

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

PRINCIPAL BENCH

CUSTOMS APPEAL NO. 55833 OF 2013

(Arising out of Order-in-Appeal No. CC(A)CUS/480/2012 [C.No. Appl/DLH/Cus/D-I/Prev/366/12] dated 29.10.2012 passed by Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi)

M/s. Ligare Aviation Limited,
(formerly known as
M/s. Religare Aviation Limited)
19, Nehru Place,
New Delhi – 110 019

...Appellant

Versus

**Additional Commissioner of Customs
(Preventive),**
New Custom House,
Near IGI Airport,
New Delhi 110037

...Respondent

APPEARANCE:

Shri Tushar Jarwal, Shri Priyojeet Chatterjee and Shri Rahul Sateeja, 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. 50813/2023

JUSTICE DILIP GUPTA:

M/s. Ligare Aviation Limited¹ (formerly known as M/s. Religare Aviation Limited) has filed this appeal to assail the order dated 29.10.2012 passed by the Commissioner of Customs (Appeals) that disposes the appeal filed by the appellant against the order dated

1. the appellant

29.06.2012 passed by the Additional Commissioner of Customs (Preventive), New Delhi.

2. The appellant had imported one aircraft called Beechcraft 1900 D against Bill of Entry dated 19.05.2008 at "nil" rate of duty by availing exemption from customs duty under serial no. 347B of the Notification No. 21/2002-Cus dated 01.03.2002, subsequently amended by Notification No. 61/2007-Cus dated 03.05.2007. The appellant had also filed an undertaking with the customs that the said aircraft would be used for non-scheduled air transport (passenger) services only.

3. A show cause notice dated 23.09.2009 was issued to the appellant alleging violation of the aforesaid Notification and the Additional Commissioner, by order dated 30.09.2010, confirmed the demand and imposed penalty.

4. It is against this order dated 30.09.2010 that **Customs Appeal 644 of 2010 (M/s. Ligare Aviation Limited)** was filed, which Customs Appeal has now been decided by order of date.

5. It transpires that the appellant had sought change of category of the aircraft from non-scheduled operator permit to scheduled operator permit by a letter dated 18.06.2012. This request was denied to the appellant by order dated 29.06.2012 for the reason that it would not be proper to give clearance for change of the category since the appeal filed by the appellant against the order dated 30.09.2010 was pending before the Tribunal.

6. The finding recorded by the Additional Commissioner were confirmed by the Commissioner (Appeals) by the order dated 29.10.2012 and the relevant paragraph is reproduced below:

"5. I agree with the decision arrived at vide the impugned order letter dated 29.06.2012 for the reasons that the appellant's request to change of category of Aircraft from NSOP to SOP, cannot be entertained when the issue pending in the Tribunal has arisen out of the referred Show Cause Noticed and Order-in-Original, alleging the use of the subject aircraft against the referred Notifications. Moreover, it is also necessary to state here that the said aircraft was imported vide Bill of Entry No. 231851 dated 19.05.2008 and the said assessment has been finalized as no appeal has been filed against the same. Hence, seeking changes in usage of the said aircraft requires re-look into the imports of the said aircraft at the time of actual imports, which is against the intended purpose of the said Notification providing exemption and the legal provisions under the Customs Act, 1962. Hence, the appeal is dismissed."

7. As noted above, Customs Appeal No. 644 of 2010 filed by the appellant has been allowed by order of date.

8. The order dated 29.10.2012 passed by the Commissioner (Appeals) is, accordingly, set aside and the matter is remitted to the Additional Commissioner to pass a fresh order in accordance with law. The appeal is allowed to the extent indicated.

(Order pronounced on **03.07.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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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)**