

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. III

Customs Appeal No. 664 of 2010 (DB)

[Arising out of Order-in-Original No.26/HKC/Commr./2010 dated 22.09.2010 passed by the Commissioner of Customs (Preventive), New Customs House, Near IGI Airport, New Delhi]

Escorts Limited

15/5 Mathura Road,
Faridabad

Appellant

Versus

Commissioner of Customs (Preventive)

New Customs House, Near IGI Airport,
New Delhi.-110 037.

Respondent

APPEARANCE:

Shri B.L. Narasimhan, Advocate for the appellant.
Shri P.R.V. Ramanan, Special Counsel for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.55893/2024

DATE OF HEARING: 28.03.2024
DATE OF DECISION: 04.06.2024

BINU TAMTA:

1. Challenge in the present appeal is to the Order-in-Original No.26/HKC/Commr/2010 dated 22.09.2010, whereby the Commissioner of Customs confirmed the duty demand, redemption fine and the penalty under Section 112(a) of the Customs Act, 1962.

2. The appellant imported Helicopter Bell 407, Registration No.VT-RPN vide bill of entry no.932425 dated 14.03.2008 under Permit No.02/2000 dated 13.09.2000 issued by the DGCA, Government of India. Undisputedly, the permit has been renewed from time to time by the

DGCA. The appellant also received a 'No objection certificate' dated 27.07.2007' from the DGCA for import/procurement of Helicopter and for providing Non-Scheduled Air Transport Services (Passenger) NSOP (Passenger). They also availed exemption under Notification No.21/2002-Cus dated 01.03.2002 (Sl.No.347B), as amended by Notification No.61/2007-Cus dated 03.05.2007. It is necessary to quote the relevant portion of the exemption notification as under:-

No.	Chapter or Heading or sub-heading	Description of goods	Standard rate	Condition no.
347B	8802(except 8802 60 00	All goods	NIL	104

Condition No.104:

(i).....

(ii) the importer furnishes an undertaking to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the cases 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

Explanation:- for the purposes of this entry,--

(a).....

(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' mean 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:"

3. Show cause notice dated 18.09.2009 was issued proposing to demand differential duty under Section 28 of the Customs Act, 1962 on the ground that the appellant has violated Condition No.104 of the

Notification No.21/2002-Cus.,as amended, as the Helicopter has been used for NSOP (Charter) whereas Undertaking has been submitted for NSOP (Passenger) and a Permit issued for passenger service is not automatically valid for charter services. Secondly, the appellant has not been issuing any tickets for the passengers. Penalties were also proposed on the appellant as well as on individuals.

4. On adjudication, the impugned order confirmed the differential duty in terms of the undertaking, however, held that since the duty is not demandable under Section 28 of the Customs Act, no interest can be demanded. The penalty under Section 112(a) of the Customs Act is imposable on the appellant, however, penalties against individuals are liable to be dropped.

5. The issue whether the 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**¹, 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:-

- (i) **M/s.Reliance Commercial Dealers Ltd. Vs. Commissioner of Customs (Preventive), New Customs House, Delhi**² affirmed by the Hon'ble High Court³
- (ii) **M/s.Global Vectra Helicorp Limited Vs. Commissioner of Customs (Preventive), New**

¹ 2022 (8) TMI 720 – CESTAT Ahmedabad (LB)

² 2022 (9) TMI 807 –CESTAT New Delhi

³ 2023(3)TMI 595 – Delhi High Court

- Customs House**⁴ affirmed by Hon'ble Delhi High Court⁵
- (iii) **M/s.Taneja Aerospace and Aviation Ltd. Vs. Commissioner of Customs (Preventive), New Customs House, Delhi**⁶ affirmed by Hon'ble High Court⁷
- (iv) **M/s.Chimes Aviation Private Limited Vs. Commissioner of Customs, Delhi**⁸
- (v) **M/s. Ligare Aviation Limited Vs. Commissioner of Customs (Preventive)**⁹

6. The relevant observations of the Larger Bench, particularly with reference to the nature of services relating to non-scheduled (Passenger) services or (Charter) services, necessary for the present case also are set out below:-

