

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 70 OF 2010

[Arising out of Order-in-Original No. 25/Commr./HKT/09 dated 24.11.2009 passed by the Commissioner of Customs (Preventive), New Delhi]

Indian Metal and Ferro Alloys Limited

IMFA Building, Bomikhal,
P.O. Rasulgah,
Bhubaneshwar - 751010

....Appellant

Versus

Commissioner of Customs (Preventive)

New Customs House,
Near IGI Airport,
New Delhi- 110037

....Respondent

WITH

CUSTOMS APPEAL NO. 72 OF 2010

[Arising out of Order-in-Original No. 25/Commr./HKT/09 dated 24.11.2009 passed by the Commissioner of Customs (Preventive), New Delhi]

Shri Bhajyant Panda

Vice Chairman, Indian Metal and Ferro Alloys Ltd.
IMFA Building, Bomikhal,
P.O. Rasulgah,
Bhubaneshwar - 751010

....Appellant

Versus

Commissioner of Customs (Preventive)

New Customs House,
Near IGI Airport,
New Delhi- 110037

....Respondent

WITH

CUSTOMS APPEAL NO. 73 OF 2010

[Arising out of Order-in-Original No. 25/Commr./HKT/09 dated 24.11.2009 passed by the Commissioner of Customs (Preventive), New Delhi]

Shri Rajeev Lala

Sr. Manager (Corporate affairs),
Indian Metal and Ferro Alloys Ltd.
IMFA Building, Bomikhal,
P.O. Rasulgah,
Bhubaneshwar - 751010

....Appellant

Versus

Commissioner of Customs (Preventive)

New Customs House,
Near IGI Airport,
New Delhi- 110037

....Respondent

AND

CUSTOMS APPEAL NO. 102 OF 2010

[Arising out of Order-in-Original No. 25/Commr./HKT/09 dated 24.11.2009 passed by the Commissioner of Customs (Preventive), New Delhi]

Commissioner of Customs (Preventive)

New Customs House,
Near IGI Airport,
New Delhi- 110037

....Appellant

Versus

Indian Metal and Ferro Alloys Limited

IMFA Building, Bomikhal,
P.O. Rasulgarh,
Bhubaneswar - 751010

....Respondent

APPEARANCE:

Shri Tushar Jarwal, Shri Vikrant Maheshwari and Ms. Daliya Singh, Advocates for the Appellant

Shri P.R.V. Ramanan, Special Counsel, Shri Rakesh Kumar and Shri Girijesh, Authorized Representatives, for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 07.08.2025

Date of Decision: 02.02.2026

FINAL ORDER NO's. 50192-50195/2026

JUSTICE DILIP GUPTA:

Customs Appeal No. 70 of 2010 has been filed by Indian Metal and Ferro alloys Limited¹ for setting aside that portion of the order dated 24.11.2009 passed by the Commissioner (Preventive), New Customs House, New Delhi² that confiscates Robinson R-44 Raven II Helicopter³ under section 111(o) of the Customs Act, 1962⁴ but an option has been given to the appellant to redeem the same on payment

-
1. the appellant
 2. the Commissioner
 3. the Helicopter
 4. the Customs Act

of redemption fine. The order also confirms the demand of duty in terms of the undertaking dated 18.10.2007 given by the appellant.

2. **Customs Appeal No. 72 of 2010** has been filed by Bhaijayant Panda, Vice Chairman of the appellant, to assail that portion of the order dated 24.11.2009 passed by the Commissioner that imposes a penalty of Rs. 10 lacs upon him under section 112(a) of the Customs Act.

3. **Customs Appeal No. 73 of 2010** has been filed by Rajeev Lala, Senior Manager (Corporate affairs) of the appellant, for assailing that portion of the order dated 24.11.2009 passed by the Commissioner that imposes a penalty of Rs. 2 lacs upon him under section 112 of the Customs Act.

4. **Customs Appeal No. 102 of 2010** has been filed by the department to assail that portion of the order dated 24.11.2009 passed by the Commissioner with a prayer that the matter be remanded to the Commissioner for the purpose of enhancing penalty imposed upon Bansidhar Panda, Executive Chairman of the appellant and Baijayant Panda, Vice Chairman of the appellant.

