प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, **आल इंडीया रेडियो के पास**, **नवरंगपुरा** , **अहमदाबाद** 380009
दुर भाष (079) 2754 46 30 **फैक्स** (079) 2754 23 43
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009
PHONE: (079) 2754 4630 FAX (079) 2754 2343 E-mail: cus-ahmd-adj@gov.in

---

निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ **F. No.: VIII/10-30/Pr. Commr/O&A/2025-26**
DIN- 20261071MN000080D267

आदेश की तारीख/Date of Order : 05.10.2026
जारी करने की तारीख/Date of Issue : 08.10.2026

द्वारा पारित :- **मनीष कुलहरी, आयुक्त**
Passed by :- **Manish Kulhary, Commissioner**

मूल आदेश संख्या **:**

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-14-2026-27 dtd. 05.10.2026 in the case of M/s. Interglobe Aviation Limited, situated at Level 1, Tower C, Global Business Park, Mehrauli Road, Gurugram, Haryana – 122002.

1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.

3. उक्त अपील प्रारुप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियोँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी

उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए) । अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियोँ में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारे मे विवाद है उसका भुकतान करके अपील की जा शकती है।

7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Subject: - Show Cause Notice File No. VIII/10-30/Pr. Commr./O&A/2025-26 dated 06.04.2026 issued by the Principal Commissioner of Customs, Customs, Ahmedabad to M/s. Interglobe Aviation Limited, Level 1, Tower C, Global Business Park, Mehrauli Road, Gurugram, Haryana - 122002.

Brief facts of the case:

M/s. Interglobe Aviation Limited, Level 1, Tower C, Global Business Park, Mehrauli Road, Gurugram, Haryana - 122002 (hereinafter referred to as 'the Noticee' for the sake of brevity) operates International Flights from Sardar Vallabhbhai Patel International Airport, Ahmedabad (herein after referred to as 'SVPI Airport') to various international and domestic destinations. The Noticee uses the same aircrafts for domestic extension flights to various destinations in India i.e. Mumbai & Kolkata without a trip to a foreign airport during their voyage.

2. The definition of "*foreign going vessel or aircraft*" and *"stores"* as provided under Section 2(21) and Section 2(38) of the Customs Act, 1962, are as under:

> *"2(21) "**foreign-going vessel or aircraft**" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes—*
>
> *(i) any naval vessel of a foreign Government taking part in any naval exercises;*
> *(ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;*
> *(iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;"*
>
> *"2(38) "**stores**" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting;"*

2.1 Further, Section 87 of the Customs Act, 1962, states that:-

> *"any imported stores on board a vessel or aircraft (other than stores to which Section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign going vessel or aircraft".*

3. The international flights upon their termination at SVPI Airport, convert to domestic extension flights when they left the airport for various cities in India. Thus, these aircrafts during their domestic run from SVPI Airport cannot be considered as 'foreign going aircraft' within the meaning of Section 2(21) of the Customs Act, 1962 and are not entitled to duty free supply of Air Turbine Fuel (ATF) and other stores. This position has been clarified by CBEC vide Circular No. 65/2001-Cus dated 19.11.2001. The Noticee was, accordingly, required to self-assess the duty leviable on leftover fuel on completion of International Flights, file Bill of Entry (BoE) under Section 46 of the Customs Act, 1962 and pay the applicable Customs duty thereon

3.1 It was observed that the Noticee was not filing the Bill of Entry for remnant ATF. Accordingly, they were asked to provide data of such left over fuel (ATF) at the time of termination of international flights and duty, if any, paid

thereon, vide letter F.No. VIII/48-77/ACC/ATF/Interglobe/2025-26 dated 10.09.2025 and reminder letter dated 01.12.2025.

3.2 The Noticee vide their e-mail dated 19.01.2026 and 04.02.2026, submitted worksheets containing details of the quantity of ATF available on board in Kg and Liter, Rate per liter, exchange rate of US dollar etc. from 01.05.2024 to 31.08.2025 for various flights which were terminated as international flights after landing at SVPI Airport and later converted to domestic extension flights for various destinations in India.

3.2.1 The copies of TR-6 Challans submitted by the Noticee revealed that they had paid Advance Customs Duty amounting to Rs. 60,00,000/- vide various TR-6 challans during the period from 01.05.2024 to 31.08.2025. The details of TR-6 challans are as under:-

Table-1 (Details of challan paid)

Sr. No.	**TR-6 Challan No.**	**Challan date**	**Amount paid**
1.	4053	26.02.2025	15,00,000/-
2.	4056	17.03.2025	25,00,000/-
3.	4057	27.03.2025	20,00,000/-
Total duty paid			**60,00,000/-**

3.2.2 The Noticee had provided the details of the formula based on which they had adopted for the calculation of Customs Duty liability:

Table-2 (data for example only)

Sr. No.	Particulars	Unit in Kg
1.	Opening Qty in Aircraft at Ahmedabad Uplift at Ahmedabad	600 1700
2.	Total Qty before departure from Ahmedabad**(A)** Fuel Burnt in flight Ahmedabad-Kuwait	2300 (1200)
3.	Remaining fuel at Kuwait on arrival Uplift at Kuwait	1100 1000
4.	Total Qty before departure from Kuwait Fuel burnt in flight Kuwait - Ahmedabad	2100 (1000)
5.	Remaining fuel at Ahmedabad**(B)**	1100
6.	Differential Qty for duty computation**(B-A)**	(-1200)

3.3 It is seen from the above formula that the Noticee had calculated the remnant ATF at Ahmedabad after completion of its international journey by subtracting the total available ATF at the start of international flight from total remnant ATF at the termination of international journey.

3.4 The Principal Commissioner of Customs, Customs, Ahmedabad had issued a Public Notice No. 09/2018 dated 12.02.2018 from F.No. VIII/48-64/Cus/T/2018 providing the procedure to be followed in paragraphs A to G regarding filing of manual Prior Bill of Entry (PBE) for payment of customs duty

on remnant ATF. The airlines not willing to follow the procedure as mentioned at paragraphs "A to G" in the said Public Notice were given alternate procedure in paragraph "G". However, the Noticee failed to follow both the prescribed procedure for clearance of remnant Aviation Turbine Fuel (ATF).

3.5 The formula applicable to the Noticee for payment of customs duty on remnant ATF could be explained below:

Table-3 (data for example only)

Sr. No.	Particulars	Unit in Kg
1.	a) Opening Qty in Aircraft at Ahmedabad b) Uplift at Ahmedabad	600 1700
2.	a) Total Qty before departure from Ahmedabad b) Fuel Burnt in flight Ahmedabad- Kuwait	2300 (1200)
3.	a) Remaining fuel at Kuwait on arrival b) Uplift at Kuwait	1100 1000
4.	a) Total Qty before departure from Kuwait b) Fuel burnt in flight Kuwait - Ahmedabad	2100 (1000)
5.	**Remaining fuel at Ahmedabad i.e., quantity taken for computation of customs duty**	**1100**

3.6 It is evident from above that Customs duty was chargeable on the quantity of ATF which remained on board of flight at the time of termination of international voyage. The Noticee has therefore, by deducting the total available ATF at the start of journey from total remnant ATF at the termination of international journey devised a new formula without following procedure of filing of Bills of Entry and thereby evaded payment of actual Customs Duty due to be paid to the Govt.

3.7. The request of the Noticee to work out the Duty without including cost or expense other than transaction value is not in consonance with the provisions of Section 14 of the Customs Act, 1962 read with Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The assessable value of imported goods is required to be determined under the provisions of Section 14 of the Customs Act, 1962, read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The relevant portion of Section 14 (1) of the Customs Act, 1962 reads as follows:

> "*For the purpose of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.*

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extend and in the matter specified in the rules made in this behalf:"

3.7.1 The provisions of above Section are to be seen in conjunction with Valuation Rules of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 beginning with Rule 3 and if the value cannot be determined under the provisions of Rule 3, the value has to be determined by proceeding sequentially through Rule 4 to Rule 9.

3.7.2 After determining value under the appropriate Rule, addition towards cost and services as mentioned in Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are to be made to arrive at final assessable value.

3.7.3 Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 reads as under:

"*(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods. for delivery at the time and place of importation and shall include –*

(a) the cost of transport of the imported goods to the place of importation:

(b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation, and

(c) the cost of insurance;

Provided that where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods;

Provided further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be twenty per cent of such sum:

Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods;

Provided also that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost

referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum:

Provided also that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods:

Provided also that in the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

3.7.4 It is evident that as per rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the value of such imported goods for the purpose of Sub Section (1) of Section 14 of the Customs Act, 1962, for assessment of Customs duty shall be the value of such goods, for delivery at the time and place of importation and shall include the cost of insurance. Wherever the cost of insurance is not ascertainable, it has to be taken as @ 1.125% of the FOB value of the goods.

3.7.5 The assessable value of the remnant ATF is required to be re-determined by including the amount of insurance @1.125%. Accordingly, worksheets for calculating assessable value as well as customs duty leviable/payable on remnant ATF has been prepared as **Annexure-A** to SCN, for various international flights which terminated at SVPI Airport and were later converted to domestic extension flights.

3.8 It is evident from the worksheet (Annexure-A to SCN) that during the period from 01.05.2024 to 31.08.2025, the Noticee is required to pay Customs duty amounting to Rs. 10,12,66,253/- on 9571058 Ltrs of remnant ATF on board at the time of termination of International flights at SVPI Airport.

