claim of interest made by the appellant, we observe that the appellant had applied for conversion of DEEC shipping bills into the Drawback shipping bills. Out of the 34 shipping bills, shipping bill numbers 1-8 were already covered by the order of the Tribunal dated 16.10.2001, wherein the Tribunal directed conversion of the shipping bills.

> *"We find that the samples have been drawn and due verification of the nature of fabric and the market value etc. can be got conducted and drawback claim determined under appropriate All Industry Rate schedule. We find no force in the reasons for denying the conversion of the S/Bills into drawback claim of S/Bills. The order is therefore, required to be set aside. We order accordingly. The conversion request is allowed and that drawback amount available should be determined by the proper officer of the Customs House, to submit after giving an opportunity to the exporter, to submit such collateral evidence as may be available with them to substantiate the claim. The order Impugned is set aside, appeal allowed as regards the conversion of shipping bills allowed only and matter disposed of in the above terms"*

11.1. We observe that after the CEGAT dated 16.10.2001, the proper officer has not initiated any action for conversion of the DEEC shipping bills into drawback shipping bills. Accordingly, the appellant filed Writ Petition No. 1720 of 2003 in the Hon'ble High Court at Calcutta, which was disposed of vide Order dated 16.07.2018, wherein the Hon'ble High Court has made the following observations: -

> *"In such circumstances, the authority will decide the application for grant of duty draw back made by the petitioner, in accordance with law. All points raised by the parties in the present writ petition are kept open to be decided by the authorities. Needless to say that, the authorities will afford a reasonable opportunity of hearing to the petitioner. It is at liberty to hear such other parties and examine such documents as it thinks appropriate. It will pass a reasoned order which it will communicate to the parties forthwith thereafter. It is expected that, the entire exercise is completed within three months from the date of communication of this order to the authorities."*

11.2. Thus, as directed by the Hon'ble High Court, the proper officer passed the Order dated 17.10.2018, wherein he has rejected the request for conversion of all the 34 shipping bills. The said rejection was set aside by this Tribunal vide Final Order No. 75487 of 2025 dated 28.02.2025.

11.3. We find that the CESTAT vide Final Order No. 75487 of 2025 dated 28.02.2025 finally held that the appellant is entitled for conversion of the shipping bills in question from DEEC scheme to drawback scheme and directed the adjudicating authority to finalize the drawback claim of the appellant in accordance with law. Thereafter, vide Order-in-Original No. KOL/CUS/PR.COMMISSIONER/DBK/PORT/41/2025

dated 17.09.2025 impugned herein, the adjudicating authority allowed the conversion of the Shipping Bills in terms of the CESTAT Order dated 28.02.2025. However, he has not granted any interest for the delayed sanction of the drawback.

11.4. Thus, from the above, it is clear that after the CEGAT Order dated 16.10.2001, the appellant had filed the Writ Petition in the Hon'ble Calcutta High Court, which was disposed by the Hon'ble High Court vide Order dated 16.07.2018. Hence, during the pendency of the said Writ petition in the Hon'ble Calcutta High Court, the Department could not initiate any action. Thus, we are of the opinion that the Department cannot be faulted for not taking any action till the Writ petition was disposed by the Hon'ble High Court. However, we also find that finally the Department has allowed the conversion of the shipping bills into drawback shipping bills vide the Order dated 17.09.2025, on the basis of same set of documents furnished by the appellant earlier. Thus, we agree with the submission of the appellant that they cannot be held responsible for the delay in conversion of the shipping bills in question after 17.10.2018, on which date the order rejecting the request for conversion of the said shipping bills was passed. Thus, we observe that the delay if any on the part of the Department can only be attributed after three months from passing of the order dated 17.10.2018 only.

11.5. Drawback is sanctioned in respect of the goods exported. In the present case, there is no doubt that the exports have taken place during the period 1995 to 1997. Initially, the appellant had not exported the goods under the claim of drawback. Hence, the

drawback cannot be claimed from the date of export (or) the date of Let Export Order. However, when the appellant applied for conversion of the DEEC shipping bills to drawback shipping bills, they became eligible for the drawback from the date on which the shipping bills were converted into drawback shipping bills. In this regard, we do not agree with the submission of the Revenue that finally all the shipping bills were allowed conversion only by the Order dated 17.09.2025 and the delay, if any, in sanctioning the drawback is to be calculated only from this date. It is a fact on record that 8 shipping bills were allowed conversion by the Tribunal's Order dated 16.10.2001. We find that the appellant has applied for conversion of the remaining shipping bills also along with these 8 shipping bills. However, for various reasons, which cannot be attributed to the appellant, the conversion of all the 34 shipping bills was delayed and finally, all the 34 shipping bills (including the 8 shipping bills), were together allowed by the Revenue on the basis of the same set of documents furnished earlier. Therefore, under these circumstances, we agree with the submission made by the appellant that the date of allowing conversion of the 8 shipping bills by the CEGAT has to be considered as the 'relevant date' for computation of the interest in respect of these 8 shipping bills. Accordingly, in respect of these 8 shipping bills, the appellant should be eligible for interest after three months from the date of passing of the Tribunal's Order dated 16.10.2001.