5. The appellant is a company incorporated under the Companies Act and has its registered office at Bomikhal, Rasulgarrh. The appellant imported Robinson R-44, Raven II Helicopter to expand its fleet. It was granted a Non Scheduled Air Transport Services (Passenger) Permit by the Director General of Civil Aviation⁵, Ministry of Civil Aviation⁶. It is said that the permit was renewed by DGCA from time to time.

6. The appellant then applied to the MCA for grant of a No-Objection Certificate for the import of the Helicopter through an application dated

5. DGCA
6. MCA

05.03.2007 and the appellant received the No-Objection Certificate from the MCA on 05.09.2007.

7. The Helicopter was imported by the appellant by a Bill of Entry dated 08.10.2007. The appellant through Rajeev Lala also furnished an undertaking dated 08.10.2007 to Assistant Commissioner of Customs, New Delhi mentioning that it had imported the Helicopter for non-scheduled air transport services (passenger) and undertook to pay on demand an amount equal to the duty payable on the Helicopter, in the event of failure in using the Helicopter for the specified purpose.

8. The appellant had imported the aircraft claiming customs duty exemption under Notification No. 61 of 2007 dated 03.05.2007⁷ that amended the earlier Exemption Notification No. 21 of 2002 dated 01.03.2002. Prior to importing the aircraft, the appellant had obtained the no objection certificate from DGCA on 05.09.2007 to operate the aircraft for non scheduled air transport (passenger) services.

9. 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

7. the Exemption Notification

(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) xxxxxxxxx

(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)
347A	8802(except 8802 60 00)	All Goods	Nil	-	103
347B	8802(except 8802 60 00)	All Goods	Nil	-	104
347C	Any Chapter	Parts (other than rubber tyres or tubes) of aircraft of heading 8802	Nil	-	105";

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

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Condition No.	Conditions
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103. If,-

- (a) the aircraft is imported by:-
- (i) the Aero Club of India, New Delhi, recognized as a National Sports Federation by Ministry of Youth Affairs and Sports, Government of India; or
 - (ii) a Flying Training Institute approved by the competent authority in the Ministry of Civil Aviation; and

- (b) the importer has been granted approval by the competent authority in the Ministry of Civil Aviation to import aircraft for use in imparting training; and
- (c) 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 for the specified purpose only and 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;
 - b. the aircraft imported under this concession shall not be sold/transferred to an entity other than a flying training institute approved by the Directorate General of Civil Aviation.

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."

10. 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 MCA 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, 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.

11. On the date of filing of the said Bill of Entry, the Exemption Notification had come into force. As noticed above the Exemption Notification inserted Serial Numbers 347A, 347B and 347C in the

Exemption Notification. Exemption, under the said Serial Numbers 347A, 347B and 347C, was subject to fulfillment of Conditions Nos. 103A, 104 and 105 appended to the Notification. The appellant claims that though it had claimed the benefit of Serial Number 347B with Condition No. 104 but by inadvertence, Serial Number 347A with Condition No. 103 was mentioned in the undertaking.

12. A show cause notice dated 09.08.2008 was issued to the appellant, Bansidhar Panda, Executive Chairman of the appellant, Baijayan Panda, Vice-Chairman of the appellant and Rajeev Lala, Senior Manager (Corporate affairs) of the appellant. After referring to the statements made by Rajeev Lala under section 108 of the Customs Act, the show cause notice states that from the Bill of Entry it was evident that the appellant had claimed exemption under 347A of the Exemption Notification and Condition No. 103. The show cause notice also refers to the subsequent statement of Rajeev Lala made on 06.08.2008 that the appellant had intended to avail exemption under 347B and not 347A of the Exemption Notification and that the undertaking was intended to be given under Condition No. 104 and not Condition No. 103. The show cause notice then alleges.

