



ALO Law Office- IDT Tax / Arbitration / Litigation

Date: 07.05.2025

CESTAT New Delhi- Customs restrictive interpretation was incorrect, and no misrepresentation or suppression was proven

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi, by order dated May 2, 2025, set aside the confiscation, duty demand, and penalties imposed via Order-in-Original dated 19.05.2010. The case centered on the import of a Bell 407 helicopter under exemption Notification No. 21/2002-Cus as amended by Notification No. 61/2007-Cus and the alleged misuse of the duty exemption granted under Condition No. 104.

Background of the Case:

- **Importer:** M/s. Sky Airways (a Division of G.S.I. Pvt. Ltd.)
- **Aircraft Imported:** Bell 407 Helicopter
- **Date of Import:** January 2008
- **Declared Use:** Non-Scheduled (Passenger) Services
- **Exemption Claimed:** Notification No. 21/2002-Cus (S.No. 347B) subject to Condition No. 104

The helicopter was imported for non-scheduled passenger services, and a statutory undertaking was provided that it would be used accordingly. However, the department alleged the aircraft was operated as a charter service, not a passenger service, by a third-party entity, violating the notification terms.

Allegations by Customs:

- The helicopter was allegedly given on dry lease to Trans Bharat Aviation Pvt. Ltd., which further sub-leased it for charter operations.

- It was claimed that since Sky Airways had a permit for only non-scheduled passenger services, use for charter services violated Condition No. 104 of the exemption notification.
- Resulting demands included:
 - Confiscation of the helicopter under Section 111(d) and 111(o)
 - Duty demand of over Rs. 3 crores
 - Penalty under Sections 112 and 114AA on the company and its directors

Key Legal Issues:

1. Whether the helicopter could be used for both Non-Scheduled Passenger and Charter Services under the same exemption notification?
2. Whether leasing the aircraft to another operator invalidated the importer's eligibility for the exemption?

CESTAT's Observations:

- The Tribunal found that the notification did not restrict usage to only one service (passenger or charter). It allowed both, as held in the V.R.L. Logistics Ltd. ruling (affirmed by Gujarat High Court).
- The DGCA had issued permits to Sky Airways for both passenger and charter services, and the statutory undertaking provided also referred to both.
- There is no requirement under the notification that the importer must personally operate the aircraft or cannot lease it.
- Leasing arrangements and sub-charters were not violative of the terms of exemption.
- The Commissioner's restrictive interpretation was incorrect, and no misrepresentation or suppression was proven.

Final Decision:

- Appeals of Sky Airways and its directors allowed in full.
- Order-in-Original dated 19.05.2010 was quashed.
- All confiscation, penalty, and duty demands were set aside.

Legal Significance:

This decision reinforces:

- That interpretative flexibility exists where exemption notifications are not explicit.
- The importance of harmonizing customs and civil aviation regulations.
- That leasing does not constitute violation unless specifically prohibited by the exemption conditions.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT New Delhi

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 419 of 2010

(Arising out of Order-in-Original No. 17/H.K.C./2010 dated 19.05.2010 passed by the Commissioner of Customs, (Preventive), New Custom House, New Delhi.)

M/s. Sky Airways

P-3, New CIT Road,
2nd Floor, Kolkata, 700073

....Appellant

Versus

Commissioner of Customs, Preventive

New Custom House,

New Delhi-110037

....Respondent

APPEARANCE:

Shri V.V. Gautam and Ms. Nitu Barik, Advocates for the Appellant
Shri Rakesh Kumar, Authorised Representative of the Department

WITH

Customs Appeal No. 420 of 2010

(Arising out of Order-in-Original No. 17/H.K.C./2010 dated 19.05.2010 passed by the Commissioner of Customs, (Preventive), New Custom House, New Delhi.)

Shri B.M. Agarwal,

Director, M/s. Sky Airways
P-3, New CIT Road,
2nd Floor, Kolkata, 700073

....Appellant

Versus

Commissioner of Customs, Preventive

New Custom House,

New Delhi-110037

....Respondent

APPEARANCE:

Shri V.V. Gautam and Ms. Nitu Barik, Advocates for the Appellant
Shri Rakesh Kumar, Authorised Representative of the Department

AND

Customs Appeal No. 421 of 2010

(Arising out of Order-in-Original No. 17/H.K.C./2010 dated 19.05.2010 passed by the Commissioner of Customs, (Preventive), New Custom House, New Delhi.)

