CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20121 of 2022

(Arising out of Order-in-Appeal No. 318/2021 dated 24.08.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

M/s. Interglobe Aviation Ltd.,
Upper Ground Floor, Thapar House,
Gate No. 2, Western Wing,
124 Janpath,
New Delhi – 110 001.

Appellant(s)

VERSUS

Principal Commissioner of Customs,
Air India SATS Airfreight Terminal,
Kempegowda International Airport,
Bengaluru – 560 300.

Respondent(s)

With

(1). Customs Appeal No. 20122 of 2022
(M/s. Interglobe Aviation Ltd.)

(Arising out of Order-in-Appeal No. 308-309/2021 dated 09.08.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

(2). Customs Appeal No. 20123 of 2022
(M/s. Interglobe Aviation Ltd.)

(Arising out of Order-in-Appeal No. 373/2021 dated 17.09.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

(3). Customs Appeal No. 20152 of 2022
(M/s. Interglobe Aviation Ltd.)

(Arising out of Order-in-Appeal No. 308-309/2021 dated 09.08.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

(4). Customs Appeal No. 20515 of 2022
(M/s. Air Asia (India) Ltd.)

(Arising out of Order-in-Appeal No. 386 to 391/2021 dated 22.09.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

(5). Customs Appeal No. 20516 of 2022
(M/s. Air Asia (India) Ltd.)

(Arising out of Order-in-Appeal No. 386 to 391/2021 dated 22.09.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

(6). Customs Appeal No. 20517 of 2022
(M/s. Air Asia (India) Ltd.)

(Arising out of Order-in-Appeal No. 386 to 391/2021 dated 22.09.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

(7). Customs Appeal No. 20518 of 2022
(M/s. Air Asia (India) Ltd.)

(Arising out of Order-in-Appeal No. 386 to 391/2021 dated 22.09.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

(8). Customs Appeal No. 20519 of 2022
(M/s. Air Asia (India) Ltd.)

(Arising out of Order-in-Appeal No. 386 to 391/2021 dated 22.09.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

(9). Customs Appeal No. 20520 of 2022
(M/s. Air Asia (India) Ltd.)

(Arising out of Order-in-Appeal No. 386 to 391/2021 dated 22.09.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

(10). Customs Appeal No. 20052 of 2022
(M/s. Air Asia (India) Ltd.)

(Arising out of Order-in-Appeal No. 262 to 285/2021 dated 30.07.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

(11). Customs Appeal No. 20053 of 2022
(M/s. Air Asia (India) Ltd.)

(Arising out of Order-in-Appeal No. 287 to 306 dated 06.08.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

(12). Customs Appeal No. 20293 of 2021
Customs Cross Objection No. 20387 of 2021
(Commissioner of Customs Vs. M/s. Air Asia (India) Pvt. Ltd.)

(Arising out of Order-in-Appeal No. 163 to 188/2021 dated 24.02.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

(13). Customs Appeal No. 20529 of 2021
Customs Cross Objection No. 20500 of 2021
(Commissioner of Customs Vs. M/s. Air Asia (India) Pvt. Ltd.)

(Arising out of Order-in-Appeal No. 1 to 35/2021 dated 11.01.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

(14). Customs Appeal No. 20531 of 2021
(Commissioner of Customs Vs. M/s. Interglobe Aviation Ltd.)

(Arising out of Order-in-Appeal No. 40/2021 dated 13.01.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.)

APPEARANCE:

Ms. Purvi Asati & Ms. Ashwini Nag, Advocates for the Appellant-assessee

Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Revenue

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 22029 to 22043 /2025

DATE OF HEARING: 18.11.2025
DATE OF DECISION: 18.11.2025

DR. D.M. MISRA

The appeals filed by M/s. Interglobe Aviation Ltd. and M/s. Air Asia (India) Ltd. against respective Orders-in-Appeal since involve more or less common issues are taken up together for hearing and disposal along with the appeals filed by the Revenue against some of the orders of the learned Commissioner(Appeals). Narrating the facts of M/s. Interglobe Aviation Ltd. would suffice the purpose to decide all these appeals.