"22. The purpose of the aircraft for which it was intended to be imported was non-scheduled air transport services (passenger). As per Civil Aviation Requirement, Section 3, Air transport Services 'C', part III, dated 08.10.1999, (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. In the instant case, evidently no bills have

been raised for the flying hours covered under 'private flights/non-commercial flights' by the importer.

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24. It is evident that the company has not used the aircraft for the purpose for which it was imported, viz., non-scheduled (passenger) flight, and that it has been used for private use and for promoting business. This is further corroborated by the application for grant of no-objection certificate to operate non-scheduled operator permit (passenger) made on 5th March, 2007.

25. In view of the above, there does exist a clear violation of the conditions of notification and foreign trade policy. In terms of DGFT Notification No.2 (RE 2006)/2004-09, dated 7.4.2006 read with Import Licensing Note (1) and (2) of Chapter 88 of ITC (HS) for 2004-09, the import of aircraft is restricted. However, an aircraft may be imported only by a person who has been granted permission by the Ministry of Civil Aviation for operating scheduled or non-scheduled air transport services subject to condition that its use is in accordance with the permission. The use of the subject aircraft is not according to the permission granted by Ministry of Civil Aviation and its import is unauthorized and hence liable to confiscation under Section 111(d) and (o) of the Customs Act, 1962.

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30. Thus, from the foregoing paras, it is evident that M/S IMFA have willfully mis-represented and suppressed facts through Rajeev Lala, Sr. Manager, who had signed the undertaking on behalf of M/s IMFA, with an intention to evade payment of Customs duties and circumvented relevant laws relating to the import of helicopter and their parts as such a gross misuse of helicopter for private use instead of specified use, declared at the time of importation and have evaded the Customs duty amounting to Rs. 48,58,948/- (RUD-9A & 9B) by reason of willful mis-declaration and suppression of facts and hence, the said helicopter and their parts are liable for confiscation and the duty amounting to Rs.48,58,948/- is liable to be recovered

by invoking the extended period of five years in terms of proviso to Section 28(1) of the Customs Act, 1962 and by the above acts of omission and commission, M/s IMFA have rendered themselves liable for penal action under Section 114A of the Customs Act.

31. The role of Shri Bansidhar Panda, Executive Chairman and of Shri Baijayant Panda, Vice -Chairman of M/s IMFA in misrepresenting the facts through Rajeev Lala, Senior Manager cannot be denied as without their consent Shri Rajeev Lala would not have submitted the said declaration to avail of exemption. Further, they are well aware of the use of the helicopter after the import as the was being used most of the time by Shri Baijayant Panda himself. By the above acts of omission and commission, Shri Bansidhar Panda, Executive Chairman, Shri Baijayant Panda, Vice-Chairman of M/s. IMFA and Shri Rajeev Lala, Sr. Manager of M/s. IMFA have rendered themselves liable for penal action under Sec 112 of Customs Act, 1962.”

13. The appellant filed a detailed reply denying the allegations made in the show cause notice. It was specifically stated that it was by inadvertence that the appellant had claimed benefit of Serial Number 347A with Condition No. 103 instead of 347B with Condition No. 104. It was also stated that there was no failure on the part of the appellant to use the Helicopter for the specified purpose for providing non-scheduled (passenger) service. The recovery of duties under section 128 of the Customs Act was also denied.

14. The Commissioner, however, did not accept the submissions made by the appellant in reply to the show cause notice and passed the following order:

24. Shri Rajeev Lala in his statement dated 6.8.09 stated that they intended to give an undertaking under Condition No. 104 of the exemption notification for

Non-scheduled (Passenger) Services but by purely inadvertently and unintentionally it was got mentioned as Condition No.103A of the Customs exemption notification. He also confirmed that he signed the undertaking Sr.No. 347A instead of 347B.

25. The submissions of the aircraft importer that the above lapse of wrongly claiming exemption under 347A instead of 347B is a minor mistake is not acceptable. The aircraft importer has promptly paid the entire duty with respect to the aircraft as well as the imported parts for the said aircraft as per facts stated in Para 9 to 15 above.