Shri J.M. Lal,

C.E.O., M/s. Sky Airways
P-3, New CIT Road,
2nd Floor, Kolkata, 700073

....Appellant

Versus

**Commissioner of Customs, Preventive
New Custom House,**
New Delhi-110037

....Respondent

APPEARANCE:

None for the Appellant
Shri Rakesh Kumar, Authorised Representative of the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

DATE OF HEARING: April 08, 2025

DATE OF DECISION: May 02, 2025

FINAL ORDER NO's. 50566-50568/2025

JUSTICE DILIP GUPTA

Customs Appeal No. 419 of 2010 has been filed by M/s. Sky Airways¹ for setting aside the order dated 19.05.2010 passed by the Commissioner (Preventive). The order seeks to confiscate the Helicopter Bell 407 with an option to the appellant to redeem the same after payment of redemption fine under section 125 of the Customs Act, 1962². The order also seeks to confirm customs duty with penalty under section 112 of the Customs Act.

2. **Customs Appeal No. 420 of 2010** has been filed by B.M. Agarwal, Director of the appellant, to assail the order dated 19.05.2010 passed by the Commissioner that imposes penalty of Rs. 10 lakhs under section 112 read with section 140 of the Customs Act.

3. **Customs Appeal No. 421 of 2010** has been filed by J.M. Lal, Chief Executive Officer of the appellant, to assail the order dated

1 the appellant

2 the Customs Act

19.05.2010 passed by the Commissioner that imposes penalty of Rs. 10 lakhs under section 112 read with section 140 of the Customs Act.

4. The appellant was granted a no objection certificate to operate Non-Scheduled Air Transport Services (Passenger) and for acquisition of one Piper Seneca IV Aircraft for Non-Scheduled Air Transport Passenger Services on 31.08.2006 by the Ministry of Civil Aviation, Government of India. Subsequently, the Director General of Civil Aviation, Government of India, issued Permit No. 07/2007 dated 24.08.2007 to the appellant to operate Non-Scheduled Air Transport Services (Passenger/Cargo/Charter) with the aircraft listed in Appendix I. The relevant portion of the said permit dated 24.08.2007 is reproduced below:

"Permit To Operate Non-Scheduled Air Transport Services
(Passenger/Cargo/Charter)

Permission is hereby granted to Sky Airways
P-3 New C.I.T.
Road,
(2nd Floor), Kolkata-
700 073

To operate Non-Scheduled Air Transport Services
(Passenger/Cargo/Charter) with aircraft listed in the
Appendix I hereto.

Date: 24.08.2007

Dy. Director General
of Civil Aviation"

5. The appellant imported 1 Bell 407 helicopter and filed a Bill of Entry dated 11.01.2008 at New Customs House, IGI Aircraft, New Delhi for its clearance. The appellant claimed exemption under serial no. 347B of Notification No. 21/2002-Cus dated 01.03.2002³ as amended on 03.05.2007. In terms of Condition No. 104 of the Notification dated 01.03.2002, the appellant gave an undertaking

3 Notification dated 03.05.2007

dated 14.01.2008 to the Deputy Commissioner of Customs, New Custom House, IGI Airport, New Delhi that the Helicopter imported would be used only for providing Non-Scheduled Passenger Service, Non-Scheduled Charter Service as the case may be and that the appellant on demand shall, in the event of failure to use the imported goods for the specified purpose pay an amount equal to the duty payable on the said goods but for the exemption under the Notification dated 01.03.2002. The relevant portion of undertaking is reproduced below:

"We Sky Airways (A Division of G.S.I. Pvt. Ltd) P-3, New C.I.T. Road, 2nd Floor, Kolkata 700073, having Non Scheduled Air Transport Services No. 07/2007..... valid upto 23.08.2008 have imported Helicopter Bell 407 Value Rs.

We hereby undertaken as under:-

- a) That the goods imported shall be used for assembling or operate purpose only.
- b) The said air craft schedule be used only for providing non schedule (passenger) services non schedule charter services as the case may be and
- c) We shall pay on demand in the event of the failure to use the imported goods for the above specified purpose an amount equal to the duty payable on the said goods but for the exemption under this notification."

