

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

PRINCIPAL BENCH - COURT NO. 1

**Customs Appeal No. 51706-51708 of 2017 with  
Customs Stay Application No. 50909 of 2017**

(Arising out of Order-in-Original No. 07/2017/VJ/Pr. Commissioner dated 13.07.2017 passed by the Pr. Commissioner of Customs (Import), New Delhi)

DATE OF HEARING : 20.12.2017  
DATE OF DECISION : 20.12.2017

**CC, New Delhi**

....

**Appellant**

(Rep by Sh. R.K. Manjhi, DR)

VERSUS

**M/s Ligare Aviation Ltd.**

....

**Respondents**

(Rep. by Sh Tushar Jarwal & Rahul Satija, Adv.)

**CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT  
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 58541-58543/2017**

**PER JUSTICE (Dr.) SATISH CHANDRA :**

All these appeals are filed by the Revenue against the Order-in-Original No. 07/2017/VJ/Pr. Commissioner dated 13.07.2017 passed by the (Pr.) Commissioner of Customs (Import), New Delhi.

2. The brief facts of the case are that, the assessee-Respondents have imported seven aircrafts which were sent to Colombo, Sri Lanka and thereafter returned. In these appeals, the dispute is regarding three aircrafts. The Department

has demanded the Customs duty and imposed penalties. But the adjudicating authority dropped the demand and imposition of penalties. Being aggrieved, the Department has filed the present appeals.

3. With this background, we have heard Shri R.K. Manjhi, learned DR for the Revenue and Shri Tushar Jarwal, learned counsel for the assessee-Respondents.

4. After hearing both sides and on perusal of the material available on record, it appears that, in the assessee-Respondent's own case, regarding the two aircrafts, the matter was assailed before the Chandigarh Regional Bench of this Tribunal against the different impugned order with similar set of facts. The Tribunal vide Final Order No. 62117/2017 dated 05.12.2017 by following the ratio laid down in the case of **Noble Asset Company Ltd. vs CC (Preventive), Mumbai**, 2006 (205) ELT 901 (Tri.-Mum), has allowed the appeal by setting aside the impugned order by observing that :

**"7. We find that the undisputed facts are that two aircrafts in question were imported by the appellant availing the benefit of notification 21/2002-Cus dated 01.03.2002. The said aircrafts were operated by them under non-scheduled operator under License No. 01/1998 issued by Director General of Civil Aviation (DGCA). In fact, a total of 7 aircrafts were imported by them availing the benefit of Notification No. 21/2002-Cus dated 01.03.2002 as amended. The Customs department booked a case of misuse of said notification in 2008 and seized 7 aircrafts and issued**

show cause notice in September 2009 which was adjudicated by the Commissioner of Customs Preventive vide Order-in-Original dated 30.09.2010 in which aircrafts worth Rs. 271.01 Crores were confiscated and redemption fine in lieu of confiscation of Rs. 40 Crores was imposed. Duty amount of Rs. 56.51 Crores was confirmed and penalty of Rs. 15 Crores was imposed on the importer. The appellant appealed against the said Order-in-Original in CESTAT and the CESTAT granted them stay in Feb 2012 and waived pre-deposit till the disposal of the appeal. Since then, the said matter was pending before CESTAT, Delhi. It is also undisputed that subject aircrafts were, at the time of initial import, cleared for home consumption by filing bill of entry under Section 46 of the Customs Act. Subsequently, the aircrafts left the country without filing shipping bills under Section 50 of the Customs Act. They went to Colombo to be handed over to M/s. INV-2R Leasing Company Limited as per Sale and Purchase Agreement dated 19.12.2012. Later, both aircrafts were brought back into India without filing necessary bills of entry, under Section 46 of the Act. The Department has alleged that the export of aircrafts was in contravention of Section 50 of the Customs Act, 1962 and, that their import being fresh import, the appellant violated Section 46(1) of the Customs Act, 1962. Thus, import duty was leviable on these aircrafts and they were also liable to confiscation under Section 111 (i) and 111(l) and 113(h) of the Customs Act, 1962. The question to be decided is, whether after initial assessment and clearance, the subsequent taking out of the two aircrafts, out of India and bringing them back into India would amount to export and import respectively under Customs Act, 1962.