11.5.1. However, we find that for the remaining shipping bills no formal conversion was allowed and there was no drawback eligible to the appellant. We note that the order for rejecting the conversion was passed on 17.10.2018, but this order was set aside

and conversion of these shipping bills into drawback shipping bills was allowed, on the same set of facts as existed on 17.10.2018, by the order of the Tribunal dated 28.02.2025. Accordingly, we hold that the appellant should be eligible to interest after three months from the date of passing of the order dated 17.10.2018.

11.6. In this regard, we refer to the decision of this Tribunal in the case of *Vedanta Ltd. v. Commissioner of Customs (Ports), Kolkata [Final Order No. 75010 of 2025 dated 07.01.2025 in Customs Appeal No. 76391 of 2024 (CESTAT, Kolkata)],* wherein interest has been granted for delay in finalization of provisional assessment by the department. We observe that the said decision to grant interest for the delay in finalization of provisional assessment has been upheld by the Hon'ble Orissa High Court vide Order dated 27.10.2025. We observe that the same ratio would be applicable to this case, as the delay in conversion of the shipping bills, to the extent as observed by us hereinabove, was not on the part of the appellant. The relevant part of the decision cited supra is reproduced as under: -

> *"38. Again has been observed time and again by High Court and Tribunal, the Revenue failed to follow the directions of the Commissioner (Appeals) contained in the OIA dated 11.10.2010. Again Revenue failed follow the directions of the Tribunal, when the Final Order was passed on 28.07.2022. Thus, it is observed that the excess Export Duty @ Rs.250 PMT has been retained by the Revenue without any explicable reason for a very long time, making the appellant run from pillar to post and to make regular follow up. This has resulted in holding back of substantial amount, putting financial pressure on the appellant. Admittedly, due to this inordinate delay, the appellant would have been compelled to borrow from banks on payment of interest.*

39. Therefore, we hold that the Ranbaxy judgement of the Hon'ble Supreme Court would be squarely applicable to the facts of the present case. This is a case where the erroneously excess Export Duty was collected from the appellant during the period 2007-2008. After following up from 2009 onwards for proper rectification of the assessment order and litigation at various forum, finally the refund was granted on 5.9.2024. In terms of Ranbaxy judgement, the appellant would be eligible interest on the refund amount granted to them.

40. It would also be relevant to refer to the Apex Court's judgement in the case of Sandvik Asia Ltd vs Commissioner Of Income Tax-I, Pune & Ors - Order dated 27 January, 2006

The Hon'ble Supreme Court framed the following questions :

A. Whether in view of binding decisions of this Court the respondents are estopped from urging that compensation as claimed by the appellant is not payable by them? And therefore whether the Bombay High Court erred in allowing them to urge such a contention in the impugned judgment?

B. Assuming for the sake of argument that there is no provision in the Income-tax Act, 1961 ("the Act") for grant of such compensation, this Court had upheld the view of the Gujarat & Madhya Pradesh High Courts that compensation should be granted (whether called interest or otherwise) and hence the impugned judgment was contrary to a decision of this Court and ought to be reversed?

E. Whether the High Court ought to have held that sections 240 and 244 of the Act refer to 'refund of any amount', which phrase clearly includes any amount (including interest) due by the Income Tax department to the assessee, and hence the appellant was entitled to interest on the delay in the payment of amounts due from the Income-tax department ?

Provisions of Income Tax Act :

243. Interest on delayed refunds.

(1) If the Income-tax Officer does not grant the refund

(a) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividend, within three months from the end of the month in which the total income is determined under this Act, and

(b) in any other case, within three months from the end of the month in which the claim for refund is made under this Chapter, the Central Government shall pay the assessee simple interest at (twelve) per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

Explanation: If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

244. Interest on refund where no claim is needed. (1) Where a refund is due to the assessee in pursuance of an order referred to in section 240 and the Income-tax Officer does not grant the refund within a period of [three months from the end of the month in which such order is passed], the Central Government shall pay to the assessee simple interest at [twelve] per cent per annum on the amount of refund due from the date immediately following the expiry of the period of [three] months aforesaid to the date on which the refund is granted.