6. The exemption notification dated 03.05.2007, on which revolves the entire controversy, grants 'nil' rate of duty on import of aircraft for Non-Scheduled (Passenger) Services as well as Non-Scheduled (Charter) Services subject to Condition No. 104 that is required to be fulfilled by an importer of the aircraft for availing the benefit of the exemption notification. The relevant portion of the said exemption notification is reproduced below:

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public

interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2002-Customs, dated the 1st March, 2002 which was published in the Gazette of India, Extraordinary, vide number G.S.R. 118(E) of the same date, namely:-

In the said notification,-

(A) In the Table,-

- (i) xxxxxxxx
- (ii) after S. No. 347 and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely:-

S. No.	Chapter or Heading No. or Sub-heading No.	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
347B	8802(except 8802 60 00)	All Goods	Nil	-	104

xxxxxxx

(B) in the Annexure, after Condition No. 102 and the entries relating thereto, the following Conditions shall be inserted, namely:-

xxxxxxxxxx

104. (i) the aircraft are imported by an operator who has been granted approval by the competent authority in the Ministry of Civil Aviation to import aircraft for providing non-scheduled (passenger) services or non-scheduled (charter) services; and

(ii) the importer furnishes an undertaking to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, at the time of importation that:-

- a. the said aircraft shall be used only for providing non-scheduled (passenger)

services or non-scheduled (charter) services, as the case may be; and

- b. he shall pay on demand, in the event of his failure to use the imported aircraft for the specified purpose, an amount equal to the duty payable on the said aircraft but for the exemption under this notification.

Explanation. – for the purposes of this entry,-

- (a) 'operator' means a person, organization, or enterprise engaged in or offering to engage in aircraft operation;
- (b) 'non-scheduled (passenger) services' means air transport services other than scheduled (passenger) air transport services as defined in rule 3 of the Aircraft Rules 1937.
- (c) 'non-scheduled (charter) services' means services provided by a 'non-scheduled (charter) air transport operator', for charter or hire of an aircraft to any person, with published tariff, and who is registered with and approved by Directorate General of Civil Aviation for such purposes, and who conforms to the civil aviation requirement under the provision of rule 133A of the Aircraft Rules 1937;

Provided that such air charter operator is a dedicated company or partnership firm for the above purposes."

7. A perusal of Condition No. 104 would show that at the stage of import, the importer should have an approval from the competent authority in the Ministry of Civil Aviation⁴ and the importer should, at the time of importation, also furnish an undertaking to the customs authority that the aircraft will be used for the specified services,

4. MCA

namely Non-Scheduled (Passenger) Services or Non-Scheduled (Charter) Services. The undertaking should also state that the importer shall pay on demand, the duty payable, in the event of his failure to use the imported aircraft for the specified purpose.

8. It transpires that the appellant gave the Helicopter on lease to M/s Trans Bharat Aviation Pvt Ltd. but, subsequently, the lease deed was cancelled on 03.05.2008.

9. A show cause notice dated 03.08.2009 was issued to the appellant and the relevant portion is reproduced below:

"M/s Gandhmardhan Sponge Industries Private Limited (**M/S Sky Airways**, a Division of M/s G.S.I. Pvt. Ltd.), (hereinafter called to as "the importer") imported a helicopter Bell 407 Sr. No. **53598 and filed Bill of Entry No. 869994 dated 11.01.2008 with an assessable value Rs.11,84,52,537/-** from M/s Hennessy Aviation Services (Ltd) Unit 8 North Wood Court, Santry, Dublin 9, Ireland, under invoice dated 21.12.2007 for its clearance through M/s Parveen Munjal. The Aircraft was described as Bell 407 Helicopter having Sr. No. 53598 (Registration No. VT-TBE). The helicopter's country of origin was declared as Canada. **Clearance of helicopter was claimed under Notification No. 21/2002-Cus. Dated 1.3.2002, as amended by Notification No.61/2007-Cus dated 3.5.2007, under serial No.347B at 'nil' rate of duty. M/S Sky Airways (a Division of M/s G.S.I. Pvt. Ltd.) gave an undertaking dated 14.1.2008 to the Assistant Commissioner of Customs, as per the aforesaid notification. They also submitted a NOC to import dated 20.12.2007 issued by DGCA and Permit No. 7/2007 dated 24.08.2007 issued by the Ministry of Civil Aviation, to Operate Non-Scheduled Air Transport Services (Passenger).** The subject B.E was assessed to 'nil' rate of duty extending the benefit of above said exemption notification and the helicopter was accordingly cleared.

11. **From the investigations it emerges that the purpose of the helicopter for which it was imported, was for providing non-scheduled air transport (passenger) services.** As per Civil Aviation Requirement, Section 3, Air Transport Services 'C', part III, dated 8.10.1999, (Para 9.7),

the non-scheduled operators shall issue passenger tickets in accordance with the provisions of the Carriage by Air Act, 1972. These tickets shall stipulate the conditions of carriage including the liability of the operator, which shall be the same as applicable to the scheduled air transport operators. As per the statement and the records submitted by Col. C.S.Chaturvedi, and Sh. J. M. Lal, C.E.O. of M/S Sky Airways, it appears that they have issued no passenger tickets in respect of the subject aircraft.