2. M/s. Interglobe Aviation Ltd. (IGA, for short) is a scheduled airline operator engaged in the business of transportation of passengers and goods by air as well as cargo to various destinations within India. The appellant acquired

aircrafts, engines and other parts on an operating lease basis from overseas parties by entering into lease agreements. During the course of operation of the airlines, defects develop and to rectify such defects, relevant parts are sent out by the appellants for repairing to Maintenance, Repair and Operations organisations located outside India (hereinafter referred to as MRO) under maintenance and repair contracts. The MRO is an organisation which specialises repair and maintenance in aircrafts and its parts and as a pre-requisite for the repair of the aircraft or such parts, it is necessary for the appellant to send the same outside India. After necessary repairs, the parts are reimported and the appellant filed Bill of Entry for reimport of the repaired aircraft parts. In the respective Bill of Entry, they claimed exemption from payment of BCD under Sl. No.544 of Notification No.50/2017-Cus. dated 30.06.2017. Also they have not paid integrated tax (IGST) on the reimported aircraft repaired parts in terms of the exemption provided under Sl.No.2 of the Notification No.45/2017-Cus. dated 30.06.2017. The Department assessed the Bills of Entry denying the benefit of Notification No.45/2017-Cus. dated 30.06.2017. Aggrieved by the said assessment, they filed appeals before the learned Commissioner(Appeals). In most of the cases, the learned Commissioner(Appeals) rejected appeals filed by the assessee whereas in few cases, the learned Commissioner(Appeals) allowed the appeals; hence, the Revenue is in appeal in those cases, where the learned Commissioner(Appeals) set aside the assessment orders.

3. Heard both sides and perused the records.

4. The short question involved in the present appeals filed by the assessee as well as by the Revenue mainly revolves around the eligibility of exemption at Sl.No.2 of the exemption Notification No.45/2017-Cus. dated 30.06.2017 on the reimported repaired aircraft parts by the assesses. In few

appeals, the question also arose whether the subsequent Notification No.36/2021-Cus. issued w.e.f. 19.07.2021 is clarificatory and retrospective in nature; hence, covers the period till 30.06.2017. We find that both the issues have been considered by the Principal Bench at New Delhi in the case of Interglobe Aviation Ltd. Vs. CC [2021(1) TMI 726 – CESTAT, New Delhi] and also reported as Interglobe Aviation Limited Vs. CC [2024(8) TMI 1523 – CESTAT New Delhi.

5. After analysing the definition of duty under the Customs Act and the definition of integrated tax under Section 2(12) of the IGST Act and levy and collection under Section 5 of the IGST Act, the Tribunal has concluded that the appellant therein are entitled to exemption under Notification No.45/2017-Cus. dated 30.06.2017 in relation to IGST. It is observed as follows:-

> **20.** The Exemption Notification does not define the phrase *duty of customs.* However, Section 2(15) of the Customs Act defines “duty” to mean duty of customs leviable under the Customs Act. The said Section 2(15) of the Customs Act is reproduced below :
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> > “2(15). ”duty” means a duty of customs leviable under this Act;”
>
> **21.** Section 12 of the Customs Act deals with dutiable goods. Sub-section (1) of Section 12 is reproduced below :
>
> > **“Section 12. Dutiable goods.** - (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or exported from India.”
>
> **22.** A bare perusal of Section 12(1) of the Customs Act shows that duties of customs shall be levied at such rates as are specified under the Tariff Act or any other law for the time being in force, on goods imported into, or exported from India. The contention of the Learned Authorized Representatives of the Department is that Section 12(1) of the Customs Act leaves no manner of doubt that duties of customs are levied not only under the provisions of the Customs Act and the Tariff Act but also under ‘any other law for the time being in force’.

Thus, the integrated tax leviable on imported goods by the Integrated Tax Act would also be a duty of customs and, therefore, the appellant was correctly denied exemption from integrated tax leviable under Section 3(7) of the Tariff Act.

23. It is not possible to accept this contention of the Learned Authorized Representatives of the Department. Section 2(15) of the Customs Act defines 'duty' to mean duty of customs leviable under the Customs Act. Section 12(1) provides that the duties of customs shall be levied at such rates as may be specified in the Tariff Act or any other law for the time being in force. It only means that the rates for duties of customs can be specified either under the Tariff Act or any other law for the time being in force. It does not expand the meaning of 'duties of customs'. What is important to notice is that whereas Section 2 of the Tariff Act refers to 'duties of customs', Section 3 of the Tariff Act does not refer to 'duties of customs'. It only provides for levy of additional duty equal to the excise duty, sales tax, local taxes and other charges. Additional duty is levied under Section 3(1) of the Tariff Act, whereas integrated tax and compensation cess are levied under sub-sections (7) and (9) of Section 3 of the Tariff Act. Sub-section (11) of Section 3 also refers to duty or tax or cess chargeable under Section 3.

