CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20192 of 2014

(Arising out of Order-in-Appeal No. 393-396/2013 Cus. (B) dated 17.10.2013 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Varman Aviation Private Limited
Aviation Complex, 16-17,
Road No.7, EPIP, Whitefield,
Bangalore – 560 066.

Appellant(s)

VERSUS

The Commissioner of Customs
Central Revenue Building,
P.B. No.5400, Queens Road,
Bangalore – 560 001.

Respondent(s)

WITH

1. **Customs Appeal No. 20193 of 2014 (M/s. Varman Aviation Private Limited vs. Commissioner of Customs, Bangalore.)**

2. **Customs Appeal No. 20194 of 2014 (M/s. Varman Aviation Private Limited vs. Commissioner of Customs, Bangalore.)**

3. **Customs Appeal No. 20195 of 2014 (M/s. Varman Aviation Private Limited vs. Commissioner of Customs, Bangalore.)**

(All appeals arising out of common Order-in-Appeal No. 393-396/2013 Cus. (B) dated 17.10.2013 passed by the Commissioner of Customs (Appeals), Bangalore.)

APPEARANCE:

Shri N. Anand, Advocate for the Appellant

Shri K. A. Jathin, Authorised Representative for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20424 - 20427 / 2024

DATE OF HEARING: 19.04.2024
DATE OF DECISION: 21.05.2024

PER : R. BHAGYA DEVI

M/s. Varman Aviation Pvt. Ltd., appellants, are into the activity of repair/overhauling of imported aero engines at their facility provided in Export Promotion Industrial Park, Whitefield, Bangalore. The appellant was issued with Section 58 Bond for storage of imported goods such as spare parts of aero engines, consumables and chemicals for cleaning the engine, without payment of duty. The appellant imported aircraft parts meant for repair / overhaul of aircraft engines received from abroad and bonded these aircraft parts in their bonded warehouse without payment of duty and subsequently, cleared them under ex-bond Bills of Entry to be used in repair / overhaul of the aero engines claiming the benefit of 'Nil' rate of duty vide Notification No.153 / 1994-Cus. dated 13.07.1994. In terms of this Notification, the appellant could import goods of foreign origin for repairs and export. The Original Authority denied the benefit of the above Notification for spare parts cleared from the bonded warehouse under ex-bond Bill of Entry stating that these spare parts were not meant for being repaired as is the condition of the Notification. The Commissioner (A) upheld the order of the original authority and also rejected the claim of the appellant for alternative remedy in terms of the Notification No.134/1994 dated 22.6.1994 on the ground that the appellant did not comply with the Section of 65 of the Customs Act, 1962. The request for benefit of Notification No.21/2002 was also rejected.

2. The learned counsel on behalf of the appellant submitted that vide sanction order No.1/2011 dated 19.11.2011 issued under Section 58 of the Customs Act, 1962 was obtained initially. Later on, the same sanction order was amended to include in-bond manufacturing license under Section 65 of the Customs Act, 1962 vide letter dated 28.3.2012. it is submitted by the learned counsel that admittedly all the spare parts which were being imported and cleared under ex-bond Bills of Entry were used for repair of engines and the repaired / overhauled

aircraft engines along with spare parts incorporated / used were exported and shipping Bills have been filed and cleared in all the cases of repaired / overhauled engines. It is submitted that in terms of Section 69 of the Customs Act, 1962 no duty is payable on reexport of warehoused goods and hence, the demand is not sustainable.

2.1 It is further submitted that Notification No.153/1994 dated 13.07.1994 allows both 'aircraft engines' as also 'spare parts' required for undertaking repair / overhauling of the aircraft engines are eligible for the benefit of the Notification. The Notification only states that articles of foreign origin is exempted from payment of duties of customs subject to condition that the importer makes a declaration at the time of import that the said goods are being imported for repairs and return. The expression 'for repair and return' would encompass not only goods which require repair but also spare parts or components which are essential and required for doing repairs. Accordingly, the benefit of Notification to the spare parts admittedly used in the engines which are exported cannot be denied. It is also submitted that initially they were advised to take only Section 58 bond license for storing the goods and only at a later date section 65 bond license was obtained and since the original license is amended to include the in-manufacturing activity as per Section 65, the question of denying the benefit of Notification No.134/1994 – Cus. dated 22.06.1994 does not arise. The benefit for alternative exemption is claimed based on the decision of Share Medical care vs. UOI: 2007 (209) ELT 321 (SC) and Shri Hari Chemical Export Ltd. Vs. UOI: 2006 (193) ELT 257 (SC); Unichem Laboratories Ltd. Vs. CCE: 2012 (145) ELT 502 (SC).

3. The learned Authorised Representative (AR) for the Revenue reiterated the findings of the lower authorities and submitted that the appellant vide his letter dated 22.02.2011 written to the Deputy Commissioner of Customs had very clearly written stated that they provide repair / overhauling services not only to the foreign customers but also to domestic customers

under approval of Director General of Civil Aviation and therefore, in accordance with the provisions of Section 65 of the Customs Act, 1962 which requires bonding of the entire premises of the company and infrastructure therein, it would not be possible for the appellant to provide repair / overhauling services to the domestic customers. Accordingly, they refused to take license under Section 65 of the Customs Act, 1962. It was also submitted that the appellant had requested for allowing to import parts under Notification No.21/2002-Cus. dated 01.03.2002 read with Sl. No.347 on submission of Green Bill of Entry and utilize the parts required for repair / overhauling of engines received from overseas customers which are cleared under Notification No.153/1994 dated 13.07.1994. Hence, the learned AR submits that it was on the appellant's request that Section 65 bond was not given and later on, it was added as per the request of the appellant when the benefit of the Notification No.153/1994 dated 13.07.1994 was denied. Similarly, the question of benefit of Notification No.134/1994 claimed before the Commissioner (A) was also not eligible since during the relevant period, the appellant did not comply with the provisions of Section 65 of the Customs Act, 1962. The Commissioner (A) also denied the benefit of the Notification No.21/2002-Cus. dated 01.03.2002 as they are applicable only for home consumption.