Further, the Bell 407 helicopter was given to M/S Trans Bharat Aviation (P) Ltd, on lease who in turn gave the helicopter to M/S Prabhattam Aviation for further chartering.

17. M/S Sky Airways (a Division of M/S G.S.I. Private Ltd) through its Director Sh.B.M.Agarwal and C.E.O. Sh. J.M.Lal got NOC from the Ministry of Civil Aviation for the import of Bell 407 helicopter to be operated by their firm against NSOP permit No.07/2007, but instead of creating infrastructure and manpower of their own, they have given the above helicopter to M/S Trans Bharat Aviation (P) Ltd. It is pertinent to note that Sh. B.M.Agarwal and Sh.J.M.Lal are also the Director/. C.E.O. of M/S Trans Bharat Aviation (P) Ltd, respectively, and very well knew that the aircraft will be used for Non Scheduled Charter Services by M/s Trans Bharat Aviation (P) Ltd. as the company is engaged in the business of running the aircraft for charter services only.

18. Sh. B.M. Agarwal Director, and Sh.J.M.Lal, CEO both were aware that they have procured the permit from the Ministry of Civil Aviation which was for Non Scheduled Passenger Services, they continued to operate the said aircraft for Non-Scheduled Charter Services even when they were having NSOP only for passenger services. Thus from the foregoing it is evident that M/S Sky Airways (a division of M/S GSI Private Ltd) through its Director Sh.B.M.Agarwal and C.E.O. Sh. J.M.Lal, have willfully mis-represented and suppressed facts at the time of import of the Aircraft with an intention to evade payment of Customs duties and circumvented relevant laws relating to the import of aircraft. By their above acts of omission and commission Sh. B. M. Agarwal, Director and Sh. J.M.LaL, CEO have rendered themselves for penal action under Section 112(b) of Customs Act, 1962.

25. **Now, therefore, the noticees are required to show cause to** the Commissioner of Customs (Preventive), Room No. 212; New Custom House, Near IGI Airport, New Delhi, **within 30 days** of receipt of this notice, as to why-

a) **The aircraft valued Rs.11,84,52,537/- (c.i.f) should not be confiscated under Sec 111(d), and 111 (0) of the Customs Act, 1962, and appropriate fine should not be imposed,**

b) **The Customs duty amounting to of Rs.3,00,82,889/- should not be demanded under Sec 28 of the Act, ibid., and as to why amount already deposited by them should not be appropriated against the said demand.**

c) Interest as applicable under Sec 28AB of the Act, ibid, on the duty amount, should not be demanded,

d) Penalty should not be imposed upon M/S Sky Airways (a Division of G.S.I. Pvt. Ltd) under Sec 112 (a) and/or Sec. 114A of the Act, ibid,

e) Penalty should not be imposed upon Sh.B.M.Agarwal, Director, and Sh J.M.Lal, C.E.O. of M/S Sky Airways under Sec 112 (b) and Sec. 114AA read with Section 140 of the Act, Ibid"

(emphasis supplied)

10. The appellant filed a detailed reply to the show cause notice and denied the allegations made therein.

11. The Commissioner, by the order dated 19.05.2010, confirmed the demand and the relevant portion of the order is reproduced below:

"20. From the condition (ii) a, of the exemption notification it is quite clear that the notification allows the use of the aircraft either for providing Non Scheduled (passenger) services or Non Scheduled (charter) services as the case may be i.e. whichever service was chosen by the importer. It nowhere provides that the aircraft can be used for providing both the services. As such, so long as the customs

exemption notification clearly restricts the use of the aircraft for providing only one service, either passenger or charter so chosen at the time of the import of the aircraft, the department is under no obligation to refer to any other provisions occurring elsewhere.

Xxx xxx xxx

22. **It has further been claimed that the helicopter had been used for non-scheduled (passenger) service only as seen from the passenger manifest of M/s Prabhatam Aviation Pvt. Ltd. and only because the word charter was used on some manifests, the names and details of the passengers mentioned in the same manifest cannot be ignored.** But I do not find this argument very convincing as a passenger manifest is required to be filed even in charter services. Moreover, I find from the records that even the certificate dated 12.08.08 given by M/s Prabhatam Aviation Pvt. Ltd., regarding lease of two helicopters from the importer confirms that the helicopters were used for **charter operation**. The certificate, interalia, reads as follows-

"This is to certify that we, Prabhatam Aviation Pvt. Ltd had taken two Bell 407 helicopters registration No. VT-TBE & VT-TBC from Trans Bharat aviation for charter operations at Phata (Distt. Uttarakhand) from 5th May to 25th June 2008."