3.8.1 The Noticee has neither filed Bill of Entry as required under provisions of Section 46 of Customs Act 1962 nor assessed the duty liability required under Section 17 read with provisions of Section 14(1) of the Customs Act 1962. They also did not make any request to the proper officer under Section 18(1)(a) of the Customs Act, 1962 for the assessment in case of their inability for self-assessment under Section 17(1) of the Customs Act, 1962.

3.8.2 In view of the above acts committed by the Noticee, it is evident that they deliberately suppressed the material facts in order to mislead the Department under the Guise of self- devised formula with an intent to evade the payment of Customs duty. Further, the Noticee did not declare the quantity of the remnant ATF on termination of International flight into domestic extension flight in Import manifest as required as per provisions of Section 30 of the Customs Act, 1962 nor did they seek its clearance from proper officer as per provisions of Section 47 of the Customs Act, 1962. Therefore, the Noticee had contravened the provisions of import, i.e. indulged in improper importation by way of not declaring the quantity of remnant ATF in the Import manifest and removed the

remnant ATF from the Customs area without permission of the proper officer, thereby rendering the impugned goods i.e. 9571058 liters of remnant ATF liable for confiscation under Section 111(f) and 111(j) of the Customs Act, 1962.

4. In view of forgoing paras, it appears that Customs duty to the tune of ***Rs. 10,12,66,253/- (Rupees Ten Crore, Twelve Lakh, Sixty-Six Thousand, Two Hundred and Fifty Three only)*** *not levied / not paid* by the Noticee is required to be recovered from them in terms of Section 28(1) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962.

5. The Noticee has contravened the provisions of Section 46(1) of the Customs Act, 1962 in as much as they have failed to file the Bills of Entry on left over fuel (ATF) on board at the time of its termination of various international flights into domestic sector. They have also contravened the provisions of Section 17(1) of the Customs Act, 1962 in as much as they have failed to assess the correct assessable value of leftover fuel on board at the time of its termination of various international flight and subsequent conversion into domestic flights, in terms of Sub-Section (1) of Section 14 of the Customs Act, 1962 read with Rule 10(2) of the Customs Valuation (Determination of value of imported goods) Rules, 2007, which resulted in non-payment of Customs Duty which is required to be recovered and demanded under Section 28(1) along with interest under Section 28AA of the Customs Act, 1962.

6. Pre-notice consultation hearing in terms of the provisions of Section 28(1)(a) of the Customs Act, 1962 read with Pre-Notice Consultation Regulations, 2018 was held on 27.03.2026 in virtual mode, wherein Ms. Anjali Singh, Advocate of M/s. Laxmikumaran & Sridharan appeared on behalf of the Noticee. In virtual hearing, Ms. Anjali Singh, Advocate reiterated the contents of their submission dated 27.03.2026 submitted through email dated 27.03.20026. The Noticee vide letter dated 27.03.2026 has contended that no additions are liable to be made under Section 14(1) of the Customs Act, 1962 read with Rule 10(2) of the Valuation Rules since nothing was either paid or payable by them towards the insurance charges and that they have fulfilled all the conditions of Notification No. 35/2017, therefore, they are eligible for exemption under the said notification. In view of the above they requested to drop the proceedings. After careful consideration of the issue involved and records of pre-consultation held on 27.03.2026 and written submission dated 27.03.2026 filed by the Noticee, it appears that the formula adopted by the Noticee to calculate the quantity of remnant ATF is not proper and the Noticee has not fulfilled the conditions of Notification No. 35/2017, hence they are not eligible for exemption under the said notification. Therefore, Customs duty amounting to Rs. 10,12,66,253/- not paid by the Noticee on 9571058 Ltrs of remnant ATF on board at the time of termination of International flights at SVPI Airport, during the period from 01.05.2024 to 31.08.2025, is required to be recovered from them under Section 28(1) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962.

7. Accordingly, the Show Cause Notice No. VIII/10-30/Pr.Commr/O&A/2025-26 dated 06.04.2026 was issued to M/s Interglobe Aviation Limited, Level 1, Tower C, Global Business Park, Mehrauli Road, Gurugram, Haryana, 122002 calling upon to show cause to the Principal Commissioner of Customs, Ahmedabad as to why: -

a. 95,71,058 Ltrs. of ATF valued a **Rs. 55,97,32,799/- (Rupees Fifty Five Crore, Ninety Seven Lakh, Thirty Two Thousand, Seven Hundred and Ninety Nine only)** should not be held liable to confiscation under Section 111(f) and 111(j) of the Customs Act, 1962.

b. the value of 95,71,058 Ltrs of remnant ATF should not be determined to **Rs. 55,97,32,799/- (Rupees Fifty Five Crore, Ninety Seven Lakh, Thirty Two Thousand, Seven Hundred and Ninety Nine only)** in terms of Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and Customs duty of ***Rs. 10,12,66,253/- (Rupees Ten Crore, Twelve Lakh, Sixty Six Thousand, Two Hundred and Fifty Three only),*** as detailed in Annexure A to the SCN, should not be demanded and recovered with interest from them under Section 28(1) and Section 28AA of the Customs Act, 1962 respectively.

c. The amount of **Rs. 60,00,000/- (Rupees Sixty Lakh only)** already deposited by the Noticee should not be adjusted and appropriated against the above Demand.

d. Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962.

e. Penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

DEFENCE SUBMISSION:

8. The noticee vide their letter 03.09.2026 submitted written submission including compilation wherein they interalia stated as under:

8.1 That the Noticee has been operating its international flight which on completion of its foreign run at Sardar Vallabhbhai Patel International (SVPI) Airport converts to domestic flights; that for determining the assessable value of the remnant ATF in the aircraft, they followed the procedure of multiplying the units of remnant ATF with the prevalent IOCL price (Units of remnant ATF x IOCL Price); that for computing the units of remnant ATF for the purpose of payment of duty, the Noticee deducted the number of excise paid units of ATF

that were present in the aircraft at the time of departure (i.e. domestic sector to international sector) from the number of units present at the time of arrival of the aircraft (i.e. domestic airport from the international airport); that this deduction was in line with the exemption allowed under Notification No. 35/2017-Cus dated 30.06.2017 ('**Notification No. 35/2017**'); that during the relevant period, the Noticee was not adding any charges towards insurance over and above the IOCL price per unit for computing the assessable value. The Noticee discharged its customs duty liability amounting to Rs. 60,00,000/- on import of the ATF in the fuel tanks of aircraft by taking the IOCL price to be the assessable value of the ATF;

8.2 That there is no dispute regarding the liability to pay customs duty on the remnant ATF as the Noticee has already paid and debited the customs duty liability of Rs. 60,00,000/- for the remnant ATF imported during the relevant period from its running account, maintained with the customs authorities;

8.3 That the SCN is vague to the extent it does not lay down the reasons for including the insurance cost while determining the assessable value of ATF. It does not provide any reason as to why Rule 10(2) of Valuation Rules is applicable or how it is applicable. The Noticee in its response to the PNC letter mentioned that it has been calculating the units of remnant ATF by claiming the benefit under Notification No. 35/2017. However, the SCN does not even mention as to how such exemption is not available to the Noticee. Therefore, the SCN is clearly vague and in violation of principles of natural justice. They have relied upon the decision of Rajman Lakhichand V Commissioner of Customs, which was subsequently affirmed by the Hon'ble Supreme Court that natural justice requires that the show cause notice must give adequate notice of what is proposed so that the Noticee may be in a position to effectively represent his/her case and in the present case the SCN does not state the reasons either for adding the insurance cost to the IOCL price or for denying the benefit of netting off under Notification No. 35/2017 for calculation of assessable value of ATF;

8.4 That n*o additions are liable to be made under proviso to Section 14 / Rule 10 (2) as nothing is paid or payable by the Noticee for insurance of remnant ATF; that* first proviso to Section 14 provides for inclusion of amount paid or payable for costs and services which includes cost of transportation to the place of importation, insurance and handling charges, such cost is liable to be added to the transaction value. Where no amount is either paid or payable for transportation of goods, insurance etc., the cost of transportation, insurance and handling charges would be considered as 'nil' or 'zero' and no addition can be made under first proviso to Section 14. The term 'paid and payable' used in Section 14 above has been interpreted to mean "whatever is agreed to as the price for the goods forms the basis of value, whether such price has been paid, has been paid in part, or has not been paid at all." They have placed reliance on the case of Eicher Tractors Ltd. vs. Commissioner of Customs, Mumbai, 2000

(122) ELT 321 (S.C.), Purolator India Ltd. vs. Commissioner of Central Excise, Delhi-III 2015 (323) E.L.T. 227 (S.C.);

8.5 That as per Rule 10(2) of the Valuation Rules, the cost of insurance incurred in respect of the imported goods is to be added to the value of the imported goods, that is either paid or payable, if the same has been incurred and does not already form part of the value of the goods under import. In the present case, the ATF present in the fuel tank of the aircraft is not insured per se and thus no insurance charges are paid for the same. Thus, the insurance cost in case of import of remnant ATF is NIL. The present case lacks any substantive discussion regarding whether the fuel in question has been insured. The SCN has merely alleged this without providing any concrete reasoning or evidence to support such an allegation;

8.6 That in the present case, the Noticee has secured insurance exclusively for the aircraft and its associated spare parts. The scope of the aircraft insurance encompasses both the aircraft itself and its spare components. Furthermore, the concerned team of the Noticee, which deals with the insurance company, has also certified that the ATF is not covered within the insurance policy of the Noticee which further proves that fuel is not insured in the present case. It is the department that ought to have proved that the fuel imported by the Noticee is insured and hence, the insurance cost is liable to be added to the assessable value, however, the same has clearly not been proved in the present case. The burden of proof is on the department to prove that the Noticee has included the price of fuel in the insurance. In this regard, reliance is placed on the following decisions wherein, it has been held that the burden of proof to levy tax is on the revenue:

- Commissioner of Central Excise, Lucknow v. Railway Equipment and Engg. Works, 2015 (325) ELT 184 (Tri. - Del.);
- Union of India v. Garware Nylons Ltd., (1996) 10 SCC 413;
- Commissioner of Customs, Mumbai v. Foto Centre Trading Co., 2008 (225) ELT 193 (Bom.);
- Commissioner of Central Excise, Chandigarh v. Khalsa Charan Singh And Sons, 2010 (255) ELT 379 (P&H); and
- H.P.L Chemicals v. Commissioner of Central Excise, 2006 (197) ELT 324 (SC).