24. .. ...
25. ... ...

26. It is, therefore, clear that even the levy of additional duty under Section 3 of the Tariff Act, which is in addition to the duty of customs under Section 2 of the Tariff Act, would not be *duty of customs* for the purpose of notifications issued under the Customs Act.

28. In this connection, the judgment of the Supreme Court in *M/s. Unicorn Industries* v. *Union of India & Others,* [2019 (12) TMI 286-Supreme Court = 2019 (370) E.L.T. 3 (S.C.)] also needs to be referred to. The Supreme Court held that National Calamity Contingency Duty, Education Cess and Secondary and Higher Education Cess are in the nature of additional excise duty and when an exemption notification exempts duty of excise it would not automatically mean that these additional excise duties are also exempted. Thus, it was held that these additional duties do not come within the scope of the term "duty of excise".

29. Integrated Tax has been defined under Section 2(12) of the Integrated Tax Act to mean the "Integrated Goods and Services Tax levied under the Integrated Tax Act. Section 5 of the Integrated Tax Act deals with levy

and collection. It provides that there shall be levied a tax called the Integrated Goods and Services Tax on all inter-State supplies of goods or services or both on the value as determined under Section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding 40 per cent as may be notified by the Government. The proviso stipulates that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Tariff Act on the value as determined under the Tariff Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act. Section 5 of the Integrated Tax Act is reproduced below :-

> **"Section 5. Levy and collection.** - (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person :
> Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962)."

30. It is, therefore, clear that though integrated tax is levied under Section 5 of the Integrated Tax Act, but it is collected in accordance with the provisions of Section 3 of the Tariff Act on the value as determined under the Tariff Act and at the point when duties of customs are levied under Section 12 of the Customs Act. Thus, integrated tax is levied under Section 5(1) of the Integrated Tax Act and only the procedure for collection has been provided under Section 3 of the Tariff Act.

31. It also needs to be noted that the term "integrated tax" has not been defined either under the Customs Act or the Customs Tariff Act or under the Exemption Notification. As integrated tax is not levied under Section 12 of the Customs Act, it cannot be called "duty of customs". The charging section for integrated tax, in terms of which it is levied, is Section 5 of the Integrated Tax Act and not Section 3(7) of the Tariff Act. Section

3(7) of the Tariff Act only provides for the manner of collection of the said integrated tax to be done by the Customs Authorities in case of import of goods. This is what was observed by the Madras High Court in *Vedanta Limited* v. *Union of India* [2018 (19) G.S.T.L. 637 (Mad.)].

32. Thus, what follows from the aforesaid discussion is;
(1) Though the expression *duty of customs* has not been defined under the Exemption Notification but it can only have that meaning which has been assigned to the meaning of 'duty' under Section 2(15) of the Customs Act. It would, therefore, mean the "duty of customs" leviable under the Customs Act and any other duty not levied under the Customs Act, would not be *duty of customs* for the purposes of any notification issued under the Customs Act.
(2) Integrated tax has also not been defined under the Exemption Notification. It has been defined under Section 2(12) of the Integrated Tax Act to mean the tax levied under the Integrated Tax Act. Integrated Tax is levied under Section 5 of the Integrated Tax Act and not under Section 12 of the Customs Act, and therefore, cannot be called as *duty of customs;* and
(3) Section 3(7) of the Tariff Act only provides the manner of collection of the integrated tax by the customs authorities in case of import of goods.

33. It is in the light of the aforesaid discussion that the meaning assigned to duty of customs in the Exemption Notification has to be understood.

34. A perusal of the main body of the Exemption Notification would indicate that it refers not only to *duty of customs* leviable thereon which is specified in the First Schedule to the Tariff Act, but also to integrated tax and compensation cess which are leviable thereon respectively under sub-sections (7) and (9) of Section 3 of the Tariff Act. However, column (3) of the Table accompanying the main notification for Serial No. 2 refers to only *duty of customs* (without mentioning 'leviable thereon which is specified in the First Schedule'), on the fair cost of repairs carried out with insurance and freight charges.