26. xxxxxxxxxxx. It has been argued by the aircraft importer that the aircraft was used by their officials because otherwise the aircraft would have remained idle and instead of requisitioning the services of any other NSOP agency their officials chose to use their own helicopter. Aircraft importer has used the imported aircraft simply as per their own whims and fancies without a scant regard to the law and procedures. In view of their own admissions the aircraft importer has violated the conditions of permit given by DGCA and the condition of the Customs exemption notification. However as already discussed the aircraft importer has not given any undertaking with respect to condition of S.No. 347 B of the Customs exemption notification at the time of importation and the undertaking was given with respect to Sl.No. 347A of the exemption notification. No revised undertaking was given to the department by the aircraft importer. In view of the above findings aircraft importer is required to pay the differential duty as per the undertaking given at the time of clearance of the aircraft as the aircraft use is not as per the undertaking given at the time of importation.

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27. Once it is held that Section 28 is not applicable to such demands, when a post importation condition is violated, then the provisions of Section 28AB will also not be attracted and the duty is payable by the importer for violation of the post importation condition under the relevant exemption notification without any time limit **Therefore, duty amounting to Rs.48,58,948/- with respect to imported aircraft and its parts is required to be confirmed in view of the undertaking given under Notification No. 21/2002-Cus, as amended, read with Supreme Court's judgment in the case of Commissioner of Customs Vs CT Scan Research Centre (P)Ltd [2003 (155)ELT 3 (SC)]. Similarly interest under Section 28AB cannot be demanded from IMFA as Section 28 is not attracted in this case.**

28. So far as the confiscation of aircraft under Section 111(d) (o) and (m) is concerned, it is observed that nothing was noticed at the time of import contrary to any prohibition imposed or that any particular entry made with respect to value/description of goods did not tally with the actual value/description, therefore, the provision of Section 111(m) are not applicable in this case. However, the provisions of Section 111(d) and 111(0) are violated to the extent that aircraft importer has not fulfilled the post import conditions imposed under Notification No. 21/2002-Cus as amended. The undertaking was given with respect to Sl.No. 347A of the exemption notification when the helicopter and parts were not used for imparting training at all as per the undertaking and then claim. **Even if it is presumed that party was importing the aircraft as per Sl.No. 347 B of the exemption notification then also they were not entitled to the benefit of exemption as they have themselves admitted that the aircraft was used for charter for only 22 hours by the officials of aircraft importer for 82.33 hrs and for 27.02 hrs for ferry and test flights. Under Non-scheduled(Passenger) Service the aircraft can not be used for Services other than revenue flights/charter flights. Secondly notification No. 21/2002-Cus as amended does not permit an**

aircraft to be used for charter operations when approval of DGCA is for passenger services in which of the specific conditions of notification No. 21/02-Cus, as amended. For this purpose the importer is required to give an undertaking as per Sr.No.347B of the exemption notification at the time of import which has not been done in this case. **For the above violations Robinson R-44 Raven II helicopter valued at Rs. 1,77,34,654/- is required to be confiscation under Section 111(o) of the CA, 1962 and duty is required to be confirmed. As the spare parts are not available for confiscation the same can not be confiscated.**

29. So far as imposition of penalty upon Shri Rajeev Lala Sr.Manager of the aircraft importer is concerned it is observed that he gave an undertaking before the Customs for the use of aircraft as per Sr.No. 347 A of the exemption notification No. 21/2002-Cus, as amended. Later he claimed it to be an error and claimed the real Sr.No. should be 347B of this exemption notification. The use of the aircraft was neither as per Sl.No. 347 A nor Sl.No. 347B of the exemption notification. **The imported aircraft was used at will without appreciating the provisions of the exemption notification and aircraft was not for the specified purpose for which the undertaking was given.** It has been admitted by him that the aircraft was used by his Vice-chairman and the private use was known to them when it is recorded in the flight sector report as 'private flight, non commercial' under the column pilot special report'. **In view of the above Shri Rajeev Lala is liable to penal action under Section 112 of the CA 1962.**

30. Similarly Shri Bansidhar Panda, Executive Chairman and Shri Baijayan Panda Vice-Chairman of the aircraft importer are liable to penalty under Section 112(a) of the CA 1962 as they were using the aircraft for personal use and they cannot say that Rajeev Lala did not have their approval to file a declaration with the Customs at the time of

importation which was not followed by them in letter and spirit.”

(emphasis supplied)

15. The first issue that requires to be examined is whether duty could be confirmed on the basis of the undertaking given by the appellant.

16. The contention of learned counsel for the appellant is that the show cause notice has demanded duty under section 28 of the Customs Act and the impugned order accepts that section 28 of the Customs Act would not apply.

17. A perusal of the show cause notice indicates that reference has also been made to the undertaking given by the appellant under Condition No. 104 of the Exemption Notification. It is true that the show cause notice refers to demand of duty under section 28 of the Customs Act, but if the entire show cause notice is read as a whole, it is clear that reference has been made to the undertaking. It is not disputed that in terms of the undertaking given by the appellant, the duty amount could have been recovered by taking recourse to the undertaking. The contention advanced by the learned counsel for the appellant, therefore, cannot be accepted.

18. The second contention that has been advanced by the learned counsel for the appellant is that the Commissioner committed an error in holding that the undertaking had been given by the appellant under serial No. 347A of the Exemption Notification.

19. It is clear from the undertaking given by the appellant that it refers to the Bill of Entry for import of the Helicopter by the appellant for non-scheduled air transport services (passenger) as per the licence dated 13.10.2005. It is apparent that it is by mistake that at Serial

Number 3 of the undertaking the appellant mentioned that it shall pay on demand the tariff as per Serial Number 347A of the Exemption Notification. It is clear from the undertaking that the appellant had intended to give the undertaking under Serial Number 347B of the Exemption Notification with Condition No. 104 and not 347A of the Exemption Notification with Condition No. 103. Serial No. 103 of the Exemption Notification is in connection with the aircraft imported by the Aero Club of India recognized as a National Sports Federation by Ministry of Youth Affairs or a Flying Training Institute approved by the competent authority in the MCA. The appellant does not satisfy either of the two conditions. On the other hand Serial No. 104 of the Exemption Notification relates to an aircraft imported by an operator who has been granted approval by the competent authority in the MCA to import aircraft for providing non-scheduled (passenger) services or non-scheduled (charter) services. Serial No. 347A relates to Condition No. 103 while Serial No. 347B relates to Condition No. 104. The Commissioner, therefore, committed an error in not accepting this explanation offered by the appellant and restricting the undertaking to Serial Number 347A of the Exemption Notification read with Condition No. 103.

20. The third contention advanced by learned counsel for the appellant is that the finding recorded by the Commissioner that when the approval was granted to the appellant for passenger services, it cannot be used for charter operations in view of the decision of the Larger Bench of the Tribunal in **VRL Logistics Ltd. vs. Commissioner**

of Customs, Ahmedabad⁸. This submission deserves to be accepted. The Larger Bench of the Tribunal held that the aircraft imported for non-scheduled (passenger) services can be used for non-scheduled (charter services).

21. Learned special counsel for the department has, however, placed reliance upon the decision of the Delhi High Court in **East India Hotels Ltd. vs. Commissioner of Customs, Central Excise and Central GST, New Delhi**⁹ to contend that perusal of the statement, aircraft log book details shows that leaving aside test/ferry flights, about 80% of the hours flown by the Helicopter were used by the appellant for private purpose without any remuneration earned from such flights and thus Condition No. 104 had been violated as a result of which the appellant could not claim the benefit of the Exemption Notification by claiming exemption from payment of basic customs duty.

22. The Delhi High Court in **East India Hotels** held that for a service to fall within the meaning of 'air transport service' it is essential that the same is provided for some kind of remuneration and flight service for no remuneration would not qualify to be considered as air transport service. Thus, use of the aircraft by the appellant for transporting senior officials and directors without charging any remuneration violates the terms of the permit issued by the DGCA. The relevant portions of the judgment of the Delhi High Court in **East India Hotels** are reproduced below.