We have given our anxious and thoughtful consideration on the elaborate submissions made by counsel appearing on either side. In our opinion, the High Court has failed to notice that in view of the express provisions of the Act an assessee is entitled to compensation by way of interest on the delay in the payment of amounts lawfully due to the appellant which were withheld wrongly and contrary to the law by the Department for an inordinate long period of up to 17 years.

In our view, there is no question of the delay being 'justifiable' as is argued and in any event if the revenue takes an erroneous view of the law, that cannot mean that the withholding of monies is 'justifiable' or 'not wrongful'. There is no exception to the principle laid down for an allegedly 'justifiable'

withholding, and even if there was, 17 (or 12) years delay has not been and cannot in the circumstances be justified.

At the initial stage of any proceedings under the Act any refund will depend on whether any tax has been paid by an assessee in excess of tax actually payable to him and it is for this reason that Section 237 of the Act is phrased in terms of tax paid in excess of amounts properly chargeable. It is, however, of importance to appreciate that section 240 of the Act, which provides for refund by the Revenue on appeal etc., deals with all subsequent stages of proceedings and therefore is phrased in terms of 'any amount' becoming due to an assessee.

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 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 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.

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.

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.

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.

41. In the present case, as has been observed in the earlier paragraphs, the delay in taking up the issue for re-assessment by the Revenue was to the tune of more than 14 years. Hence, we hold that the decision of the Hon'ble Supreme Cour in the cited case of Sandvik Asia is squarely applicable."

11.7. Thus, by following the ratio of the decision cited supra, we hold that the appellant would be eligible for the drawback along with the applicable rate of interest @6%, in respect of the goods exported vide all the 34 shipping bills, in terms of our observations supra.

11.8. It is pertinent to note that the Circular No. 36/2010-Cus. dated 23.09.2010 prescribes a three-month time limit from the date of Let Export Order for conversion of shipping Bills. The relevant portion of the said Circular is reproduced below: -

"The conversion may be allowed subject to the following further conditions:

(a) The request for conversion is made by the exporter within three months from the date of the Let Export Order (LEO). …."

12. Thus, our findings, on the issue of interest, are summarized as under: -

(i) Out of the 34 shipping bills, the Tribunal had allowed conversion of 8 shipping bills, vide its Order dated 16.10.2001. We find that these 8 shipping bills were also formally converted into drawback shipping bills only in the order dated 17.09.2025. Since these 8 shipping bills were allowed conversion vide the Tribunal's Order dated 16.10.2001, we hold that these 8 shipping bills should be deemed to have been converted w.e.f. 16.10.2001. Thus, the appellant would be eligible for interest for the drawback sanctioned in respect of these 8 shipping bills, from three months after the passing of the CEGAT Order dated 16.10.2001 till the date of sanction of drawback.

(ii) In respect of the remaining shipping bills, the delay if any on the part of the Department can only be attributed from three months after passing of the order dated 17.10.2018 only whereby the claim of the appellant was rejected. Thus, the appellant would be eligible for interest for the drawback sanctioned in respect of the remaining shipping bills, from three months after the passing of the order dated 17.10.2018 till the date of sanction of drawback.

13. In view of the above discussions, we pass the following order:

(a) The goods covered under the 34 shipping bills in question [as listed in the Table at paragraph 8 of this Order] are classified as under for the purpose of computation of eligible amount of drawback: -

- Sl. Nos. 1 to 32: CTH 6102.
- Sl. Nos. 33 and 34: CTH 6110.

(b) All the goods covered under the shipping bills mentioned at Sl.Nos.1-32, wherein the goods are classified under the CTH 6102, are eligible for drawback as provided in the entry corresponding to the drawback serial number 2704, i.e., the drawback rate would be 10% of FOB value subject to a maximum of Rs. 45/- per piece. In respect of the remaining two shipping bills mentioned at Sl. Nos. 33 and 34, classified under the CTH 6110, the drawback rate fixed in the impugned order is upheld.

(c) The appellant would be eligible for interest on the drawback sanctioned in respect of the 8 shipping bills covered in the CEGAT order dated 16.10.2001, from three months after the passing of the CEGAT Order dated 16.10.2001 till the date of sanction of drawback.

(d) The appellant would be eligible for interest on the drawback sanctioned in respect of the remaining shipping bills, from three months after the passing of the order dated 17.10.2018 till the date of sanction of drawback.

14. The appeal filed by the appellant is disposed of on the above terms.

(Order pronounced in the open court on **27.11.2025**)

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

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

Sdd