Further, the Noticee is neither liable to pay any amount nor have they actually paid any amount towards such insurance of ATF. For this reason, also, neither third proviso to Section 14 nor Rule 10(2) is applicable.

8.7 That, since there is no amount paid or payable towards the cost of insurance at all, it is submitted that neither first proviso to Section 14(1) nor Rule 10(2) can be invoked for inclusion of the cost of insurance to the value of the goods imported into India; that they relied upon the judgement of the Hon'ble Supreme Court in the case of ***Wipro Ltd. Vs. Asst. Collector of Customs, 2015 (4) TMI 643 – SUPREME COURT, Hindustan Polymers vs.***

Collector of Central Excise, 1989 (43) E.L.T. 165 (S.C.), *the decision of the tribunal in the case of* ***M/s Seatrans Marine Private Limited Vs CC (Preventive) Bhubaneshwar, 2020 SCC Online CESTAT 3525****.* In the instant case, no cost of insurance is incurred/suffered by the Noticee. Therefore, no amount as cost is payable in this regard towards insurance of the remnant ATF. Therefore, no addition can be made on that account to the transaction value for arriving at the assessable value of ATF under Rule 10(2)(a) read with proviso to Section 14;

8.8 That as per Rule 10 of the Valuation Rules, the price paid by the importer is to be loaded with freight and insurance; that in the present case, since the customs duty is being discharged on the basis of IOCL price, no further additions are required to be made as the same is a fully loaded price and thus, by taking this IOCL price as the basis for calculation of duty liability, the Noticee is not required to make any additions in terms of Rule 10 of the Valuation Rules;

8.9 That the question of inclusion of freight/insurance element to the transaction value has already been decided by multiple tribunals and placed reliance on decision of Larger Bench of CESTAT, Mumbai in the case of Jet Airways, wherein after considering the submissions made in detail herein above, it has been held that no additional freight / insurance is required to be added while arriving at the assessable value of the remnant ATF. That by referring to the order of Larger Bench, the Hon'ble Mumbai CESTAT has even passed Final Order no. A/87329/2021 dated 21.12.2021, [2021 (12) –MI 971 - CESTAT MUMBAI] wherein it has been held that notional freight @ 20% and insurance is not to be added to the IOCL price under Section 14 read with Rule 10 to arrive at the assessable value of the remnant ATF; that the Larger Bench decision in the case of *Jet Airways (supra)* was passed in accordance with the law and the same is binding on the Ld. Commissioner. They have also relied upon the decision in case of National Aviation Company of India v. Commissioner of Central Excise, Service tax and Customs 2023 (11) TMI 783 - CESTAT BANGALORE; Commissioner of Customs, Jodhpur Hqrs. v. M/s Indian Airlines Ltd. 2024 (388) E.L.T. 652 (Tri. - Del.); Air India Express Ltd Vs C.C.E, 2023-VIL-1063-CESTAT-BLR-CU;

8.10 That in light of the case laws cited above, insurance charges are not to be included to the IOCL price for calculation of the assessable value of remnant ATF for the reason that the IOCL price is a fully loaded/ fully delivered price and no further additions are to be made to it;

8.11 That they have fulfilled all the three conditions of Notification No. 35/2017; that the ATF remaining in the Aircraft after its domestic leg at the time of conversion into international leg is always duty paid; that such ATF is domestically procured by the Noticee from IOCL on payment of excise duty at the rate of 11%; that exemption is claimed only to the extent of the quantity of duty paid ATF remaining in the Aircraft tank at the time of international departure and not on the excess quantity at the time of arrival;

8.12 That the benefit of netting off has been recognised by other customs ports as well and thus, the Noticee has correctly computed the quantity and duty for the relevant period. They have submitted sample copy of bills of entry for other ports. Moreover, as already mentioned in the facts above, Ld. CC (Preventive), LKO vide its OIO No. 04/Commr/2024-25 dated 07.02.2025 has recently allowed the benefit of netting off to the Noticee. Before the Ld. CC (Preventive), LKO, the Noticee produced similar documents as the ones being produced in the instant case, to establish that it has fulfilled all the conditions to Notification No. 35/2017. After a detailed consideration of each and every document / evidence put forth by the Noticee, the Ld. CC (Preventive) agreed with the submissions of the Noticee; acknowledged that all the conditions to Notification No. 35/2017 have been fully satisfied; and accordingly, the benefit of the aforesaid notification was granted to the Noticee. In light of the abovementioned submissions, the Noticee submits that benefit of Notification No. 35/2017 must be extended to the Noticee and duty demand in denial of the same is liable to be dropped. Thus, it is submitted that the Noticee has correctly computed the quantity of remnant ATF and has already discharged the duty liability on it for the relevant period and nothing further remains to be recovered from the Noticee. Therefore, the demand of differential duty proposed vide the SCN is unjustified and liable to be dropped;

8.13 That they have complied with the procedure laid down in Public Notice 09/2018; that PN 09/2018 envisages two modes vide which assessment of remnant ATF could be made, i.e. by filing provisional/prior bills of entry prior to the arrival of the aircraft (i.e. method mentioned at para A to F of PN 09/2018) or by filing regular bills of entry post the arrival of an aircraft from an international run i.e. method mentioned at Para G of the aforesaid public notice; that they follow the first method given at Para A to F of PN 09/2018, wherein it has been prescribed that prior/provisional bills of entry should be filed under Section 46(3) of the Customs Act with an estimation about the quantity of remnant ATF as the exact quantity is not known at the time of filing of the provisional bills of entry; that they were discharging the applicable duty at the end of every month by debiting the amount from the advance deposit maintained with the Customs, thus following the procedure as prescribed under PN 09/2018 for payment of customs duty on remnant ATF. In the present case, the provisional Bills of entry were accepted by the customs till February 2022 only. From March 2022 onwards, the customs officers at the airport were not accepting the manual bills of entry. The Noticee vide letter dated 12.04.2023 and subsequent reminders dated 21.02.2024, 26.06.2024 & 05.12.2025 has been requesting the customs department to accept the prior / provisional bills of entry, however, the same has not been accepted till date and resultantly, the acceptable of bills of entry is pending since March 2022. In view of the multiple letters and follow ups made by the department, the Noticee cannot be held responsible for failure to file the bills of entry;

8.14 That remnant ATF imported by the noticee is not liable for confiscation and placed reliance on the decision of the Hon'ble Bombay High Court in case of

M/s Bussa Overseas & Properties P. Ltd. vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay, 2004 (163) ELT 304 (Bom.), decision of Hon'ble Tribunal in case of Southern Enterprise v. Commissioner of Customs, 2005 (186) E.L.T. 818, decision of Hon'ble CESTAT, Mumbai in case of Price SWR Systems Ltd vs CCE & Cus., Vapi, 2006 (202) E.L.T. 818;

8.15 That in the present case ATF would constitute goods from a conjoint reading of Sections 2(22)(b) and 2(38) of the Customs Act without prejudice to the above, it is also submitted that remnant ATF was imported by following the procedure under PN-09/2018 on which duty was duly discharged and thus was never improperly imported into India and therefore, it is submitted that the remnant ATF present in the fuel tank of the aircraft entering India and diverted for a domestic run is not liable for confiscation under the provisions of Section 111 of the Customs Act;

8.16 That the confiscation under Section 111(f) is not sustainable; that Section 111(f) has been invoked without any discussion as to why details regarding remnant ATF has to be mentioned in the import manifest or from where such requirement is arising and therefore clause (f) is not invokable;

8.17 That confisaction under Section 111 (j) is not sustainable; that Section 111(j) will not applicable as the Noticee was filing the bills of entry in line with the PN 09/2018; that the bills of entry were accepted by the department only untill February 2022; that pursuant to this, the Noticee has been filing several letters and requesting the department to accept the bills of entry, however, the same is not being accepted by the department; that the fact of arrival of aircrafts from international and their conversion to domestic run was never a hidden fact from the department; that Noticee was regularly paying applicable customs duty on the remnant ATF by debiting it from advance duty deposit; that Accounts were maintained and the customs officals were aware about the same;

8.18 That penalty is not imposable under Section 112 and Section 117 of the Customs Act and in support of their claim they have relied upon various judgements. Also, interest is not payable by the noticee under Section 28AA of the Customs Act.

PERSONAL HEARING:

9. The Personal Hearing was fixed on 09.09.2026 for M/s. Interglobe Aviation Ltd. Aditi Sharma, Advocate of M/s. Interglobe Aviation Limited and Shri Yogesh Kumar, Authorized Representative of the Noticee, attended the Personal Hearing on 09.09.2026 in virtual mode wherein she stated that they had already submitted a detailed reply with compilation vide email dated 03.09.2026 and reiterated the contents of that submission.

DISCUSSION AND FINDINGS:

10. I have carefully gone through the Show Cause Notice dated 06.04.2026, relevant case records and the Noticee's submission dated 03.09.2026 and records of personal hearing.