35. It is for this reason that it has been contended by the Learned Authorised Representatives of the Department that omission to mention "specified in the said First Schedule" in the conditions set out in column (3) of the Table for Serial No. 2 after "Duty of customs", would mean that the Government intended to include integrated tax and compensation cess in the expression *duty of customs.*

36. It is not possible to accept this reasoning advanced by the Learned Authorised Representatives of the Department. In the first instance, the meaning assigned to *duty of customs,* as discussed above, is the meaning assigned to 'duty' under Section 2(15) of the Customs Act, which would be the duty leviable under Section 12 of the Customs Act. Mere omission to mention "specified in the First Schedule to the Tariff Act" after "Duty of customs" in the conditions set out in column (3) of the Table for Serial No. 2 cannot lead to an inference that *duty of customs* would include integrated tax and compensation cess. Column (3) of the Table refers to "Duty of customs" which would be leviable. Section 2(15) of the Customs Act defines 'duty' to mean a duty of customs leviable under the Customs Act. It is Section 12 of the Customs Act which provides that the duties of customs shall be levied at such rates as may be specified under the Tariff Act. Section 2 of the Tariff Act also provides that the rates at which duty of customs shall be levied under the Customs Act are specified in the First and Second Schedules to the Tariff Act. It, therefore, inevitably follows that the expression *duty of customs* occurring in the column (3) of the Table at Serial No. (2) of the Exemption Notification would only mean the duty of customs leviable under the Customs Act as have been specified in the First and Second Schedules to the Tariff Act and not to integrated tax, which is levied under Section 5 of the Integrated Tax Act.

46. Learned Authorized Representatives of the Department have placed reliance upon the exemption Notification No. 94/96, dated December 16, 1996. The relevant portion is reproduced below :
"Exemption to re-import of goods exported under duty drawback, rebate of duty or under bond. - 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. 97/95-Customs, dated the 26 May, 1995 the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within any Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table hereto annexed (hereinafter referred to as the said table) when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, the additional duty leviable under section 3 of the said Customs Tariff Act and special duty of customs leviable under sub-section (1) of Section 68 of the Finance (No. 2) Act, 1996 (33 of 1996), as is in

excess of the amount indicated in the corresponding entry in column (3) of the said Table.

Table

Sl. No.	**Description of goods**	**Amount of Duty**
(1)	(2)	(3)
1.	xxxx xxxx xxx	xxxx xxxx xxxx
2.	Goods, other than those falling under Sl. No. 1 exported for repairs abroad	Duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways.

47. It would be seen that the aforesaid notification refers to the duties of customs leviable thereon which is specified in the said first schedule, the additional duty leviable thereon under Section 3 of the Tariff Act and special duty of customs leviable under Section 68(1) of the Finance Act, whereas the instant Exemption Notification refers to duty of customs leviable thereon which is specified in the said First Schedule and the integrated tax, compensation cess leviable thereon respectively under sub-sections (7) and (9) of Section 3 of the Tariff Act. Thus, the additional duty leviable thereon under Section 3 of the Tariff Act and special duty of customs leviable under Section 68(1) of the Finance Act have been replaced by the integrated tax under Section 3(7) and compensation cess under Section 3(9) of the Tariff Act. It cannot, therefore, be contended that "duty of customs" referred to in the condition against Serial No. 2 of the Exemption Notification would include integrated tax.

48. The inevitable conclusion that follows from the aforesaid discussion is that the absence of mention of *integrated tax* and *compensation cess* in column (3) under Serial No. 2 of the Exemption Notification would mean that only the basic customs duty on the fair cost of repair charges, freight and insurance charges are payable and *integrated tax* and *compensation cess* are wholly exempted.

> **49.** It would, therefore, not be necessary to examine the contention of Learned Authorised Representatives of the Department that in case of any ambiguity in an Exemption Notification, the benefit should go to the Revenue. It would also not be necessary to examine the remaining contentions advanced by the Learned Counsel for the appellant that the activity of repairs is "supply of service" or that the said activity would not fall under the category of 'import of service' under the Integrated Tax Act since the necessary ingredients mentioned therein have not been fulfilled.
>
> **50.** Thus, for all the reasons stated above, it is not possible to sustain the impugned orders upholding the assessments made on the 346 Bills of Entry. The 346 orders passed by the Commissioner (Appeals) are, accordingly, set aside and it is held that the appellant is entitled to exemption from payment of integrated tax under the Exemption Notification on re-import of repaired parts/aircrafts into India. All the 346 appeals are, therefore, allowed.