4. Heard both sides. The limited issue to be decided is whether the appellant is eligible for the benefit of Notification No.153/1994 dated 13.07.1994, relevant clauses of which is reproduced below:

> **Notification No.153/1994 dated 13.7.1994**
>
> Exemption to goods of foreign origin imported for repairs and return, theatrical equipments including costumes imported by visiting foreign troups, pontoons for speeding loading and unloading of imported goods, photographic, filming, audio, video and radio equipments and tapes imported for short films, feature films and documentaries,

goods for mountaineering expeditions and tags or lables or printed polythene bags for use on articles for export.

In exercise of the powers conferred under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods (hereinafter referred to as the said goods) of the description specified in column (2) of the Table hereto annexed and falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from the whole of the duty of customs leviable thereon specified in the said Schedule and from the whole of the additional duty leviable thereon under section 3 of the second mentioned Act subject to the conditions, if any, laid down in the corresponding entry in column (3) thereof.

S. No.	Description of goods	Conditions
(1)	(2)	(3)
1.	Articles of foreign origin	(i) The importer makes a declaration at the time of import that the said goods are being imported for repairs and return; (ii) the said goods are re-exported within six months of the date of importation or within such extended period not exceeding one year, as the Assistant Collector of Customs may allow; (iii) the Assistant Collector of Customs is satisfied as regards the identity of the said goods; and (iv) the importer executes a bond undertaking- (a) to re-export the said goods after repairs within six months of the date of importation or within the aforesaid extended period; (b) to produce the goods before the Assitant Collector of Customs for identification before re-export; (c) to pay the duty if the re-export does not take place within the stipulated period.

The Notification exempts goods of foreign origin imported for repairs and return and in the present case, engines are imported for repair and to repair these engines, spare parts are imported and used for repair of engines and they become part and parcel of the engine and thereby they are exported which is not disputed. All the conditions stipulated against the Notification are also being satisfied and there is no dispute that any of these conditions have been violated. The only dispute is that the spares which are imported are also to be repaired and they cannot be used to repair the engines. As seen from the above Notification, the goods that can be imported are not specified but only states that they should be articles of foreign origin which are being imported for repairs and return. The appellant's letter dated 22.02.2011 clearly stated that spare parts would be cleared under ex-bond Bill of Entry for being used for repairing the engine which is imported under Notification No.153/1994 and these engines along with the spares are being exported. The observation by the original authority that the above Notification is applicable only to import of goods of foreign origin which themselves were to be repaired and returned after repairs and not for goods imported to be used for carrying out repairs cannot be inferred from the said Notification.

4.1 The relevant portion Notification of No.21/2002-Cus. dated 01.03.2002 is reproduced herein below:

> **Effective rates of basic and additional duty for specified goods falling under chapters 1 to 99**
>
> In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 17/2001-Customs, dated the 1st March, 2001 [G.S.R. 116(E), dated the 1st March, 2001], the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the

corresponding entry in column (2) of the said Table, when imported into India,-

(a) **from so much of the duty of customs** leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;

(b) **from so much of the additional duty** leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table,

subject to any of the conditions, specified in the Annexure to this notification, the condition No. of which is mentioned in the corresponding entry in column (6) of the said Table :

Provided that nothing contained in this notification shall apply to –

(a) the goods specified against serial Nos. 239, 240, 241 and 242 of the said Table on or after the 1st day of April, 2003;

(b) the goods specified against serial Nos. 250, 251 , 252 and 415 of the said Table on or after the 1st day of March, 2005.

*Explanatio*n. - For the purposes of this notification, the rate specified in column (4) or column (5) is *ad valorem* rate, unless otherwise specified.

347.	88 or any Chapter	Parts of aeroplanes, gliders, helicopters or simulators of aircraft (excluding rubber tyres and tubes for aeroplanes or gliders)	Nil	Nil	67

67. If the parts are required for manufacture or servicing of aeroplanes, gliders, helicopters or simulators of aircraft.

Explanation.- “Parts of aeroplanes, gliders, helicopters or simulators of aircraft” shall include engines, engine parts, wireless transmission apparatus, wireless receivers, iron and steel washers and screws, ball and roller bearings and other parts.

As seen from the above Notification, the spare parts imported for repair/replacement of the engines were otherwise also exempted even if they were cleared for home consumption; hence, the question of demanding duty does not arise. In the instant case, admittedly, the goods were bonded and after repairs were exported. Accordingly, we find that the appellant was eligible for the benefit of the Notification No.153/1994 13.07.1994 even for the spares which were being imported and used in the engines which are exported.

5. In view of the above discussions, the impugned order is set aside and the appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 21.05.2024.)

(D.M. MISRA)
MEMBER (v JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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