10.1 I find issues for consideration before me in the present SCN are as under :-

i) Whether insurance @ 1.125 % of the FOB value is includible in the assessable value in terms of the provisions of Rule 10(2) of the Customs Valuation (Determination of value of imported goods) Rules, 2007 read with Section 14 of the Customs Act, 1962? Whether the value of goods should be determined to Rs. 55,97,32,799/- (Rupees Fifty Five Crore, Ninety Seven Lakh, Thirty Two Thousand, Seven Hundred and Ninety Nine only) and Customs duty of Rs. *10,12,66,253/- (Rupees Ten Crore, Twelve Lakh, Sixty Six Thousand, Two Hundred and Fifty Three only)* as detailed in Annexure A to the Notice should be demanded and recovered with interest from them under Section 28(1) and Section 28AA of the Customs Act, 1962 respectively ?

ii) Whether noticee is eligible for benefit of Notification No. 35/2017-Cus dated 30.06.2017 & and whether the Opening balance i.e. the quantity of fuel lying in the tank of the aircraft upon conversion of the domestic flight to International fight is deductible from the quantity of remnant fuel at the time of termination of the International flight ?

iii) Whether 95,71,058 Ltrs. of ATF valued at Rs. 55,97,32,799/- (Rupees Fifty Five Crore, Ninety Seven Lakh, Thirty Two Thousand, Seven Hundred and Ninety Nine only) should be held liable to confiscation under Section 111(f) and 111(j) of the Customs Act, 1962 ?

iv) Whether the amount of Rs. 60,00,000/- (Rs. Sixty Lakh only) already deposited by the Noticee should be adjusted and appropriated against the above Demand ?

v) Whether penalty should be imposed on them under Section 112(a) of the Customs Act, 1962 or otherwise ?

vi) Whether penalty should be imposed on them under Section 117 of the Customs Act, 1962 or otherwise ?

11. The core issue involved in the present case is the Noticee's liability to pay Customs Duty on the remnant ATF imported. With regard to the leviability of Customs Duty on the remnant fuel, it is to mention that Section 12 of the Customs Act, 1962 stipulates that Customs Duty is leviable on goods imported into India and the relevant text of the same reads as under:

> "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 (51 of 1975)], or any other law for the time being in force, **on goods imported into, or exported from, India."**

The above provisions, clearly stipulates that applicable Customs Duty is leviable on all imported goods. It is not in dispute that the ATF is procured both at the domestic Airport and the International Airport. Such ATF which has been sourced from the International Airport is definitely falling within the definition of the term 'imported goods' as defined at Section 2(25) of the Customs Act, 1962. Thus, the only aspect remaining to be ascertained is whether any other provision in the Customs Act, 1962 provides otherwise.

11.1 Section 87 of the Customs Act, 1962 provides for consumption of imported stores on board a vessel or aircraft during the period such aircraft is a foreign going vessel. The term 'stores' has been defined under Section 2(38) of the Customs Act, 1962 and includes fuel. However, the International flights under consideration, upon their termination at SVPI Airport, Ahmedabad convert to domestic extension flights to various places in India. Thus, the flights under consideration are not covered under the category of 'foreign going vessel' as defined under Section 2(21) of the Customs Act, 1962 and as such the provisions of Section 87 of the Customs Act, 1962 are not applicable to the International flights upon their termination and conversion to domestic flights. Apart from Section 87, there is no other provision which provides that Customs Duty is not leviable on the imported fuel which is leftover in the tanks of the aircraft. Thus, the remnant fuel is covered under the definition of the 'imported goods' and also there is no other explicit provision for non-levy of Customs Duty on such goods and as such Customs Duty is leviable on the remnant fuel in terms of the provisions of Section 12 of the Customs Act, 1962. This fact has been substantiated by Board's Circular No. 65/2001-Cus dated 19.11.2001 which reads as under:

> ***The domestic extension flights cannot be considered similar to flights which operate between an airport in India and an airport abroad, touching one or more Indian airports in between.*** *Section 87 of the Customs Act, 1962 allows imported stores to be consumed without payment of duty in a foreign going aircraft.* ***It has, therefore, been decided that the extension flights operated by Air India between Mumbai and other airports or between two airports in India would not be entitled to duty free supply of fuel and other stores.***

The above position of law makes it expressly clear that the remnant fuel on board in the tank of the aircraft, upon termination of the International flight and converted to a domestic flight, is leviable to Customs Duty at the applicable rates. The Noticee has also not disputed the fact regarding leviability of Customs Duty on such remnant fuel.

12. Whether insurance @ 1.125 % of the FOB value is includible in the assessable value in terms of the provisions of Rule 10(2) of the Customs Valuation (Determination of value of imported goods) Rules, 2007 read with Section 14 of the Customs Act, 1962? and whether the value of goods should be re-determined at Rs. 55,97,32,799/- (Rupees Fifty Five Crore, Ninety Seven Lakh, Thirty Two Thousand, Seven Hundred and Ninety Nine only)?

12.1 I find that in the present Show Cause Notice, value is proposed to be re-determined as the Noticee failed to include the insurance @1.125% of FOB value in the assessable value of remnant fuel in terms of the provisions of Rule 10(2) of the Customs Valuation (Determination of value of imported goods) Rules, 2007. Proviso to Section 14(1) of the Customs Act, 1962 stipulates that cost of insurance is required to be included in the value in the manner specified in the rules made in this behalf. The relevant text of the said proviso reads as under:

> ***Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including*** *commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation,* ***insurance****, loading, unloading and handling charges to the extent and* ***in the manner specified in the rules made in this behalf***

12.2 The corresponding provisions regarding cost of insurance have been made in Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the relevant text of the same reads as under:

> *(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, and shall include –*
>
> *(a) ……;*
>
> *(b) the cost of insurance to the place of importation :*
>
> ***Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods.***

12.3 I further find that on the issue of inclusion of freight value and insurance in the assessable value, the decision of CESTAT Delhi rendered in case of Air India Limited v. CC, New Delhi – 2018 (4) TMI 785 – CESTAT New Delhi was challenged before the Hon'ble Supreme Court by the Commissioner of Customs (General), New Delhi vide Civil Appeal Diary No. 10284/2020. The Hon'ble Supreme Court vide interim Order dated 15-10-2020, directed constitution of the Committee consisting of the Secretary (Revenue), the Commissioner of Customs and the Chairman and Managing Director of the respondent, Air India Limited. The Committee was directed to place on record its finding/observations and recommendations as to how the dispute in the present matter can be sorted out. Accordingly, the Committee was constituted and meeting was held on 15.04.2021 and Reports thereof (Minutes of the Meeting) was submitted to the Hon'ble Supreme Court. The Learned Counsel appearing for the parties agree that these appeals should be disposed of in terms of what is recorded in the Minutes of the Meeting dated 03.06.2021, hence, the Hon'ble Supreme Court vide Order dated 07.11.2023 disposed of Civil Appeal filed by the Department by directing the parties to abide by what is recorded in the Minutes of the Meeting dated 03.06.2021 of the Committee constituted by this Court in terms of the order dated 15th October, 2020.

12.4 I find that above decision of Hon'ble Supreme Court is based on the Minutes of the Meeting dated 3rd June, 2021. Therefore, I find that it is inevitable to re-produce the Minutes of the Meeting dated 3rd June, 2021, which are as under:-

"MINUTES OF THE MEETING DATED 15.04.2021 OF THE COMMITTEE, IN PURSUANCE OF THE HON'BLE SUPREME COURT IN THE MATTER OF CIVIL APPEAL DIARY NO. 10284/2020

The issue to be considered by the Committee relates to valuation of remnant Aviation Turbine Fuel (hereinafter referred to as "remnant ATF) for the charging Customs Duty in respect of an international flight converted into domestic flight at the end of its foreign run. Commissioner of Customs, IGI Airport explained the issue to the Revenue Secretary and Chairman & Managing Director Air India , that for valuation of remnant ATF, Section 14 of the Customs Act, 1962 mandates inclusion of cost of transportation to the place of importation, insurance and loading unloading & handling charges in the transaction value of the goods read with Rule 10 (2) of Customs Valuation Rules, 2007 which provides for addition of cost of transportation @20%, landing charges @1% and insurance cost @1.125% for arriving at the transaction value. However, M/s. Air India was discharging Customs Duty on the FoB value of the remnant ATF without adding the cost of freight, insurance and loading, unloading & handling charges. Accordingly, 03 Show Cause Notices dated 29.11.2017, 06.03.2018 and 18.06.2018 were issued to M/s. Air India. The same were adjudicated vide Order In Original No. 135/Adj/2018 dated 31.03.2018 and 321/Commr/Adj./2018 dated 31.08.2018 wherein the demand raised vide the said Show Cause Notices was confirmed by the adjudicating authority. M/s. Air India preferred appeal before Hon'ble CESTAT against the above referred Order-In-Original dated 31.03.2018 and 31.08.2018. The Hon'ble CESTAT vide Final Orders No. 51068-51070/2019 dated 18.04.2019 allowed the appeals of M/s. Air India and dropped the demand raised in the said Show Cause Notices. Customs Department contested the said Final Orders No. 51068-51070/2019 dated 18.04.2019 before the Hon'ble Supreme Court vide Civil Appeal Diary No. 10284/2020. Hon'ble Supreme Court vide Order dated 15.10.2020 directed that the instant matter be placed before the Committee comprising of the Revenue Secretary, Chairman and Managing Director M/s. Air India and Commissioner of Customs, IGI Airport and the Committee may give its opinion as to the dispute in the matter can be resolved.