"24. As noted above, the principal controversy involved in the present case is whether the appellant is entitled to exemption under the Notification. According to the respondent, the appellant violated the Condition

8. (2023) 3 Centax 168 (Tri.-LB)
9. (2023) 4 Centax 203 (Del.)

no.104 of the Notification and therefore, is not entitled to exemption of customs duty.

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26. The aircraft was used by the Chairman and the officials of the appellant, who frequently travelled to various destinations. Admittedly, the flights operated by the appellant were non-revenue flights. According to the appellant, such non-revenue flights – that is, flights operated without generating revenue – were also covered under the broad definition of non-scheduled (passenger) services.

27. The key question to be addressed is whether non-revenue flights, operated by a company for transporting its officials, would fall within the scope of providing non-scheduled (passenger) services or nonscheduled (charter) services within the meaning of those terms under the Notification. In terms of explanation (b) to Condition no. 104 of the Notification, the term non-scheduled (passenger) services is defined to mean air transport service other than 'scheduled (passenger) air transport service' as defined in Rule 3 of the Aircraft Rules, 1937 (hereinafter 'the Aircraft Rules'). It is, thus, necessary to refer to the Aircraft Rules.

28. Rule 3(49) of the Aircraft Rules defines the scheduled air transport service and is set out below:-

"(49) Scheduled air transport service" means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognisably systematic series, each flight being open to use by members of the public;"

29. In terms of explanation (b) to Condition no.104 of the Notification, 'non-scheduled (passenger) services' would mean 'air transport service' other than the air transport service falling within the

aforementioned definition. However, it is essential that the aircraft is used for 'air transport service.'

30. The term 'air transport service' is defined under sub-rule (9) of Rule 3 of the Aircraft Rules as under:-

"(9) "Air transport service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights;"

31. A plain reading of Rule 3(9) of the Air Craft Rules, indicates that the term 'air transport service' is defined in wide terms and would cover transport by air of humans, animals, mails or any other things, animate or inanimate. However, it is necessary that the said service be provided for 'remuneration'. The said definition also clarifies that the service may be for any kind of remuneration. **However, for a service to fall within the meaning of 'air transport service' as defined in Rule 3(9) of the Aircraft Rules, it is essential that the same is provided for some kind of remuneration. Clearly, flight service for no remuneration at all would not qualify to be considered as air transport service within the meaning of sub-rule (9) of Rule 3 of the Aircraft Rules.**

32. In the facts of the present case, the appellant has used the aircraft for its own use without any remuneration whatsoever, either from the passengers transported by it or from any other person. In the circumstances, it would be difficult to accept that the appellant has used the aircraft for providing 'air transport service' within the meaning of Rule 3(9) of the Aircraft Rules.

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40. It is also not necessary for this Court to examine the question whether the use of the aircraft by the appellant for transporting its senior officials and directors without charging any

remuneration violates the terms of the permit issued by the DGCA. It is possible that the permit issued by the DGCA to the appellant entitles the appellant to use the aircraft for the aforesaid purposes. The only question that this Court is concerned with is whether the appellant has complied with the conditions as set out in the Notification and is entitled to duty exemption in terms of the Notification in respect of the import of the aircraft. And, as stated above, we find that the appellant has not complied with the condition of using the aircraft solely for providing non-scheduled (passenger) services."

(emphasis supplied)

23. In the present case, it is seen from the aircraft log book details that leaving aside test/ferry flights, about 80% of the hours flown by the Helicopter were used by the appellant for private purpose without any remuneration earned from such flights. Only 20% of the flight hours were used for charter purpose, but the remaining 80% of the hours flown by the Helicopter were used by the appellant for private purposes without any remuneration earned from such flights. There is, therefore, no substantial compliance of Condition No.104 of the Exemption Notification. The appellant has, therefore, clearly violated the terms of the Exemption Notification.

24. The Helicopter has been confiscated as the undertaking given by the appellant has been violated. There is no error in this finding recorded by the Commissioner as the appellant has violated Condition No. 104 of the Exemption Notification.