This is further confirmed from the voluntary statement dated 07.08.08 of Sh. J.M.Lal, CEO of the importer, wherein he has clearly admitted that the helicopter Bell 407 had been given to M/s Trans Bharat Aviation Pvt. Ltd., their sister concern, for charter as there was no business for the operation of Bell 407 at Bhubneshwar.

As such, I reject this argument of the importer.

35. **In this case the undertaking given as per Customs notification is only to operate non-scheduled (passenger) service and for which importer has not been issuing tickets to individuals. It can not be considered that permission for non-scheduled (passenger) services is automatically valid for running non-scheduled (charter) services when both these services are separately defined under the Customs exemption notification and undertaking is given for use of the aircraft for**

non-scheduled (passenger) services only. Further the exemption is conditioned to a specific service expressly defined in the Customs notification and the aircraft has to be put to use exclusively for that service and not for both the Services. A flexible interpretation given in the Civil Aviation Rules & Regulations cannot be used for interpreting the provisions of Customs Notification. In this case the helicopter was imported by the importer for operating non-scheduled air transport services (Passenger) but from the statement of the Sh. C. S. Chaturvedi authorized signatory and Sh. J.M. Lal, CEO of the importer and the documents submitted by them, it is clearly evident that the importer never operated this helicopter themselves as they were not having any manpower and infrastructure to operate this helicopter at the declared place and thus, they gave the same on dry lease to M/s Trans Bharat Aviation Pvt. Ltd. which operated the same, both as passenger and charter services though it remained endorsed on the importers NSOP. Between the period from 5th May 2008 to 25th June 2008, the helicopter was further given to M/s Prabhatam Aviation Pvt. Ltd. for charter operations at Phata (Uttarakhand), thus, it is contravention of even the DGCA guidelines as discussed in the next para. It is, therefore, evident that the operator has failed to use the imported aircraft for the specified purpose, thus, contravening the condition of the notification No. 21/2002-Cus dated 01.03.2002, as amended, which has rendered the Aircraft liable to confiscation and has also rendered the importer liable to penalty and duty forgone on the Aircraft is also liable to be recovered from the importer.”

(emphasis supplied)

12. Shri V.V. Gautam, learned counsel for the appellant made the following submissions:

- i. The Notification dated 03.05.2007 does not provide that the aircraft can be used either for providing Non-Scheduled (Passenger Services) or Non-Scheduled (Charter Services);
- ii. The permit granted to the appellant by the Director General of Civil Aviation clearly mentions that it has been granted to operate Non-Scheduled Air Transport Services

(Passenger/Cargo/Charter Services) and the undertaking given by the appellant also provides that the aircraft shall be used only for providing Non-Scheduled (Passenger Services), Non-Scheduled (Charter Services), as the case may;

- iii. The finding recorded by the Commissioner that the aircraft can be used for providing either Non-Scheduled (Passenger Services) or Non-Scheduled (Charter Services) is not correct and is contrary to the Notification dated 03.05.2007;
- iv. The finding recorded by the Commissioner that Condition No. 104 of the Notification dated 03.05.2007 has been violated as the Aircraft has been leased is not correct; and
- v. The Helicopter could not be held liable to confiscation under section 111 (0) of the Customs Act.

13. Shri Rakesh Kumar, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal. Learned authorized representative submitted that the importer neither provided "Non-Scheduled (Charter) Services" or provided "Non-Scheduled (Passenger) Services". Learned authorized representative also submitted that though the importer complied with clause (i) of Condition No. 104 of the Notification dated 03.05.2007, but violated the mandatory post-import condition contained in clause (ii) of the said Notification. The importer would, therefore, not be eligible for exemption from payment of basic customs duty under the said Notification.

14. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

15. The Commissioner has interpreted Condition no. 104 (ii) (a) of the Notification dated 03.05.2007 in a manner that either the aircraft should be used for providing Non-Scheduled (Passenger) Services or Non-Scheduled (Charter) Services and under no circumstances, the aircraft can be used for providing both the services.