2. In pursuance of the directions, dated 15.10.2020, of the Hon'ble Supreme Court, in the Civil Appeal Diary No. 10284/2020, filed by the Commissioner of Customs, IGI Air Port, New Delhi, against Final Order No. 51068-51070/2019 of the CESTAT dated 18.04.2019, the Committee comprising of the Revenue Secretary, Chairman and Managing Director M/s. Air India and Commissioner of Customs, IGI Airport met in the Office of Revenue Secretary, on 15.04.2021, to examine the matter.

3. Commissioner of Customs, IGI Airport further explained that a letter dated 04.03.2021 (Annexure-A) was written to CBIC Board office for seeking clarification on the issue. CBIC Board Office examined the matter vide letter dated 12.04.2021 (Annexure-B provided the clarification on the matter. (copy of the letter dated 04.03.2021 and CBIC Board Office clarification dated 12.04.2021 were provided to all the Committee members).

3.1 In the clarification dated 12.04.2021, Board noted that as a matter of general practice essential spare and extra fuel in the fuel tank is carried in flights for proper running and maintenance of the air craft. Board also noted that the fuel in the tank is not carried as "cargo/goods" but is an essential for propelling the aircraft. Thus, the fuel is not akin to other cargo/goods that the aircraft is transporting and there is no transportation cost/freight involved in the matter. The ATF is not goods that are transported, but is actually a pre-requisite for the aircraft to move. Proviso to rule 10(2) of the Customs Rules, 2007 states that where the cost of transportation is not ascertainable, such cost shall be twenty percent of the free on board value of the goods. In the case of the remnant ATF, it is clearly ascertainable that there is no transportation cost involved for the ATF in the fuel tank being an essential requirement for propelling the Aircraft. Since the remnant ATF is part of ATF, there is no transportation cost/freight involved and no freight is includable in determination of the assessable value of ATF remnant in the fuel tank on conversion to domestic run.

3.2 On the inclusion of landing charges at the rate of 1% of the FOB value, it has been noted by the CBIC board Office that the issue is no longer relevant as the amendment carried out to the Customs Valuation Rules, 2007 vide Notification No. 91/2017-Cus (NT), dated 26.09.2017, the loading, unloading and handling charges associated with the delivery of the imported goods (colloquially termed as landing charge) at the place of importation, is no longer to be added for computing value of imported goods. However, prior to the amendment, the Rule 10(2) (ii) of the Customs Valuation Rules, 2007 provided for inclusion of loading, unloading and handling charges at 1% (FOB+ cost of transportation + cost of insurance). Thus, though there is no loading, unloading and handling of the remnant ATF (being inside the tank), the value to be added for the same as per the Rule was not as per actual. In this regard, Board refers to the ruling of the Hon'ble Supreme Court in the case of M/s. Wipro Ltd. Vs. Assistant Collector-2015 (319) ELT 177 (S.C.) dated 16.04.2015 that the landing charges to be added to the value of goods, should be based on actual charged incurred, and not a notional charge of 1% as has been provided in the Rules and that the notional rate should be resorted to only when the actual are not ascertainable. This ruling of the Supreme Court will have retroactive effect and hence notional landing charges at the rate 1% cannot be added to cases prior to 26.09.2017, the date on which the amendments were affected to the said Rules. Since it is evident that landing charges are not incurred, notional charges at the rate of 1% cannot be added.

3.3. ***As regards the insurance to determine the assessable value of the remnant ATF for aircrafts, it has been noted that the airlines/aircraft are required to have aircraft insurance. Since the ATF is an integral part of the aircraft, the said insurance also covers the fuel therein. Since the amount of insurance for the ATF is not ascertainable, as per Rule, it is to be at the rate of 1.125% of the fob value of the goods****.*

3.4 Commissioner of Customs, IGI Airport explained that in view of the above clarification by the Board Office, the value of remnant ATF for charging Customs duty, will be as follows:

FoB value of the ATF+0% of FoB of remnant ATF (for freight)+ 1.125% of FoB of ATF for insurance.

3.5 ***Commissioner of Customs, IGI Airport also explained that in the instant case, Air India is discharging Customs Duty only on the FoB value of the remnant ATF without adding the cost of insurance. Thus, duty on insurance value as specified above will have to be deposited by Air India in the matter****.*

4. Revenue Secretary enquired about the impact of such valuation of remnant ATF, as clarified by the CBIC Board Office, on the other airlines. Commissioner of Customs, IGI Airport informed that majority of the other airlines are discharging Customs Duty on the value of the ATF arrived by adding insurance cost of the FoB value of the remnant ATF but Air India and Indigo Airlines are discharging Customs Duty only on the FoB value of the ATF without adding 1.125% of FoB value of remnant fuel against insurance cost (details as per Annexure-C). Therefore, recovery of Customs Duty not paid on insurance cost will have to be effected from these airlines.

5. Committee agreed in principle to the clarification regarding the valuation of the remnant ATF for charging Customs Duty, issued by the CBIC Board office.

6. Accordingly, the Committee decided that the decision shall be conveyed to Hon'ble Supreme Court.

7. The meeting ended with a vote of thanks to the Chair."

12.5 The Noticee in their defence contended that they have neither paid nor are liable to pay any amount towards insurance charges, and therefore, the same should not be included in the assessable value. In this regard, I note that the Minutes of the Meeting is based on the clarification given by the CBIC vide their letter dated 12.04.2021. Further, I find that the said Committee was constituted pursuant to the direction of the Hon'ble Supreme Court, which delivered its judgement based on the report submitted by the said committee. Therefore, in view of the Para 3.3 and 3.5 of the Minutes of the Meeting dated 03.06.2021, as stated above, I find that insurance charges @1.125% is appropriately includible in the assessable value of the Remnant Fuel.

12.6 The Noticee further contended that they had obtained insurance coverage for their aircrafts from M/s. The New India Assurance Company Limited and submitted copies of the relevant insurance policies. I have examined the insurance policies placed on record, including the Airline Hull (including Spares) and Liability Insurance Policy bearing No. 93000043241000000001 and the

Aviation Hull "War and Allied Perils" Insurance Policy bearing No. 93000043241100000001. The Schedule and the policy documents show that the insurance programme provides separate coverage in respect of the aircraft/hull, spares and war and allied risks. The principal Hull Policy is titled "Airline Hull (including Spares) and Liability Insurance" and, under Section-1 thereof, provides coverage for **"Physical Loss of or Damage to Aircraft"**. Clause 1.1 of the policy provides, inter alia, as follows:

> ***"The Insurers will pay for physical loss of or damage sustained during the Period of Insurance, up to the Limits of Indemnity stated in the Schedule less any applicable deductible to:***
>
> ***1.1.1 the aircraft (including parts temporarily removed but not replaced) as described in the Schedule;***
>
> ***1.1.2 flight spares kits carried in the aircraft as described in the Schedule..."***

Thus, the primary subject matter insured under Section-1 is the **aircraft itself**, while flight spares kits are separately specified as an additional category of coverage. The coverage in respect of the aircraft is not worded as being confined only to an exhaustive list of separately identified structural components. The separate inclusion of spares, therefore, cannot be interpreted as restricting the coverage available in respect of the aircraft itself. The Schedule also specifically provides for **"SECTION-1: PHYSICAL LOSS OF OR DAMAGE TO AIRCRAFT"**, thereby indicating that the aircraft is insured as the principal subject matter and not merely individual components separately enumerated in the policy.

I further find that the Hull Policy contains specific exclusions under **Clause 1.6 – Exclusions, relating, inter alia, to mechanical breakdown, depreciation or deterioration, wear and tear and certain cases of damage caused by ingestion**. However, neither the said exclusion clause nor any other exclusion brought on record by the Noticee provides that fuel carried in or forming part of the aircraft's operational load is excluded from the insurance coverage. Thus, while the policy expressly provides for exclusions in respect of specified contingencies, no exclusion specifically excluding fuel from the scope of the Hull insurance has been shown. Therefore, the Noticee's contention that fuel was not covered merely because it is not separately mentioned as an insured

item is not acceptable. The policy provides coverage in respect of **"the aircraft"** as described in the Schedule. Once the aircraft is insured as the subject matter under the Hull cover, the burden lies upon the Noticee, who seeks to contend that a particular item forming indispensable part of the aircraft's operational contents or load was outside the scope of such cover, to establish such exclusion from the terms and conditions of the policy. However, no such exclusion in respect of fuel has been produced or pointed out.

The same position emerges from the separate **Aviation Hull "War and Allied Perils" Insurance Policy No. 93000043241100000001**, which covers loss of or damage to:

> ***"i. Aircraft as per schedule of Aircraft;***
>
> ***ii. Spares (as specified and as defined in the Insured's Hull and Spares 'All Risks' Policy)"***

The War and Allied Perils Policy, therefore, also treats the aircraft itself as a distinct and comprehensive subject of insurance, while dealing separately with spares. Further, the said policy also contains detailed General Exclusions; however, **fuel is not specifically excluded under the said exclusions either**. The policy is further linked to, and is subject to the relevant terms and conditions of, the Hull Insurance Policy, thereby forming part of the overall insurance arrangement in respect of the aircraft and specified risks.

I, therefore, find that the language used in the policies is broad and indicative of comprehensive protection for the insured aircraft, both while in operation and on the ground. These clauses also cover "loss or damage" without restricting such coverage only to specific, enumerated aircraft components. The insurance policies submitted by the Noticee establish comprehensive insurance coverage in respect of the aircraft itself, separately and additionally providing for specified categories of spares. Neither the operative provisions nor the relevant exclusion clauses of the policies contain any specific provision excluding fuel from the scope of the insurance coverage. I note that fuel, being essential and integral element to the operation of the aircraft, cannot be reasonably excluded from the scope of coverage under such an all-encompassing insurance policy. The term "**HULL**" in aviation insurance typically refers to the entire physical structure of the aircraft, and the inclusion of "spares" further broadens the

scope to cover parts necessary for operation and maintenance. I observe that as fuel is indispensable for an aircraft to function, its exclusion would be illogical unless explicitly stated in the policy. The mere fact that fuel is not separately enumerated alongside aircraft and spares cannot lead to the conclusion that it stood excluded, particularly when the principal subject of insurance under the relevant Hull coverage is “the aircraft” as a whole.