8. We agree with the contention of the Id. Advocate that the issues involved in the present

**appeal are no longer res-integra and have been conclusively settled by this Tribunal in the case of Noble Asset Company Limited (supra), wherein this Tribunal held as under:-**

**"6. (d) (ii) (iii) ..... Under the Customs Act, the expression goods includes vessels. Therefore, when the vessel is brought into the country for the first time, the same are liable for payment of duty as any other goods. Once such goods have been assessed to duty & cleared, they are no longer remain imported goods by virtue of the definition of imported goods in Section 2(25) which states that imported goods means goods brought into India from a place outside but does not include goods which have been cleared for home consumption. Therefore once any vessel e.g. the rig in the present case, is brought into India and assessed to duty and cleared for home consumption it would cease to be imported goods. Subsequently, if it acquires the characteristic of foreign going vessel, is not liable for payment of customs duty for the movements in and out of the country. In this regard, the definition of foreign going vessel is relevant. The definition states that foreign going vessel includes inter alia any vessel engaged in fishing or any other operation outside the territorial waters of India.**

**6.d(vi). The question whether the change of ownership of a vessel, after its first import and clearance from Customs, would render the subsequent owner liable for payment of duty once again. This question assumes relevance as the rig was imported first in the year 1987 by Essar when a Bill of Entry was filed and the rig was cleared for home consumption. Thereafter, in the year 1996 the ownership of the rig changed the hands and when the rig came back to India in December, 1997, duty has been demanded from Noble on the premise that Noble had not discharged duty on the rig as owners of**

the rig and that they could not take shelter in the fact that appropriate duty had earlier been discharged on the rig by its previous owner (Essar). We are unable to agree with this contention of the Revenue, as ownership of goods or a vessel, is irrelevant in determining its duty liability under the Customs Act. It is the act of Import, which renders goods liable for duty & no owners. Once an entity has been imported and assessed to duty and cleared for Home Consumption, they cease to be imported goods. The subsequent change of ownership of such goods will not render them again liable for duty. The liability for payment of Customs duty is independent of the ownership of goods and therefore we are of the view that Noble cannot be held liable for payment of duty, merely because they became the owners of the rig. The other reasons on which duty liability has been fastened on Noble for the movement of rig in December 1997 and when it came back from repairs in 1999 is not called for have already been dealt with above.

(v) There is another reason to justify the practice which has existed for non-levy of duty on every inward movement of foreign going vessel. This is for the reason that if import duty was payable on every inward movement of a vessel, it would have to be then refunded back by way of Drawback payments, whenever the vessel went to a non-designated location/out of India. Therefore, if a vessel carrying cargo arriving into Bombay Port say on May 1, 2006, would be liable to pay duty on the full value of that ship and the Shipping Company would then become entitled to refund of the said amount as Drawback, on May 6, 2006, under Section 74 of the Act, of the duty paid, when it left the Port & goes back to international waters/foreign port. The entire course of international trade would be unnecessarily hampered and the Customs department

would be only busy in collecting the duty on day one and refunding the same on day five or earlier. It is possibly for this reason that the practice of non-levy of duty on vessels on their subsequent movements in and out of India evolved, i.e., once such vessel had been assessed to duty and cleared for home consumption, further levy & Drawback liabilities not called for."

9. We also find that the appellant had initially imported 7 aircrafts (including the two impugned aircrafts). In the similar set of facts in respect of five other aircrafts of the appellant, the same issues arose and in separate adjudication orders dated 15.02.2017 and 13.07.2017, two different Principal Commissioners by relying on the Tribunal judgment in Nobel Asset Company Limited (supra) have taken a view that the aircrafts are not liable to confiscation under Section 111 or Section 113 of the Customs Act and also not liable to pay import duty as and when they are brought back into India after making trips abroad and duty cannot be demanded on these aircrafts. Proceedings for demand and penalty were dropped in both the cases. The AR for the Revenue has not been able to show that the department is contesting these two orders in the higher judicial fora.

10. Therefore, following the judgment of this Tribunal in the case of Noble Asset Company Limited (supra) and considering the fact that the Department itself has dropped similar proceedings in relation to five other aircrafts, which were imported initially and subsequently gone out of India under sale and purchase agreements and came back under the lease agreement, we hold that the order of Id. Commissioner is not sustainable and the same is set aside."

5. By following our earlier decision (supra), we find no reason to interfere with the impugned order and the same is hereby sustained along with the reasons mentioned therein.

6. In the result, the appeals filed by the Department are dismissed. Stay application also stands disposed of accordingly.

(Dictated & pronounced in the open court)

**(V. PADMANABHAN)**  
**MEMBER (TECHNICAL)**

**(JUSTICE (Dr.) SATISH CHANDRA)**  
**PRESIDENT**

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