“Non-scheduled (Passenger) operator can carry out charter service”

63. As noticed above, the definitions of air transport service and non-scheduled (passenger) service do not stipulate any restriction or impose a condition that such service should be rendered only on per-seat basis and not by chartering nor is there any stipulation in CAR 1999 issued by DGCA for grant of permits to operate non-scheduled air transport (passenger) services. **In fact paragraph 9.2 of CAR 1999, which deals with non-scheduled air transport (passenger) services, categorically provides that a non-scheduled operator can conduct charter operations.**

68. It is, therefore, clear that **an operator providing non-scheduled (passenger) services can always provide such services either on individual seat basis or by chartering the entire aircraft and such a restriction is not contained either in Condition No. 104 or Aircraft Rules or the Civil Aviation Requirements.**

69. It also needs to be remembered that **charter is one way in which passenger services can be rendered; the only difference is that instead of individual seats, all the seats of an aircraft are hired out to one person.** It is, therefore, difficult to conceive that by chartering the aircraft, non-scheduled (passenger) services would not be rendered as even in such a case an operator transport passengers.

⁴ 2022 (9) TMI 1300 – CESTAT New Delhi

⁵ 2023 (4) TMI 514 –Delhi High Court

⁶ 2022 (10) TMI 70-CESTAT New Delhi

⁷ 2023 (3) TMI 304 (Delhi HC)

⁸ 2023 (1) TMI 1056 – CESTAT New Delhi

⁹2023 SCC Online CESTAT 163

70. This apart, a perusal of the definition of non-scheduled (passenger) services contained in the Explanation to Condition 104 would show that it includes within its scope all air transport services other than scheduled (passenger) air transport services. Therefore, all services which are not scheduled services are permitted non-scheduled (passenger) services. Thus, also non-scheduled (passenger) permit holders can perform air transport services either by selling individual seat or by hiring out the entire aircraft for non-scheduled operations.

71. In this view of the matter, the contention of the learned special counsel for the department that a charter permit is required for carrying out charter operations cannot be accepted. In fact, the prohibition is on a non-scheduled (charter) holder to carry out (passenger) operations.

72. This issue can be examined from another aspect. A comparison of the definition of non-scheduled (passenger) services with non-scheduled (charter) services would show that while non-scheduled (passenger) services are of much wider category, non-scheduled (charter) services are of limited nature applicable only to small aircrafts and restricted to operators registered under the non-scheduled (charter) category. **What needs to be noticed is that the exemption is available to both non-scheduled (passenger) services and non-scheduled (charter) service and neither the exemption notification nor the Aircraft Rules or Civil Aviation Requirements excludes charter operations from the ambit of non-scheduled (passenger) services."**

7. On the question of issuance of passenger tickets, the Larger Bench in **M/s.V.R.L. Logistics** considered the same and observed as under:-

"103.In any event, non-issuance of passenger ticket has not been considered by the competent authority under Ministry of Civil Aviation, namely Director General of Civil Aviation to mean that the appellants had not used the aircraft for non-schedule passenger service in terms of the permit issued by the said authority.

104. Under the Carriage by Air Act, 1972, the issuing of tickets is governed by the Second Schedule. Further, as per section 8 of the said Act, the Schedule will only be applicable to domestic carriage, once a notification is published applying the said provision to domestic carriage. In this regard, a notification dated 30.03.1973 was published in the Gazette, wherein Part I and II of Second Schedule dealing with the passenger tickets were not notified to apply to domestic carriage. Therefore, there is no requirement for issuing the tickets under the said Act for domestic carriage. In any event, in terms of paragraph

3 of the CAR 2000, no tickets are required to be sold for carrying out charter operations.

105. This apart, even if air tickets are not issued to the passenger, it may only lead to non fulfilment of the liability. The consequence is itself mentioned in Rule 3(2) to the Second Schedule. Thus, there cannot be any violation of the conditions, if tickets are not issued."