Accordingly, I find that the Noticee has failed to substantiate its contention that the fuel in question was outside the scope of insurance. On the contrary, the policies produced by the Noticee provide comprehensive Hull coverage in respect of the aircraft, and no specific exclusion of fuel has been observed from the applicable exclusion clauses. Therefore, the Noticee's contention that fuel was not covered under the insurance policies is not acceptable and is rejected.

The noticee has relied on the following judgments in support to their contention that it was for the department to prove that they had included the price of fuel in the insurance:-

(i) Commissioner of Central Excise, Lucknow vs Railway Equipment and Engg. Works reported in 2015(325) ELT 184(Tri.-Del)

(ii) UOI V/s Garware Nylons Ltd. 1996 10 SCC 413

(iii) Commissioner of Customs, Mumbai V/s Foto Centre Trading Co., 2008(225) ELT 193(Bom.)

(iv) Commissioner of Central Excise, Chandigarh V/s Khalsa Charan Singh & Sons 2010(255) ELT 379 (PH)

I have gone through the said judgments and find that these cases deal with burden of proof on the taxing authorities to show that a particular item is taxable in the manner claimed by them and that mere assertion is of no avail. I find that these judgments are generic in nature cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances, and cannot be applied here directly as it does not deal with the specific issue on hand, that is the inclusion of price of fuel in the insurance. The documentary evidences, i.e., the insurance policy placed on record does not provide any proof to show that fuel was not covered under insurance policy as

discussed in my earlier para. Therefore, while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)* has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)],* it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case.

12.7 The noticee has relied upon the decision of the Larger Bench of the Hon'ble CESTAT in *Jet Airways (India) Ltd.* to contend that insurance charges are not includible in the assessable value of remnant ATF. In this regard, it is observed that the said decision has not been accepted by the Department and Civil Appeal against the said judgment are presently pending before the Hon'ble Supreme Court. Accordingly, the reliance placed by the noticee on the decision in *Jet Airways (India) Ltd.* does not advance the case of the noticee in view of the subsequent proceedings before the Hon'ble Supreme Court and the statutory mandate contained in Rule 10(2) of the Customs Valuation Rules, 2007.

12.8 The Noticee has also relied upon the decision in Air India Express Ltd Vs C.C.E, 2023-VIL-1063-CESTAT-BLR-CU, as well as various decisions of the Hon'ble Tribunals, including **National Aviation Company of India v. Commissioner of Central Excise, Service Tax and Customs** which have followed the Larger Bench decision in the case of M/s Jet Airways Limited. I note that the aforesaid decisions have been rendered by following the Larger Bench decision, Mumbai Tribunal in the case of M/s Jet Airways Limited. As discussed hereinabove, the Department's appeal against the said decision is pending before the Hon'ble Supreme Court. I further find that the issue relating to the inclusion of insurance charges at the rate of **1.125%** in the assessable value of remnant

ATF, along with other related issues, was considered in the case of *M/s Air India Limited*. In the said matter, the Hon'ble Supreme Court constituted a Committee for examining and resolving the issues involved. The Committee, after considering the matter, specifically recommended in para 3.3 that insurance charges at the rate of **1.125%** were appropriately includible in the assessable value of remnant ATF where the actual insurance cost attributable thereto was not ascertainable. I further find that the Hon'ble Supreme Court, vide its order dated **07.11.2023** in the said case, disposed of the appeals in terms of the Minutes/decision of the Committee constituted pursuant to its directions. The said Minutes dated 15.04.2021 (signed on 03.06.2021) in para 3.3 specifically recorded the inclusion of insurance charges at the rate of **1.125%** in the assessable value of remnant ATF. The said order of the Hon'ble Supreme Court has attained finality. Therefore, in view of the above discussions, I find that the reliance placed by the Noticee on the aforesaid decisions is not applicable to the present case.

12.9 The Noticee further contended that since there is no amount paid or payable towards the cost of insurance at all, neither first proviso to Section 14(1) nor Rule 10(2) can be invoked for inclusion of the cost of insurance to the value of the goods imported into India and relied upon the judgement of the Hon'ble Supreme Court in the case of ***Wipro Ltd. Vs. Asst. Collector of Customs, 2015 (4) TMI 643 – SUPREME COURT, Hindustan Polymers vs. Collector of Central Excise, 1989 (43) E.L.T. 165 (S.C.),*** *as well as the decision of Hon'ble Tribunal in the case of* ***M/s Seatrans Marine Private Limited Vs CC (Preventive) Bhubaneshwar, 2020 SCC Online CESTAT 3525***. In this regard, I note that the contention of the Noticee overlooks the distinction between the absence of a separately identifiable insurance charge and the absence of insurance coverage itself. I note that fuel, being essential and integral element to the operation of the aircraft, cannot be reasonably excluded from the scope of coverage under such an all-encompassing insurance policy. The term "**HULL**" in aviation insurance typically refers to the entire physical structure of the aircraft, and the inclusion of "spares" further broadens the scope to cover parts necessary for operation and maintenance. In the present case, the Noticee failed to establish that the remnant ATF was outside the scope of insurance coverage. As discussed in paragraph 12.6 above, the insurance policies produced by the Noticee provide coverage in respect of the aircraft and contain specific

exclusions; however, no exclusion in respect of fuel has been shown. Therefore, the Noticee's contention that no insurance cost is attributable to the remnant ATF is not supported by the documentary evidence produced by them. Once the Noticee has failed to establish that the remnant ATF was excluded from the insurance coverage, the mere fact that the precise amount of insurance attributable exclusively to such fuel is not separately ascertainable cannot result in the insurance cost being treated as Nil. In such circumstances, the cost of insurance is required to be determined in accordance with the provisions of Rule 10(2) of the Customs Valuation Rules, 2007. I further find that, as discussed in detail hereinabove, the Hon'ble Supreme Court, while considering the issue of inclusion of insurance charges @ 1.125% in the assessable value of Remnant Fuel, constituted a Committee in the matter of Air India Limited. The Committee specifically recommended that the insurance charges @ 1.125% were appropriately includible in the assessable value of Remnant Fuel. Based on the said recommendation, the Hon'ble Supreme Court, vide its Final Order dated 07.11.2023, disposed of the said appeal. I also note that the aforesaid proceedings and order of the Hon'ble Supreme Court are subsequent to the judgments relied upon by the Noticee in the cases of *Wipro Ltd.*, *Hindustan Polymers and Seatrans Marine Private Limited*. Further, the issue of inclusion of insurance charges in the assessable value of remnant ATF was specifically examined in the case of Air India Limited. Therefore, the general principles laid down in the judgments relied upon by the Noticee cannot be directly applied in disregard of the subsequent proceedings and findings specifically concerning the valuation of remnant ATF as accepted by the Apex Court. Accordingly, in view of the foregoing discussion and the findings recorded in the proceedings concerning *M/s Air India Limited*, I find that the contention of the Noticee does not hold water and I reject the same.

12.10 In view of the discussion and findings recorded in paragraphs 12.1 to 12.9 above, I find that the remnant ATF was covered under the comprehensive insurance arrangement applicable to the aircraft. Further, the absence of a separately identifiable insurance premium exclusively attributable to the remnant ATF does not establish that the insurance cost is nil, particularly where the precise cost is not separately ascertainable and the statutory Rules provide a mechanism for its determination. In view of the discussion held in Para 12.1 to 12.9 above, I hold that the said insurance charges @ 1.125 % of FOB value of

goods is required to be included in the assessable value of imported remnant fuel as proposed in the Show Cause Notice. Accordingly, I confirm the re-determined assessable value of the remnant fuel as Rs. 55,97,32,799/- for the purpose of levying Customs duties.

13. Whether noticee is eligible for the benefit of Notification No. 35/2017-Cus dated 30.6.2017? Whether the Opening balance i.e. the quantity of fuel lying in the tank of the aircraft upon conversion of the domestic flight to International fight is deductible from the quantity of remnant fuel at the time of termination of the International flight?

13.1. I find that exemption under Notification No. 35/2017-Cus, is subject to interalia the following conditions:

> *(i) The quantity of the said fuel is equal to the quantity of the same type of fuel which was taken out of India in the tanks of the aircrafts of the same Indian Airline or of the Indian Air Force, as the case may be, and on which the duty of Customs, or Central Excise had been paid;*
>
> *(ii) the rate of duty of customs (including the additional duty leviable under the said section 3) or the rate of duty of Central Excise, as the case may be, leviable on such fuel is the same at the time of the arrivals and departures of such aircrafts; and*
>
> *(iii) no drawback of duty of customs or rebate of duty of Central Excise, as the case may be, was allowed on such fuel at the time of departures of such aircrafts from India.*

13.2 It is a well settled law that the conditions laid down in the exemption Notification are required to be strictly followed for the purpose of availing the benefit of exemption of Duty. It is also settled position of law that the burden to prove the eligibility of the exemption notification is lies with the person claiming the benefit of the said notification. The Hon'ble Supreme Court in the case of Commissioner of Central Excise Chandigarh I Vs. Maahan Dairies reported in 2004 (166) E.L.T. 23 (S.C.) has observed that it is settled law that in order to claim benefit of a Notification, a party must strictly comply with the terms and conditions of the Notification.

