

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

**PRINCIPAL BENCH**

**CUSTOMS APPEAL NO. 644 OF 2010**

(Arising out of Order-in-Original No. 27/HKC/Commr/2010 dated 30.09.2010 passed by Commissioner of Customs (Preventive), New Customs House, Near IGI Airport, New Delhi)

**M/s. Ligare Aviation Limited,**  
(formerly known as  
M/s. Religare Aviation Limited)

**...Appellant**

Versus

**Commissioner of Customs (Preventive),**  
New Custom House, New Delhi

**...Respondent**

**APPEARANCE:**

Shri Tushar Jarwal, Shri Priyojeet Chatterjee and Shri Rahul Sateerja, advocates for the appellant

Shri P.R.V. Ramanan, Special Counsel and Ms. Jaya Kumari, Authorized Representative for the Department

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)**

**Date of Hearing: 01.06.2023  
Date of Decision: 03.07.2023**

**FINAL ORDER NO. 50812/2023**

**JUSTICE DILIP GUPTA:**

M/s. Ligare Aviation Limited<sup>1</sup> (formerly known as M/s. Religare Aviation Limited) has filed this appeal to assail the order dated 30.09.2010 passed by the Commissioner (Preventive), New Delhi<sup>2</sup> confiscating the imported aircrafts/helicopters with an option to the appellant to redeem the same after payment of redemption fine. The

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1. the appellant  
2. the Commissioner

order also confirms the demand of customs duty in terms of the undertaking given by the appellant at the time of importation of the aircrafts/helicopters with interest and penalty.

2. The appellant is engaged in the business of providing non-scheduled (passenger) services and for this purpose holds a permit issued by the Directorate General of Civil Aviation<sup>3</sup> for undertaking non-scheduled (passenger) services. The appellant also applied to the DGCA for granting the necessary permission to import aircrafts/helicopters and the DGCA granted the no objection certificate for import of aircrafts/helicopters for operating non-scheduled operator services. Permit No. 1/1998 dated 16.01.2006 was issued by the DGCA initially to Ran Air Services Limited and subsequently on change of name of the company, a fresh permit dated 27.03.2009 was issued in the name of Religare Aviation Limited (the appellant).

3. The following aircrafts/helicopters were imported by the appellant but VT-REO at serial no. 4 crashed on 03.08.2008:

<b>S. No.</b>	<b>Name of the aircrafts/helicopter</b>	<b>Registration No.</b>	<b>Date</b>
1.	2001 King Air B200	VT-RSM	12.11.2007
2.	2000 King Air B200	VT-REM	12.11.2007
3.	Hawker 800 XP	VT-RAN	13.11.2007
4.	2000 Bell 430	VT-REO	13.11.2007
5.	1998 King Air B200	VT-RSN	18.03.2008
6.	Beechcraft 1900 D	VT-REN	19.05.2008
7.	Bell 430	VT-RER	22.12.2008
8.	Falcon 2000	VT-RVL	08.02.2009

4. The aforesaid aircrafts/helicopters were cleared by the appellant by availing exemption from customs duty under serial no. 347B of the

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**3. DGCA**

Notification No. 21/2002-Cus dated 01.03.2002, subsequently amended by Notification No. 61/2007-Cus dated 03.05.2007.

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

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2002-Customs, dated the 1<sup>st</sup> 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)
<b>347B</b>	8802(except 8802 60 00)	All Goods	Nil	-	104

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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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**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."

6. 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.

7. The appellant holds permits provided by DGCA for non-scheduled (passenger) services. These permits have been renewed from time to time and have been endorsed for each aircraft/helicopter imported by the appellant. Such operations have been carried out by the appellant without any objection from either the DGCA, which had issued the permit or from the MCA. The benefit of the conditional exemption notification was availed by the appellant. The customs authority, however, raised an issue that the operations carried out by the appellant were not covered by the permits that had been granted by the DGCA and, accordingly, a show cause notice dated 23.09.2009 was issued to the appellant alleging that the permits granted to the appellant are for passenger services but the aircrafts were used for charter services; passenger tickets were not issued; and the aircrafts were given for charter to the Directors of Group Companies and hence not open to use by members of the public. This, the show cause mentions, was in complete violation of the permits, and consequently in violation of the exemption notification. It needs to be noted that there is no specific allegation in the show cause notice that the eight aircrafts were not flown/used for remunerative basis, though it does refer to a solitary flight undertaken on Hawker Aircraft VT-RAN on 27.01.2008 without consideration.