16. This understanding of the Commissioner is not borne out from the said clause of the Notification. When Condition No. 104(ii) (a) provides that the undertaking should be that the aircraft shall be used only for providing Non-Scheduled (Passenger) Service or Non-Scheduled (Charter) Services, as the case may be, it cannot not mean that only one such service can be provided.

17. This issue was examined by a Division Bench of this Tribunal in **Escorts Limited vs. Commissioner of Customs (Preventive)**⁵. The observations made by a larger bench of the Tribunal **M/s. V.R.L. Logistics vs. Commissioner of Customs**⁶ that exemption is available to both Non-Scheduled (Passenger) Services and Non-Scheduled (Charter) Services was relied upon to hold:

"5. Permit under NSOP (Passenger) can be used for charter purposes is no longer res integra and has been decided against the Revenue by the Larger Bench of the Tribunal in the case of **M/s. V.R.L. Logistics Ltd. Vs. Commissioner of Customs, Ahmedabad**, which has been affirmed by the Gujarat High Court vide order dated 04.04.2023. Following the decision of the Larger Bench in **M/s. V.R.L. Logistics**, a series of decisions have been passed, which are as under:-

5 Customs Appeal No. 664 of 2010 (DB) decided on 04.06.2024

6 2022 (8) TMI 720-CESTAT Ahmedabad (LB) decided on 04.04.2023

(i) M/s. Reliance Commercial Dealers Ltd. Vs. Commissioner of Customs (Preventive), New Customs House, Delhi⁷ affirmed by the Hon'ble High Court⁸

(ii) M/s. Global Vectra Helicorp Limited Vs. Commissioner of Customs (Preventive), New Customs House⁹ affirmed by Hon'ble Delhi High Court

(iii) M/s. Taneja Aerospace and Avaition Ltd. Vs. Commissioner of Customs (Preventive), New Customs House, Delhi¹⁰ affirmed by Hon'ble High Court

(iv) M/s. Chimes Aviation Private Limited Vs. Commissioner of Customs, Delhi¹¹

(v) M/s. Ligare Aviation Limited Vs. Commissioner of Customs (Preventive)¹².

9. In the present case, the appellant had obtained the NSOP(Passenger) permit in respect of helicopter imported but used the same for NSOP (Charter), however, there is no bar on the permit holder of NSOP (Passenger)services to provide charter services, which has been squarely upheld by the Larger Bench on the basis of CAR, 1999 and 2000."

18. Even otherwise, the Directorate General of Civil Aviation had issued a permit dated 24.08.2007 to the appellant to operate Non-Scheduled Air Transport Services (Passenger/Cargo/ Charter). In terms of Condition no. 104 of the Notification, the appellant gave an undertaking to the Deputy Commissioner of Customs that the Aircraft would be used only for providing Non-Scheduled (Passenger) Service, Non-Scheduled (Charter) Service, as the case may be.

19. The finding recorded by the Commissioner on this issue, therefore, cannot be sustained and is set aside.

7 2022 (9) TMI 807-CESTAT New Delhi

8 2023 (3) TMI 595-Delhi High Court

9 2022 (9) TMI 1300-CESTAT New Delhi

10 2023 (3) TMI 304 (Delhi HC)

11 203 (1) TMI 1056- CESTAT New Delhi

12 2023 SCC Online CESTAT 163

20. The Commissioner has also recorded a finding that though the Aircraft was imported by the appellant for operating it, but the appellant did not operate the Aircraft and gave it on dry lease to M/s. Trans Bharat Aviation Pvt Ltd. and M/s. Prabhatam Aviation Pvt. Ltd.

21. This finding recorded by the Commissioner is also not borne out from the Notification dated 03.05.2007. The said notification does not provide that it is the importer alone who has to use the Aircraft for Non-Scheduled (Passenger) Services or (Charter) Services and that it cannot be given on lease.

22. Such being the position it cannot be urged by the department that the appellant failed to ensure compliance of Condition no. 104 of the Notification dated 03.05.2007.

23. The impugned order dated 19.05.2010 passed by the Commissioner, therefore, cannot be sustained.

24. For the same reasons, the imposition of penalty upon the Director of the appellant and the Chief Executive of the appellant under section 112 read with section 140 of the Customs Act cannot be sustained.

25. The impugned order dated 19.05.2010 passed by the Commissioner is, accordingly, set aside. Customs Appeal No. 419 of 2010, Customs Appeal No. 420 of 2010 and Customs Appeal No. 421 of 2010 are, accordingly, allowed.

(Order pronounced in the Open Court on 02.05.2025)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)