8. We find that the aircraft imported is not a private aircraft. In this regard, the observations made by the Larger Bench in **M/s.V.R.L. Logistics** that the definition of 'Private Aircraft' under Rule 3(4) of Aircraft Rules, 1937 does not warrant the view that if the tariff is not published, the use of the aircraft would be private. Further, the testing point enunciated was that if the aircraft is used for carriage of persons for remuneration, it is a public transport aircraft and not a private aircraft.

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. The crux of the decision is that NSOP (Passenger) services being a much wider category includes charter operations. In fact, subsequently, the difference between the NSOP(Charter) and NSOP(Passenger) services have been done away with by amalgamating the two services under CAR 2010 and as a result, both NSOP(Charter) and NSOP (Passenger) fall under one single category of non-scheduled transport services, as defined in para-3.3 of CAR, 2010 as under:-

"3.3 'Non-scheduled air transport service' means an air transport service, other than a scheduled air transport service as defined in para 3.2 above, being operated for carriage of passengers, mail and goods, and includes charter operations."

10. From the facts of the present case, we find that the helicopter was used only for commercial flights for remuneration except the test flights meant for maintenance. Even the use of the helicopter by the officials or the Board of Directors, etc. of the appellant was not without any remuneration. In view thereof, the helicopter falls under the category of 'Private Aircraft'.

11. Lastly, we may note that in the present case, the DGCA vide letter dated 15.07.2009 clarified that the operation of Charter Services by NSOP (Passenger) holder under para 9.2 of CAR, 1999, Section 3 Air Transport Series 'C' Part-III is permissible and similar letters have been issued in the matter of other companies also, which have been taken note of by the Larger Bench. Thus, use of the aircraft by the appellant for charter purposes is permissible and has been upheld by the judicial pronouncements as noted above.

12. We may now deal with the decision cited by the learned Special Counsel for the Revenue in the case of **M/s. East India Hotels Ltd.**, where the key question before the High Court was whether non-revenue flight operated by the companies for transporting its official would fall within the scope of providing non-scheduled (Passenger) service or non-scheduled charter service in terms of the notification in question. Referring to the Aircraft Rules, specially Rule 3(4) defining "Scheduled Air Transport Services" and Rule 3(9) defining "Air Transport Service", the Court observed as under:-

"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."

Thus, the determinative factor noticed by the High Court in the case of **M/s. East India Hotels Ltd.** was evidently the factor of remuneration and in view thereof concluded that the conditions of exemption notification were not complied with as the appellant therein had not used the aircraft for rendering any 'Air Transport Service' within the meaning of Rule 3(9) of the Aircraft Rules. We are, therefore, of the view that the decision of the Delhi High Court in the case of **M/s. East India Hotels** is distinguishable and is not applicable in the facts of the present case.

13. Without multiplying the decisions referred to by the learned Counsel for the appellant, we are of the view that the controversy has been settled by the decision of the **M/s.V.R.L. Logistics.**

14. In view of the judicial pronouncements and the statutory provisions discussed above, we are of the view that the aircraft was used only for providing non-scheduled (Passenger) services as defined in Clause (b) of the Explanation to Condition No.104 of the exemption notification and

consequently there is no violation thereof. The issue of confiscation, interest and penalty, accordingly do not survive.

15. The present appeal was listed for hearing on 28.03.2024 with another group of appeals in the case of Commissioner of Customs Vs. M/s.GMR Aviation Pvt. Ltd. & Ors. – Customs Appeal Nos.404 to 414/2009 (DB) and extensive arguments were made in that matter by the learned counsel for the respondent. In so far as the present appeal was concerned, the submissions made in the case of M/s.GMR Aviation were relied upon. We have passed a detailed order in M/s.GMR Aviation Pvt. Ltd. & Ors. and pronounced the same on 29.05.2024, deciding the issue against the Revenue and following the same, the present appeal is allowed.

16. The impugned order is set aside. The appeal is accordingly allowed.

[Order pronounced on 4TH June, 2024.]

(Binu Tamta)
Member (Judicial)

(P. V. Subba Rao)
Member (Technical)