8. The appellant filed a reply to the show cause notice denying the allegations made in the show cause notice. The appellant also pointed out that all Group Companies had been billed and only one flight on 27.01.2008 was a test flight for crew familiarization and not for travelling. In connection with this flight, the appellant pointed out that:

- (i)** The flight was taken on aircraft VT-RAN which is a Hawker 800 (9-seater) that was imported on 13.11.2007;
- (ii)** The first flight on this aircraft was on 25.01.2008 and the second flight was taken on 27.01.2008;
- (iii)** Since the aircraft was new, the second flight was for crew familiarization;
- (iv)** The flight had two pilots (crew) and one Mr. Sunil Godhwani and Mrs. Dhillon who admittedly are prospective users and have used the aircraft in the future;
- (v)** They were travelling on the flight only for experiencing the aircraft; and
- (vi)** The flight, as is evident from Flight Report Book, shows that it was a flight from Delhi-Raipur-Bagdogra-Delhi and there was no stoppage time at the airports.

9. The Commissioner, however, by order dated 30.09.2010, confirmed the demand after recording the following findings:

- (i)** Non-scheduled passenger services permit does not automatically qualify as non-scheduled charter services permit;
- (ii)** The appellant does not qualify for providing charter services; and

(iii) The aircraft VT-RAN for one instance was used on 27.01.2008 without remuneration but aircrafts otherwise were used by Group Companies for consideration resulting in breach of non-scheduled air transport passenger services.

10. Shri Tushar Jarwal, learned counsel for the appellant assisted by Shri Priyojeet Chatterjee and Shri Rahul Sateerja submitted that the aforesaid findings recorded by the Commissioner in the impugned order are not sustainable in view of the decision of the Larger Bench of the Tribunal in **M/s. VRL Logistics Ltd. vs. Commissioner of Customs, Ahmedabad**<sup>4</sup>. Learned counsel also submitted that non-scheduled (passenger) services can also cover non-scheduled (charter) services in view of the decisions of the Delhi High Court in **East India Hotels Ltd. vs. Commissioner of Customs Central Excise and Central GST, New Delhi**<sup>5</sup>, **Commissioner of Customs (Preventive), New Customs House, New Delhi vs. M/s. Reliance Commercial Dealers Ltd.**<sup>6</sup> and **Commissioner of Customs (Preventive), New Customs House, New Delhi vs. M/s. Global Vectra Helicorp Ltd.**<sup>7</sup>. Learned counsel for the appellant also submitted that during the pendency of the proceedings, the appellant had paid redemption fine amounting to Rs. 20,45,25,279/- crores and given bank guarantees of Rs. 25,63,61,735/- crores and so if the impugned order is set aside, the appellant would be entitled to refund of the redemption fine with interest and the bank guarantees are liable to be discharged.

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4. **Customs Appeal No. 74 of 2010 decided on 08.08.2022**  
5. **CUSAA 5/2020 decided on 31.01.2023**  
6. **CUSAA 11/2023 decided on 01.03.2023**  
7. **CUSAA 35/2023 decided on 06.04.2023**

11. Shri P.R.V. Ramanan, learned special counsel assisted by Ms. Jaya Kumari, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal. Learned special counsel also submitted that if the redemption fine is to be refunded to the appellant, no interest can be granted because there is no statutory provision for grant of interest.

12. The **first** and the **second issues** that arise for consideration are whether non-scheduled (passenger) services permit would qualify as non charter services permit also and whether the appellant would qualify for providing charter service.

13. These issues were decided by the Larger Bench of the Tribunal in **VRL Logistics** and the relevant paragraphs of the decision are reproduced below:

**Use of Aircraft for only non-scheduled  
(passenger) services**

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55. 'Air transport service' has been defined in rule 3 (9) of the Aircraft Rules to mean service for transport by air of persons for any kind of remuneration whatsoever. **There is no dispute that the appellants have used the aircraft for the transport of persons for remuneration. There is no stipulation or restriction or a condition in** the said definition that a tariff should be published or that such service should be rendered only on per-seat basis and not by chartering or about the category or class of persons to be transported. **Thus, the contention of the department that the appellants have rendered 'air transport service' to their group companies by carrying personnel of their group companies is not of any relevance as there is no**

**prohibition in the said definition against any kind of persons to be transported.**

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**Non-scheduled (passenger) operator can carry out charter service**

62. **It would now have to be seen whether there is any restriction or prohibition against providing air transport service by way of charter of aircraft, while providing non-scheduled (passenger) services.**

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.

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65. **What needs to be noticed is that the exemption notification does not prohibit a non-scheduled (passenger) service permit holder to use the aircraft for charter operations.** A conjoint reading of the definitions contained in the Aircraft Rules, as have been adopted in the definition in clause (b) of the Explanation to Condition No. 104 of the exemption notification, makes the following position quite clear:

- (a) The expression "air transport service" covers service for the transport by air of person for any kind of remuneration whatsoever. The service may be individually for each seat or by chartering the entire aircraft and the remuneration may be of any kind whatsoever, such as seat-wise or daily or weekly or monthly or annual basis. There is no restriction on the mode and manner of fixing or charging the remuneration either in the exemption notification or in the Aircraft Rules;
- (b) "Scheduled (passenger) air transport service" only means that air transport service which has the

essential features mentioned in the definition in rule 3 (49) of Aircraft Rules, namely, it must be undertaken between the same two or more places, operated according to a time table or with flights so regular or frequent that they constitute a recognizable systematic series, each flight being open to use by the 'members of the public'; and

- (c) If a service is covered by "air transport service" defined in rule 3(9) and is other than "scheduled (passenger) air transport service" defined in rule 3(49), it is a "non-scheduled (passenger) service" within the meaning of clause (b) of the Explanation to the exemption notification.

66. It needs to be noticed that Condition No. 104 specifically refers to the definitions contained in the Aircraft Rules as also Civil Aviation Requirements issued under the provisions of rule 133A of the Aircraft Rules. Both, CAR 1999 that deals with non-scheduled (passenger) services operator and CAR 2000 that deals with non-scheduled (charter) services operator define a non-scheduled air transport services (passenger) in the same manner as defined in clause (b) of the Explanation to Condition No. 104.

67. CAR 1999 contains the following relevant provisions:

- (a) There will be no restriction on the type and seating capacity of the aircraft to be importer/acquired by the applicant.
- (b) Non-scheduled operators can conduct charter/non-scheduled operations for transportation by air of persons, mail or goods. In such operations, the operators shall not publish their time schedules as the operations are of non-scheduled nature.

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.**

**(emphasis supplied)**

14. The Larger Bench also held that personnel of Companies which are Group Companies qualify as members of public and the relevant paragraphs of the decision are reproduced below:

**Whether the aircraft can be used by members  
of public**

86. The definition of "private aircraft" under rule 3(43) of Aircraft Rules, does not warrant the view that if tariff is not published, the use of aircraft would be private. In terms of rule 3(43), private aircraft is other than public transport aircraft. Public transport aircraft is defined in rule 3 (46) as aircraft which effects public transport and public transport is defined in rule 3(45) to mean all carriage of persons or things effected by aircraft for a remuneration of any nature whatsoever, and all carriage of persons or things effected by aircraft without such remuneration if the carriage is effected by an air transport undertaking. Air transport undertaking is defined in rule 3(9A) to mean an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward. **It would follow from the aforesaid definitions that where the aircraft is used for carriage of persons for a remuneration it is a public transport aircraft and not a private aircraft.** There is no stipulation in the said definitions that if tariff is not published, the use of air craft would be as a private aircraft. Admittedly, in the present case, the appellants have used the aircraft for carriage of persons for remuneration. Further, where the business of an undertaking includes carriage by air of persons it would be an air transport undertaking and if such an undertaking also uses the aircraft to effect carriage of persons without remuneration, it would still be public transport aircraft and not a private aircraft. **Therefore, even assuming that some flights are conducted for carriage of persons without remuneration, it would be still be a public transport aircraft and not a private transport aircraft.**

87. Even otherwise, the purpose of having a published tariff is to apprise the public of the rates at

which the aircraft would be available. The appellants hire the aircrafts to customers pursuant to tenders/negotiations. The purpose of having a published tariff is, therefore, substantially complied with.

88. Learned special counsel for the appearing for the department submitted that the aircraft is being provided for private use and is not available to use by the public.

89. Learned counsel for the appellants submitted that the aircraft is available not only to group companies but also to other customers.

90. In the first instance, personnel of companies which are group companies of the appellant are also members of public. The aircraft is, therefore, available for used by the public. Even otherwise, this cannot be a reason to hold that the air transport service provided by the appellants would fall outside the scope of non-scheduled (passenger) service.

**(emphasis supplied)**

15. The Larger Bench also held that there is no requirement to issue air tickets and the relevant paragraphs of the decision are as follows:

**Requirement of issuing air-tickets**

100. **The definitions of 'air transport service' and 'non-scheduled (passenger) service' do not stipulate any restriction or condition that such service should be rendered only on per-seat basis. Nor is there any stipulation in the said definitions for issuance of passenger tickets.** The Policy Guidelines for Starting Scheduled/ Non-Scheduled Air Transport Services issued by the Ministry of Civil Aviation clearly state that non-scheduled operation means an air transport service other than scheduled air transport service and that it may be on charter basis and/or non-scheduled basis and that such operator is not permitted to publish time schedule and issue tickets to passengers. **A operator of non-scheduled passenger service is, therefore, not required to issue tickets to passengers.**

101. Learned special counsel for the department has, however, placed reliance upon paragraph 9.7 of CAR 1999 to contend that non-issue of passenger tickets would amount to not rendering non-scheduled (passenger) service.

102. This contention cannot not be accepted. Paragraph 9.7 of CAR 1999 provides that non-scheduled operators shall issue passenger tickets in accordance with the provisions of the Carriage By Air Act 1972 and any other requirements which may be prescribed by DGCA. As noticed above, the Policy Guidelines for starting scheduled/non-scheduled air transport services issued by Ministry of Civil Aviation provide that non-scheduled operator is not permitted to publish time schedule and issue tickets to passengers. There is, therefore, no obligation on the part of the appellants to issue tickets to passengers.

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 fulfillment 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.

**(emphasis supplied)**

16. The Larger Bench also held that remunerative flights qualify as a air transport services and would be covered under the exemption. This is clear from paragraph 55 of the order of the Larger Bench, which paragraph has been reproduced above.

17. The Delhi High Court in **Global Vectra Helicorp** also held that non-scheduled passenger permit can also cover non scheduled charter services and the relevant portion of the judgment is reproduced below:

**"26. Mr. Harpreet Singh, learned counsel appearing for the Revenue, submits that the present appeal also raises an additional question whether the helicopters imported for non-scheduled (passenger) services could be used for non-scheduled (charter) services. He submits that the said question was not covered by the decision in the case of East India Hotels Ltd. (supra).**

**27. The said contention is not merited. Although Mr Singh is correct that the said question did not arise in East India Hotels Ltd.(supra), the interpretation of Condition No.104 of the Exemption Notification and the Aircraft Rules, 1937, as accepted by the Court in the said decision, would answer question no. (iii) as well.** This is briefly explained hereafter.

28. It is relevant to refer to Condition No.104 of the Exemption Notification and the same is set out below:

**"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' 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:

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

29. **It is clear from a plain reading of the aforesaid Condition of the Exemption Notification that the exemption from custom duties would be available in respect of an aircraft used for providing non-scheduled (passenger) services or non-scheduled (charter) services. Accordingly, if the aircraft is used for either of the aforesaid purposes, the Condition No.104 of the Exemption Notification would be satisfied.**

30. The expression 'non-scheduled (passenger) services' is defined to mean 'air transport services other than the scheduled (passenger) air transport services'.

31. The expression 'air transport services' is defined under sub-rule (9) of Rule 3 of the Aircraft Rules, which reads 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;”

32. In East India Hotels Ltd. (supra), this Court had noted that the term ‘air transport service’ is defined in wide terms and would cover transport by air of humans, animals, mails or any other thing, animate or inanimate. 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.

33. This Court had also referred to paragraphs 2.4 and 2.5 of the Civil Aviation Requirement (CAR), Section 3, Air Transport Series ‘C’ Part-III issue-II, dated 01.06.2010 issued by the DGCA. The said paragraphs are set out below:

“2.4 The carriage of passengers by a non-scheduled operator’s permit holder maybe performed on per seat basis or by way of chartering the whole aircraft on per flight basis, or both. There is no bar on the same aircraft being used for either purpose as per the requirement of customers from time to time. The operator is also free to operate a series of flights on any sector within India by selling individual seats but will not be permitted to publish time table for such flights. Operation of revenue charters to points outside India may also be undertaken as per paragraph 9.2.

2.5 A non-Scheduled Operator is also allowed to operate revenue charter flights for a company within its group companies, subsidiary companies, sister concern, associated companies, own employees, including Chairman and members of the Board of Directors of the company and their family members, provided it is operated for remuneration, whether such service consists of a single flight or series of flights over any period of time.”

34. It is apparent from a plain reading of paragraph 2.5 aforesaid that a non-scheduled operator is also allowed to operate revenue charter flights for related entities.

35. Mr. Harpreet Singh’s contention that the respondent was not permitted to use the helicopters for non-scheduled (passenger) services as it had imported the

aircrafts for non-scheduled (charter) services is insubstantial. Condition No.104 of the Exemption Notification would be satisfied even if the aircraft imported is used for non-scheduled (passenger) services. It is further relevant to note that non-scheduled (passenger) services would also include non-scheduled (charter) services if provided for passengers.

36. It is also material to note that the Exemption Notification was further amended by Notification No.21/2011-Cus dated 01.03.2011 and the following explanation has been added to Condition No.104 of the Exemption Notification:

"2. For the purposes of this exemption, use of such imported aircraft by a non-scheduled (passenger) operator for nonscheduled (charter) services or by a non-scheduled (charter) operator for non-scheduled (passenger) services, shall not be construed to be a violation of the conditions of import at concessional rate of duty."

37. Although, the requirements of Condition No.104 of the Exemption Notification are unambiguous but the aforesaid explanation inserted by way of amendment of Condition No.104 of the Exemption Notification amply clarifies that the exemption condition would be satisfied if the aircraft imported is used for non-scheduled (passenger) services or non-scheduled (charter) services."

**(emphasis supplied)**

18. It is not in dispute that the aircrafts were used by Group Companies for consideration, except on one occasion where one aircraft was used without remuneration. The Delhi High Court in **East India Hotels** clearly held that since the appellant therein had used the aircraft for transporting senior officials of related entity and their family members on remuneration basis, the appellant had not violated Condition No. 104 of the notification and after noticing the provisions paragraph 2.5 of CAR, the Delhi High Court observed as follows:

"34. A plain reading of paragraph 2.5 also indicates that its contents are in conformity with the definition of the term 'non-scheduled air transport service', which entails air transport service, for any kind of remuneration. It is clear from paragraph 2.5 that a Non-Scheduled Operator is also allowed to operate revenue charter flights for related entities, its own employees or employees of a group company including Chairman and members of the Board of Directors and their family members. However, it is necessary that such service be provided for remuneration."

19. The issue, therefore, that arises for consideration is whether the appellant had violated Condition No. 104 of the notification merely because on one occasion one aircraft had been used without remuneration. As noted above, in reply to the show cause notice the appellant had pointed out that in regard to the aircraft VT-RAN which was imported on 13.11.2007, the first flight was undertaken on 25.01.2008 and the second flight was undertaken on 27.01.2008. The second flight was for crew familiarization and it had two pilots and Mr. Sunil Godhwani and Mrs. Dhillon, who as prospective users were travelling on the flight only for experiencing the aircraft. The flight was also from Delhi-Raipur-Bagdogra-Delhi with no stoppage time at the airports. Thus, it cannot be urged by the department that Condition No. 104 of the notification had been violated merely because one particular flight was undertaken without any remuneration.

20. In such circumstances, the order dated 30.09.2010 passed by the Commissioner confiscating the imported aircrafts/helicopters with an option to the appellant to redeem the same after payment of redemption fine and also confirming the demand of customs duty with interest and penalty cannot be sustained. The appellant would,

therefore, be entitled to refund of the redemption fine paid by the appellant in terms of the order passed by the Commissioner.

21. Learned counsel for the appellant also urged that the appellant had during the pendency of the proceedings paid redemption fine amounting to Rs. 20,45,25,279/- crores and given bank guarantees of Rs. 25,63,61,735/- crores and so if a direction for refund of the amount is given, the said redemption fine should be refunded with interest and the bank guarantees should be cancelled/discharged.

22. The details of the redemption fine and the bank guarantees, as pointed out by the learned counsel for the appellant, are as follows:

S. No.	Aircraft Type	Aircraft Regn.	Assessable Value (in Rs.)	Redemption fine % to Assessable Value	Proportionate Redemption Fine (in Rs.)	Redemption fine paid	Bank Guarantee
1.	VT-RSM	Super King Air B200	13,94,28,048	14.76	2,05,78,957	2,05,78,957	1,77,04,975
2.	VT-REM	Super King Air B200	12,84,82,173	14.76	1,89,51,587	1,89,51,587	1,63,04,879
3.	VT-RAN	Hawker 800 XP	35,70,04,195	14.76	5,26,92,224	5,26,92,224	4,53,33,423
4.	VT-REO	Bell 430	24,75,28,275	14.76	3,65,34,064	NA	NA
5.	VT-RSN	Super King Air B200	12,98,49,648	14.76	1,91,65,228	1,91,65,228	1,50,13,025
6.	VT-REN	Beech 1900 D	14,77,96,739	14.76	2,18,14,138	2,18,14,138	1,70,88,042
7.	VT-RER	Bell 430	38,39,12,671	14.76	5,66,63,795	5,66,63,795	3,56,61,573
8.	VT-RVL	Falcon 2000	1,17,61,87,413	14.76	17,36,00,007	NA	10,92,55,818
			<b>2,71,01,89,162</b>		<b>40,00,00,000</b>	<b>20,45,25,279</b>	<b>25,63,61,735</b>

23. What has to be seen is whether the appellant would be entitled to interest on the redemption fine amount deposited by the appellant, which is now liable to be refunded.

24. Learned counsel for the appellant submitted that though there is no provision for grant of interest on refund of redemption fine, but there is also no provision prohibiting the grant of interest on refund of redemption fine. In this connection, learned counsel for the appellant placed reliance upon the decision of the Supreme Court in **Godavari Sugar Mills Limited vs. State of Maharashtra and others**<sup>8</sup> and on rule 41 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure), Rules 1982. Learned counsel also submitted that the Larger Bench decision of the Tribunal in **Advance Mechanical Works vs. Commissioner of Customs & Central Excise, Rajkot**<sup>9</sup> would not be applicable to the facts of the present case.

25. Learned special counsel appearing for the department, however, submitted that in the absence of any specific provision granting interest on refund of redemption fine, it will not be appropriate for the Tribunal to grant interest. Learned special counsel also placed reliance upon the Larger Bench decision of the Tribunal in **Advance Mechanical Works**.

26. It would, therefore, be appropriate to refer to the Larger Bench decision of the Tribunal in **Advance Mechanical Works** and the relevant paragraphs are reproduced below:

“The facts in the referral order are set out in paragraphs 1 & 2 of the order. **The issue pertains to whether interest is payable on redemption fine which had to be refunded when the order in which it was ordered, was set aside by a higher judicial forum.** The Hon’ble Member who heard the appeal, was of the opinion that the decision in Sheela Foam Pvt. Ltd. v. CCE, Noida [[2003 \(154\) E.L.T. 522](#) (Tri. - LB)] granting interest on refund of pre-deposit of duty, has been rendered without taking into consideration the Supreme Court’s decision in Orient

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8. (2011) 2 SCC 439

9. 2005 (182) E.L.T. 460 (Tri. - LB)

Enterprises [[1998 \(99\) E.L.T. 193](#) (S.C.)] and therefore calls for a re-examination by a still Larger Bench particularly in view of the provisions contained in Section 11BB of the Central Excise Act.

2. The Larger Bench is constituted to examine whether the decision rendered in Sheela Foam is in conflict with the decision in Orient Enterprises of the Supreme Court. The two decisions cited supra dealt with facts entirely different and are set out hereunder. In Sheela Foam Pvt. Ltd. v. CCE, Noida [[2003 \(154\) E.L.T. 522](#) (Tri.-LB)], the Tribunal in its final order allowed the appeal with consequential relief. In that case, the department denied refund of Rs. 61.70 on the ground of limitation after sanctioning a part of Rs. 1 crore deposited by the appellant during investigations. The Tribunal referred to *Kuil Fire Works Industries v. Union of India* [[1997 \(95\) E.L.T. 3](#) (SC)] and relied upon *Eastern Coils Pvt. Ltd. v. CCE, Calcutta* [[2003 \(153\) E.L.T. 290](#) (Cal.)] and Board's circular dated 2-1-2002 while directing the Revenue to refund the amount due along with interest at the rate of 12%. It can be observed that the Tribunal directed the Revenue to pay interest on the consequential refund not paid, as the department set at naught relief ordered by the Tribunal. It is true that the Tribunal did not have occasion to consider the decisions in *Suganmal v. State of Madhya Pradesh* [AIR 1965 SC 1740] and *UOI v. Orient Enterprises* [[1998 \(99\) E.L.T. 193](#) (SC)]. The Division Bench of the Supreme Court in *Orient Enterprises* held that interest is not payable in the facts of that case. It is important to narrate the facts of *Orient Enterprises'* case. M/s. *Orient Enterprises* imported certain goods. The customs authorities did not accept the declared value, enhanced it, confiscated the goods on the charge that the goods were undervalued, allowed it to be redeemed on payment of fine and imposed a penalty. The importer succeeded in appeal. Since the amount deposited by the importer upon adjudication by the Collector was not refunded, the importer approached the Tribunal for issuing directions to the lower authorities. The Tribunal directed the Collector to refund the money to the importer within 60 days period. The Collector refunded the amount. The importer thereupon filed a Writ in the High Court claiming

that he is entitled to interest on the amount involved. **The High Court disposed off the Writ directing the department to pay interest at 12% from the date of filing of the revision application till the date of payment. The Union of India went in appeal against the order of the High Court. The Supreme Court allowed the appeal and set aside the order of the High Court.**

3. **The Supreme Court made some important observations while allowing the appeal of the Union of India. An order passed by a High Court under its writ jurisdiction, awarding interest, cannot be held to be of universal application, the Apex Court observed.** The direction for payment of interest in such cases was by way of consequential relief along with the main relief of setting aside the order imposing the tax or duty. The Court while disposing off civil appeal No. 914/92 (Orient Enterprises' case referred to above), observed that the contention that interest is payable on the amount deposited towards redemption fine under an adjudication order while the amount had been refunded after the said order was set aside, cannot be maintained even under Article 226 of the Constitution of India.

4. The referral order is concerned with the same issue, i.e., whether interest is payable on the redemption fine while refunding it. The issue is fairly covered by the decision of the Apex Court in Orient Enterprises supra. **The circumstances under which interest is payable on the delayed refunds are enumerated in the Central Excise Act as well as Customs Act presently.** The decision in Sheela Foam Pvt. Ltd. pertains to deposit made towards duty during the course of investigation and is not in regard to fine paid in pursuance of an adjudication order. The Apex Court clearly held that even under Article 226 of the Constitution, a claim for interest on redemption charges paid in pursuance of an adjudication order which was set aside later, can't be maintained. The present appellant's claim for interest on the redemption fine therefore cannot be upheld.

5. We observe that there is no conflict between the decision in Sheela Foam and Orient Enterprises. The latter

was dealing with the interest on redemption fine to be refunded while the former was concerned about interest on deposit of duty. **We conclude that no interest is payable on redemption fine and penalty while refunding the same in pursuance of an order of a higher judicial forum as observed by the Supreme Court in Orient Enterprises' case.** The case of interest on consequential refund of duty is covered by the decision in Sheela Foam case. There is no conflict between these decisions. We hold accordingly.

6. The appeals themselves are disposed off by holding that the appellants are not entitled to refund in the present case."

**(emphasis supplied)**

27. The issue, therefore, stands settled against the appellant in the aforesaid decision of the Larger Bench of Tribunal in **Advance Mechanical Works**. The Larger Bench of the Tribunal had placed reliance upon the decision of the Supreme Court in **Union of India vs. Orient Enterprises**<sup>10</sup> to hold that no interest would be payable on redemption fine, while refunding the same in pursuance of an order of a higher judicial forum.

28. The decision of the Supreme Court in **Godavari Sugar Mills** would not come to the aid of the appellant. The Supreme Court had observed that even though section 26 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 provides for payment of interest only upto 20 years from the date of taking possession, the owner would still be entitled to interest even after 20 years at a reasonable rate in the discretion of the Court on equitable principles. It would not be appropriate for the Tribunal to award interest on equitable grounds in

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10. 1998 (99) E.L.T. 193 (SC)

the absence of any specific provision in the Act for grant of interest on refund of redemption fine.

29. The appellant would, therefore, not be entitled to any interest on the refund of the redemption fine in view of the decision of the Supreme Court in **Orient Enterprises**.

30. The bank guarantees, however, furnished by the appellant are liable to be discharged as the order passed by the Commissioner has to be set aside.

31. Thus, for the reasons stated above, the order dated 30.09.2010 passed by the Commissioner is set aside with a direction to the department to refund the redemption fine deposited by the appellant within a period of two months from the date of service of a copy of this order. The bank guarantees furnished by the appellant are also liable to be discharged. The appeal is, accordingly, allowed to the extent indicated above.

(Order pronounced on **03.07.2023**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(RAJEEV TANDON)**  
**MEMBER (TECHNICAL)**

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

**PRINCIPAL BENCH**

**CUSTOMS APPEAL NO. 644 OF 2010**

(Arising out of Order-in-Original No. 27/HKC/Commr/2010 dated 30.09.2010 passed by Commissioner of Customs (Preventive), New Customs House, Near IGI Airport, New Delhi)

**M/s. Ligare Aviation Limited,**  
(formerly known as  
M/s. Religare Aviation Limited)

**...Appellant**

Versus

**Commissioner of Customs (Preventive),**  
New Custom House, New Delhi

**...Respondent**

**APPEARANCE:**

Shri Tushar Jarwal, Shri Priyojeet Chatterjee and Shri Rahul Sateerja, advocates for the appellant

Shri P.R.V. Ramanan, Special Counsel and Ms. Jaya Kumari, Authorized Representative for the Department

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**  
**HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**Date of Hearing: 01.06.2023**  
**Date of Decision: 03.07.2023**

**ORDER**

Order pronounced.

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER (TECHNICAL)**