25. The next issue that arises for consideration is whether penalties could be imposed upon Baijayan Panda, Vice-Chairman of the appellant, and Rajeev Lala, Senior Manager (Corporate affairs), of the appellant.

26. Penalty under section 112 of the Customs Act is imposed upon any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, shall be liable to penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater.

27. Penalty has been imposed upon Rajeev Lala for the reason that he gave an undertaking before the customs and the imported aircraft violated the provision of the Exemption Notification and was not used for the specified purposes for which the undertaking was given. Penalty has been imposed upon Bansidhar Panda as he was using the aircraft for personal use which would be in violation of the Exemption Notification.

28. Penalty under section 112(a)(i) of the Customs Act can be imposed for the reason that the appellants abetted the doing or omission of an act. The Supreme Court in **Shri Ram vs. The State of U.P.**¹⁰ and **Amritlakshmi Machine Works vs. Commr. Of Cus. (Import), Mumbai**¹¹ observed:

"6. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107."

29. This decision of the Supreme Court was followed by the Bombay High Court in **Amritlakshmi Machine Works** and the relevant paragraph is reproduced below:

10. **Criminal Appeal No. 142 of 1973**
11. **2016 (335) E.L.T. 225 (Bom.)**

"25. Mere facilitation without knowledge would not amount to abetting an offence. Parliament has specifically included abetment in Section 112(a) of the Act, to include acts done with knowledge, otherwise the first portion thereof "Any person - (a) who in relation to any goods does or omits to do any act" would cover acts done or omitted to be done on account of instigation and/or encouragement without knowledge. However, the first portion of Section 112(a) of the Act is only to make person of first degree in relation to the act or omission strictly liable. Persons who are not directly involved in the act or omission to act, which has led the goods becoming liable for confiscation cannot be made liable unless some knowledge is attributed to them. Therefore, it is to cover such cases that Section 112(a) of the Act also includes a person who abets the act or omission to act which has rendered the goods liable to confiscation. **Imposing penalty upon an abettor without any mens rea on his part would bring all business to a halt as even innocent facilitation provided by a person which has made possible the act or omission to act possible could result in imposing of penalty.** To illustrate innocent transferee of a license which enabled the purchaser of the license to misuse the license could be imposed with penalty. This could never be the intent or objective of Section 112(a) of the Act."

(emphasis supplied)

30. The impugned order does not state that the aforesaid two persons were aware of the fact that use of the Helicopter without payment of remuneration would lead to violation of the Exemption Notification. Mere violation of the Exemption Notification would not result in imposition of penalties upon them. Thus, penalties under section 112 of the Customs Act could not have been imposed upon Baijayan Panda, Vice-Chairman of the appellant and Rajeev Lala, Senior Manager (Corporate affairs) of the appellant.

31. The aforesaid discussion would lead to the following conclusions:

- (i) The appellant had violated Condition No. 104 of Serial No. 347B of the Exemption Notification and, therefore, the Helicopter could be confiscated and the demand could be made on the basis of the undertaking given by the appellant;
- (ii) Penalty could not be imposed upon Baijayan Panda, Vice-Chairman of the appellant and Rajeev Lala, Senior Manager (Corporate affairs) of the appellant.

32. Customs Appeal No. 102 of 2010 filed by the department now needs to be examined. This appeal has been filed for enhancement of the penalty imposed under section 112 of the Customs Act upon them.

33. It has been found that penalties could not have been imposed under section 112 of the Customs Act. Thus, there is no question of any enhancement in the penalties. The appeal filed by the department would, therefore, have to be dismissed.

34. In the result, Customs Appeal No. 70 of 2010 filed by the appellant is dismissed. Customs Appeal No. 72 of 2010 filed by Baijayan Panda and Customs Appeal No. 73 of 2010 filed by Rajeev Lala are allowed and the imposition of penalties upon them under section 112 of the Customs Act are set aside. Customs Appeal No. 102 of 2010 filed by the department is dismissed.

(Order Pronounced on **02.02.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)