13.3 The **Hon'ble Supreme Court, in the case of M/s. Dilip Kumar & Co. reported at 2018 (361) ELT 577 (SC),** has observed as under:

"19. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous. it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

52. To sum up, we answer the reference holding as under - (1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. (2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject assessee and it must be interpreted in favour of the revenue. (3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."

13.4 The Hon'ble Supreme Court in the case of Krishi Upaj Mandi Samiti vs. Commissioner of Central Excise on 23 February, 2022, reported in 2022 (58) G.S.T.L. 129 (S.C.) has observed that it is settled law that the Notification has to be read as a whole. If any of the conditions laid down in the Notification is not fulfilled, the party is not entitled to the benefit of that Notification. Relevant para of the said judgment is re-produced below-

"8. The exemption notification should not be liberally construed and ***beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.***

8.1 It is settled law that the notification has to be read as a whole. ***If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification****. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard.*

8.2 The exemption notification should be strictly construed and given a meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions."

13.5 Similarly, in the case of M/s. Medreich Sterilab Ltd. reported at 2020(371) ELT 639 (Mad.) Hon'ble High Court of Madras has observed as under:

9. <u>It is well-settled law that to avail the exemption of duty under any Notification, the Rules and Regulations and the conditions prescribed therein have to be strictly adhered and there is no place for equity or intendment in the interpretation of the taxing Statutes.</u> By holding that the Rules of 1996 are only procedural or directory in

nature, the Learned Tribunal has frustrated the very purpose of Rules 3 and 4 in question by holding that the Assessee is entitled to the exemption for import made on 28-6-2003. There is no dispute before us that the registration under Rules 1996 was granted in favour of the Assessee only on 14-7-2003 and not at any point of time prior to that and therefore we cannot uphold the order passed by the Learned Tribunal.

In the instant case, the Noticee has not brought sufficient evidence on record to establish that quantity of the said fuel is equal to the quantity of the same type of fuel which was taken out of India in the tanks of the aircrafts of the same Indian Airline and applicable Customs or Central Excise Duty had been paid on the quantity of fuel in the tank of aircraft before its conversion to an International flight. The Noticee has merely made statements that the fuel was Duty paid and they had not claimed drawback, however, except making general assertions regarding payment of Central Excise duty, applicability of the same duty rate and non-availment of drawback, the noticee has not produced sufficient contemporaneous aircraft-wise and flight-wise documentary evidence establishing quantitative correlation between the quantity of indigenous duty-paid ATF taken out of India and the quantity claimed as exempt upon return. Notification No. 35/2017 grants exemption only to the extent the imported remnant fuel is shown to be equal to the quantity of the same duty-paid fuel earlier taken out of India. Further, such verification / confirmation for ensuring compliance of conditions of the Notification No. 35/2017-Cus dated 30.06.2017 was possible only if the Importer has filed Bill of Entry for each and every such domestic flights. Further, the Noticee has neither filed Bill of Entry as required under provisions of Section 46 of Customs Act 1962 nor assessed the duty liability required under Section 17 read with provisions of Section 14(1) of the Customs Act 1962. The Noticee has contended that they submitted a letter dated 12.04.2023 and subsequent reminders dated 21.02.2024, 26.06.2024 & 05.12.2025 to the DC Customs, Air Cargo, requesting acceptance of the provisional bills of entry. In this regard, I note that, considering the international flights of the Noticee, they were required to file **bill of entry whenever the international flight arrived at the Airport and going by the flight schedule of the noticee, it was around 3 arrivals on daily basis.** However, in their submission they themselves admitted that after March, 2022, they made correspondence with the Department only once in each year. This limited communication over a span of nearly four years clearly indicates a lack of seriousness on the part of the Noticee regarding their intent for filing of Bills of

Entry. If they were genuinely concerned, it is unlikely they would have approached the Department only four times during this extended period, despite the daily filing requirement. Furthermore, there is no evidence to suggest that the Noticee escalated the matter to any higher authority in an attempt to resolve the issue. I further find that the Importer has also not obtained clearance of aircraft with imported dutiable remnant ATF on board under provisions of Section 47 of Customs Act 1962 read with Public Notice No. 09/2018 dated 12.02.2018 issued by the Commissioner of Customs, Ahmedabad. In a nutshell, the Noticee has failed to discharge the burden of proving that they had fulfilled all the conditions of the said Notification and were eligible for the exemption under the same. Thus, I find that the benefit of Notification No. 35/2017-Cus dated 30.6.2017 cannot be accorded to them and accordingly the Customs Duty computed in the Show Cause Notice on the quantity of remnant fuel is proper and the same is liable to be demanded and recovered from the Noticee alongwith interest in terms of the provisions of Section 28(1) and 28AA of the Customs Act, 1962, respectively.

13.6 The Noticee has contended that, in a similar issue, the Commissioner (Preventive) Commissionerate, Lucknow, had extended the benefit of the Notification No. 35/2017-Cus dated 30.06.2017. On examination of the said OIO, I observe that the adjudicating authority, in the said order, granted the benefit of Notification No. 35/2017-Cus dated 30.06.2017 to the Noticee based on the evaluation of various records and documents furnished during the proceedings. However, it is equally evident from the same order that the adjudicating authority had concurrently held the impugned goods liable for confiscation owing to the non-filing of Bills of Entry for remnant fuel and unauthorized clearance of such goods without obtaining the mandatory "Out of Charge" order from the proper officer of Customs. In the instant case, the Noticee has failed to furnish cogent and credible documentary evidence to establish that all the stipulated conditions of the aforementioned Notification have been duly complied with. The Noticee has further asserted that, with the exception of Ahmedabad, the benefit of the said Notification is being consistently granted by all other formations. However, I find that the Noticee has failed to furnish any documentary proof, such as copies of relevant Bills of Entry, or correspondences from other Commissionerates, to corroborate this claim. In absence of such supporting evidence, the assertion remains unsubstantiated

and cannot be accepted on mere averment. Furthermore, for the convenience of the Noticee and similar Airlines, the Customs Commissionerate, Ahmedabad had issued Public Notice No. 09/2018 dated 12.02.2018, laying down a detailed procedure for the clearance of aircraft carrying imported dutiable Aviation Turbine Fuel on board. The Noticee has not provided any information or documentation to indicate adherence to such prescribed procedure at other ports. In absence of documentary evidence, it is not feasible to ascertain or draw any inference to verify the procedure purportedly adopted at the said locations for the clearance of imported ATF. In view of the foregoing, I find that the contentions raised by the Noticee are devoid of merit and lack legal sustainability and accordingly, I reject the same.

14. The Noticee has also relied upon the judgment of the Hon'ble Supreme Court in *Union of India v. Kamlakshmi Finance Corporation Ltd.* highlighting the doctrine of judicial discipline. I also find that the Noticee's reliance upon the principle of judicial discipline laid down in **Union of India v. Kamlakshi Finance Corporation Ltd.** is misconceived in the facts of the present case. There is no dispute with the settled principle laid down by the Hon'ble Supreme Court that judicial discipline requires subordinate authorities to follow binding precedents. However, the said judgment does not preclude an adjudicating authority from distinguishing a precedent where the facts, issues involved or the applicable legal provisions are materially different. In the present case, the decisions relied upon by the Noticee have not been disregarded and the decisions have been taken on record during the present proceedings. However, the same are differentiable on the basis of facts, circumstances, legality of the case and the order of hon'ble supreme court order dated 07.11.2023. The conclusion reached in this Order is based not merely on a general disagreement with the Noticee's interpretation of the earlier decisions, but on the specific statutory provisions contained in Section 14 of the Customs Act, 1962 and Rule 10(2) of the Customs Valuation Rules, 2007, the subsequent proceedings concerning valuation of remnant ATF before the Hon'ble Supreme Court in the Air India matter, the Committee Minutes accepted in those proceedings, and the specific insurance documents produced by the Noticee in the present case. Therefore, the judicial discipline is being followed in line and spirit in the present case.

14.1 The Noticee has also relied upon various decisions in support of its contention that the benefit of Notification No. 35/2017-Cus dated 30.06.2017 is available to it and that the quantity of duty-paid fuel lying in the aircraft at the commencement of the international journey is required to be deducted from the quantity of remnant fuel available on arrival in India. I have carefully considered the said reliance. I find that there can be no dispute regarding the legal proposition that, where an importer establishes fulfilment of all the conditions prescribed under an exemption notification, the benefit of such notification cannot be denied. However, the applicability of Notification No. 35/2017-Cus is not dependent merely upon the Noticee's assertion that a particular quantity of fuel was duty-paid or that such quantity was available in the tank of the aircraft at the commencement of the international journey. The conditions of the Notification require factual and documentary verification, inter alia, regarding the identity and quantity of the fuel, its duty-paid character, parity of the relevant rate of duty and absence of drawback or rebate. As already discussed in paragraphs 13.1 to 13.6 above, the Noticee has failed to produce sufficient contemporaneous and verifiable evidence establishing fulfilment of all the conditions of Notification No. 35/2017-Cus in respect of each of the flights involved in the present proceedings. The Noticee has primarily relied upon worksheets and general assertions regarding the duty-paid character of the opening fuel. Such assertions cannot substitute the statutory and documentary verification required for extending an exemption. The Hon'ble Supreme Court has consistently held that an exemption notification has to be construed strictly and that the burden of establishing eligibility lies upon the person claiming the exemption. In **Commissioner of Customs v. Dilip Kumar & Company, 2018 (361) E.L.T. 577 (S.C.)**, the Hon'ble Supreme Court authoritatively held that the burden is on the assessee to establish that its case falls within the parameters of the exemption notification. The same principle is directly applicable to the present case. The Noticee has also not established that the factual records relied upon at other Customs formations are identical to the records available in the present case. Mere reference to a different assessment practice or an order passed at another Commissionerate cannot create an automatic entitlement to exemption when the statutory conditions have not been established through the documents and records pertaining to the present import. Therefore, the case laws and orders relied upon by the Noticee do not advance its case unless the foundational facts required for availing Notification No. 35/2017-Cus are first

established. In the absence of such proof, the Noticee cannot claim deduction of the opening quantity of fuel merely on the basis of a self-devised formula or general assertions regarding payment of duty. Accordingly, I find that the decisions relied upon by the Noticee do not assist its case in the facts and circumstances of the present proceedings.

15. As regard proposal in the show cause notice for demand of differential Customs Duty along with applicable interest, I find the re-determined assessable value of imported remnant fuel is Rs. 55,97,32,799/- as proposed in the Show Cause Notice and on this re-determined assessable value of Rs. 55,97,32,799/-, the total differential Duty amounts to Rs. 10,12,66,253/- (BCD @ 5% Rs. 2,79,86,640/- + CVD @11% Rs. 6,46,49,138/- + SWS@10% Rs. 86,30,475/) is required to be demanded and recovered from M/s. Interglobe Aviation Limited under the provisions of Section 28 (1) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962. Further, I find that the Noticee in their submission dated 03.09.2026 has admitted that they have paid an amount of Rs. 60,00,000/- towards their duty liability for the relevant period, therefore, I order to appropriate the same against their total duty liability of Rs. 10,12,66,253/-.

16. Whether 95,71,058 Ltrs. of ATF valued at Rs. 55,97,32,799/- (Rupees Fifty Five Crore, Ninety Seven Lakh, Thirty Two Thousand, Seven Hundred and Ninety Nine only) should be held liable to confiscation under Section 111(f) and 111(j) of the Customs Act, 1962.

16.1 I find that the Show Cause Notice proposes confiscation of the remnant fuel. In this regard it is to mention that the same is covered under the definition of 'imported goods' and leviable to Customs Duty as already discussed hereinabove. Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry and after due verification and assessment of the same, the proper officer of Customs is required to make an order permitting clearance of the imported goods i.e. issue of Out of Charge order in terms of Section 47 of the Customs Act, 1962. In the instant case, the Noticee cleared the remnant fuel from the Customs area without obtaining the requisite Out of Charge order from the proper officer of Customs. It was also observed that the Noticee failed to file the Bill of Entry for the remnant ATF as stipulated under the procedure laid down in

the Customs Act, 1962. Further, it is found that the impugned goods were not finally assessed by the proper officer, and no out of charge order was issued for their clearance. Further, in respect to the contention of the Noticee that they had approached the Customs Department for acceptance of the provisional bills of entry, I find that no sincere efforts were made by the Noticee to resolve the issue. This conclusion is supported by the circumstantial evidence, which indicates that the Noticee sent only four letters in a period of four years. This is despite the fact that, **for the period 01.05.2024 to 31.08.2025, they were required to file more than 1800 Bills of entry**. In view of the above, I find that the remnant fuel is covered within the ambit of Section 111(j) of the Customs Act, 1962 in as much as the same has been removed from Customs area without the permission of the proper officer. Further, Section 30 of the Customs Act, 1962 provides for filing of Arrival Manifest, Import Manifest or Import Report. In the instant case, it is observed that the Noticee have not filed the requisite Arrival Manifest, Import Manifest in respect of such imported goods viz. the remnant fuel, nor mentioned the same in their purported Bills of Entry. Noticee's contention that declaration of stores is absent in Aircraft Regulations is not acceptable. As per clause 1(a) of Regulation 3 of Import Manifest (Aircraft) Regulations, 1976 details of all the goods carried in the aircraft are to be entered in the Import Manifest. Import Manifest is a legal document which contains details of any goods arriving at the Customs location that is carried by the carrier of goods at the destination Customs location in terms of Section 30 of the Customs Act, 1962. Thus, I find that the remnant fuel is liable for confiscation in terms of the provisions of Section 111(f) and 111(j) of the Customs Act, 1962. Further, the aforementioned goods are not physically available for confiscation, and in such cases, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) wherein the Hon'ble High Court of Madras** has observed as under:

> *The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever*

confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

16.2 Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.),** has held interalia as under:-

" . .

174. ..... *In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;*

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)".

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."

In view of the above, I find that 95,71,058 Ltrs. of ATF whose value has been re-determined at Rs. 55,97,32,799/- (Rupees Fifty Five Crore, Ninety Seven Lakh, Thirty Two Thousand, Seven Hundred and Ninety Nine only) is liable for confiscation under Section 111(f) and 111(j) of the Customs Act, 1962 and redemption fine is also liable to be imposed in view of the aforesaid decisions.

17. Whether penalty should be imposed on them under Section 112(a) of the Customs Act, 1962?

17.1 The Show Cause Notice proposes imposition of penalty on the Noticee under the provision of Section 112 (a) of the Customs Act, 1962. In terms of the provisions of Section 112(a), any person, who omits to do any act which act or omission would render such goods liable to confiscation under Section 111, is liable to penalty. In the instant case, the Noticee have removed the dutiable goods i.e. remnant fuel from the Customs area without permission from the proper officer and also failed to file the requisite manifest/report and by such acts have rendered the goods liable for confiscation. I have already found that the Goods under consideration are liable to confiscation under Section 111(f) and 111(j) of the Customs Act, 1962. Thus, the Noticee have committed an act which has rendered the goods liable to confiscation. Therefore, ratio of none of the judgements relied upon by the Noticee are applicable in the present case. Resultantly, I find that the Noticee is liable to penalty in terms of the provisions of Section 112(a)(ii) of the Customs Act,1962.

18. Whether penalty should be imposed on them under Section 117 of the Customs Act, 1962.

18.1 I find that Show Cause Notice also proposes Penalty under Section 117 of the Customs Act, 1962. Section 117 of the Customs Act, 1962 reads as under:

"117. Penalties for contravention, etc., not expressly mentioned.—Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees]."

I find that this is a general penalty which may be imposed for various contravention and failures where no express penalty is elsewhere provided in the Customs Act, 1962. In the present case, since express penalty under Section 112 (a) (ii) of the Customs Act, 1962 for rendering the imported goods liable for confiscation under Section 111(f) and 111(j) of the Customs, Act, 1962, has already been invoked and found imposable as discussed herein above, therefore, I hold that Penalty under Section 117 of the Customs Act, is not warranted and legally not sustainable.

19. In view of the above findings, I pass the following order:

ORDER

(i) I order to reject the value assessed by the importer and confirm the re-determined assessable value of **Rs. 55,97,32,799/- (Rupees Fifty Five Crore, Ninety Seven Lakh, Thirty Two Thousand, Seven Hundred and Ninety Nine only)** in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;

(ii) I confirm the Customs Duty amounting to **Rs. 10,12,66,253/- (Rupees Ten Crore, Twelve Lakh, Sixty Six Thousand, Two Hundred and Fifty Three only)** as per Annexure-A to the Show Cause Notice and order to recover the same in terms of the provisions of Section 28(1) of the Customs Act, 1962 and as the amount of differential duty of Rs. 60,00,000/- already paid by the importer, I order to appropriate the same towards their duty liability;

(iii) I order to recover the interest on the aforesaid demand of Duty confirmed at para 19 (ii) above as applicable in terms of Section 28AA of the Customs Act, 1962;

(iv) I hold 95,71,058 Ltrs. of ATF imported during the period under consideration valued at **Rs. 55,97,32,799/- (Rupees Fifty Five Crore, Ninety Seven Lakh, Thirty Two Thousand, Seven Hundred and Ninety Nine only)** liable to confiscation under the provisions of Section 111(f) and 111(j) of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I impose redemption fine of **Rs. 3,00,00,000/- (Rupees Three Crore only)** in lieu of confiscation under Section 125 of the Customs Act, 1962;

(v) I impose penalty of **Rs. 50,00,000/- (Rupees Fifty Lakh only)** on the Noticee in terms of the provisions of Section 112(a) of the Customs Act, 1962. However, in view of the proviso to Section 112(ii) of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the penalty determined above;

(vi) I refrain from imposing any penalty on Noticee under Section 117 of the Customs Act,1962.

20. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

21. The Show Cause Notice No. VIII/10-30/Pr. Commr./O&A/2025-26 dated 06.04.2026 is disposed off in above terms.

Friday
5/10/26

D/C

(Manish Kulhary),
Commissioner,
Customs, Ahmedabad

DIN- 20261071MN000080D267

F. No. VIII/10-30/Pr.Commr/O&A/2025-26 Date: 05.10.2026

To,
M/s. Interglobe Aviation Limited,
Level 1, Tower C, Global Business Park,
Mehrauli Road, Gurugram,
Haryana - 122002.

Copy to:

1. The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad;
2. The Additional Commissioner, Customs, TRC, HQ, Ahmedabad;
3. The Assistant/Deputy Commissioner of Customs, Air Cargo Complex, Ahmedabad;
4. The Superintendent of Customs(Systems) in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad;
5. The Assistant/Deputy Commissioner, RRA, HQ, Ahmedabad Customs.
6. Guard File.

प्राप्त किया/RECEIVED
प्रधान आयुक्त का कार्यालय
प्रेषण अनुभाग/DISPATCH SECTION
सीमा शुल्क मुख्यालय, अहमदाबाद.
CUSTOMS HQ, AHMEDABAD.
दिनांक/Date...8/10/26.....
हस्ताक्षर/Sign.....