6. In the later judgment, taking note of the amending Notification No.36/2021 dated 19.07.2021 and subsequent circular issued by the Board, the Tribunal observed that the said amendment cannot be considered as clarificatory nature and retrospective in its operation. It is concluded as follows:-

> 65. The aforesaid discussion leads to the inevitable conclusion that the Amendment Notification dated 19.07.2021 cannot be said to be retrospective in nature. Findings to the contrary recorded by the Commissioner (Appeals) in the impugned orders on the basis of the Circular dated 19.07.2021 issued by CBIC basis the minutes of the meeting of the GST Council cannot, therefore, be sustained. The orders impugned in all the 1714 appeals are, therefore, set aside and all the appeals are allowed.

7. The said judgment was also followed in a recent case viz. Air India Ltd. Vs. CC [2025(2) TMI 320 – CESTAT New Delhi. Besides, the Hon'ble Delhi High Court in the case of Interglobe Aviation Ltd. Vs. Principal Commissioner of Customs [2025(3) TMI 347 – Delhi High Court] also held that the Notification No.36/2021-Cus dated 19.07.2021 is *ultra vires*. It is observed as follows:-

176. A conjoint reading of the Proviso to Section 5 (1) along side Section 3 (7) of the CTA clearly establishes that they are a part of a composite and comprehensive machinery laid in place for collection of a goods and services tax. It merely designates the place and the juncture when the tax liability would be liable to be discharged. The integrated tax which is spoken of in Section 3 (7) can only be recognised as being a reference to the integrated tax leviable under the IGST. We find ourselves unable to countenance a power or authority inhering in the respondents to subject a supply or import of service to a tax under the CTA in the garb of levying an additional duty.

177. The reliance placed on the judgment of the Supreme Court in Hyderabad Industries is clearly misplaced since the said decision was primarily concerned with the interplay between BCD and an additional duty of customs under the CTA. While there cannot be a cavil of doubt with respect to those two levies being separate and distinct, we are in the present batch concerned with the levy of a tax upon import of services under the IGST and an additional levy which, according to the respondents, would be leviable on a purported reading of Section 3 (7) of the CTA. Regard must also be had to the amendments which came to be made in Section 3 (7) and which no longer speaks of an authority to levy a tax notwithstanding the provisions contained in any other enactment but restricts its expanse to the imposition and collection of a tax "as leviable" under Section 5 (1). In any case, and as we have found, both Sections 5 (1) of the IGST and Section 3 (7) of the CTA are indelibly connected to the levy and collection of the tax contemplated under the former. We find ourselves unable to construe or interpret Section 3 (7) as envisaging an independent levy.

178. The impugned amendments ushered in by virtue of Notification No. 36/2021 together with the clarification issued by the CBIC were clearly intended to expand the tax net and cannot, therefore, be termed to be merely clarificatory. The original notifications were in unambiguous terms restricted to the levy of a BCD. It was this position which was sought to be drastically amended by those changes. In any event, the levy of an additional duty even after the transaction has been subjected to the imposition of a tax treating it to be a supply of service would be clearly unconstitutional and cannot be sustained.

179. We accordingly allow the instant writ petitions. Notification No. 36/2021 insofar as it purports to levy an additional levy over and above the IGST imposed

> under Section 5 (1) by adding the words "....tax and cess" is declared unconstitutional, ultra vires the IGST and is quashed to the aforesaid extent. For reasons aforenoted, we also declare the Explanation to clause (d) as introduced by the aforesaid notification as invalid and set aside the same. Circular No. 16/2021 issued by the CBIC is consequentially quashed.
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> 180. We also for all the reasons assigned in the body of this judgment quash and set aside the impugned orders dated 30 November 2022 [WP(C) 7845/2023] and 28 December 2023 [WP(C) 4673/2024] passed by the Commissioner of Customs (Appeals) as also the orders of assessment which were assailed. The petitioners shall be entitled to consequential reliefs.

8. Following the aforesaid judgments, we set aside the respective impugned orders upholding the assessment orders denying benefit of exemption to IGST under Notification No.45/2017-Cus dated 30.6.2017 and consequently, allow the appeals filed by the assessee-appellants; Revenue's appeals are rejected. Cross objections are disposed of.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja…