प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडियो के पास, नवरंगपुरा ,अह्मदाबाद 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
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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ **F. No.: VIII/10-29/Pr. Commr/O&A/2024-25**
DIN - 20250671MN000000AD66

आदेश की तारीख/Date of Order : 02.06.2025
जारी करने की तारीख/Date of Issue : 02.06.2025

द्वारा पारित :- **शिव कुमार शर्मा ,प्रधान आयुक्त**
Passed by :- **Shiv Kumar Sharma, Principal Commissioner**

मूल आदेश संख्या **:**

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-11-2025-26 dtd. 02.06.2025 in the case of M/s. SpiceJet Limited, 319, Udyog Vihar, Phase IV, Gurgaon, 127018.

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 प्रतियाँ 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 प्रतियाँ 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 बारेमे 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/10-29/Pr. Commr./O&A/2024-25 dated 27.12.2024 issued by the Principal Commissioner of Customs, Customs, Ahmedabad to M/s. Spice Jet Limited, 319, Udyog Vihar, Phase IV, Gurgaon, 127018.

Brief facts of the case:

M/s. SpiceJet Limited, 319, Udyog Vihar, Phase IV, Gurgaon-127018 (hereinafter referred to as 'the Noticee' or 'the Importer' for the sake of brevity) operates International Flights from Sardar Vallabhbhai Patel International Airport, Ahmedabad (herein after referred to as 'SVPI Airport'). The Noticee uses the same aircrafts for domestic extension flights to various destinations in India i.e. Mumbai, Bangalore, Goa, Chennai and Delhi without a trip to a foreign airport during their voyage.

2. A cumulative reading of definition "foreign going vessel or aircraft" and "stores" as provided under Section 2(21) and Section 2(38) with Section 87 of the Customs Act, 1962 reveals 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 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 were 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.

3.1. The Noticee was, accordingly, required to self-assess the customs duty leviable on remnant ATF 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.

3.2. It was observed that the Noticee was not filing BoE for remnant ATF, accordingly, they were asked to provide duty calculation data and duty payment details vide letter F.No. VIII/48-65/ACC/ATF/SpiceJet/2024-25 dated 20.05.2024 and subsequent reminder dated 12.08.2024. However, the Noticee did not submit requisite details as mentioned in above letters. Hence, Summons dated 17.10.2024 was issued to the noticee requesting to appear before the officer to produce above mentioned data on 28.10.2024. Failing to produce requisite details, another Summons dated 21.11.2024 was issued to the noticee to appear before the officer with the requisite data on 28.11.2024.

3.3. The Noticee vide letter dated 18.12.2024 received by the Customs department on 21.12.2024, submitted worksheets containing details of the quantity of ATF available on board in Kg, Rate per Kg, exchange rate of US dollar etc. from 01.01.2023 to 30.04.2024 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.

3.3.1. The copy of TR-6 Challan submitted by the Noticee revealed that they had paid Advance Customs duty amounting to Rs. 24,25,636/- on 09.12.2024.

3.3.2. The Noticee had provided the details of the formula based on which they had adopted for the calculation of Customs duty liability:

Table-1 (data for example only)

Particulars	Unit in Kg
Opening Qty. of ATF in Aircraft at Ahmedabad	600
Uplift of ATF at Ahmedabad	1700
Total Qty of ATF before departure from Ahmedabad **(A)**	2300
ATF Burnt in flight Ahmedabad-Dubai/Muscat/Bangkok	(1200)
Remaining ATF at Dubai/Muscat/Bangkok on arrival	1100

Uplift of ATF at Dubai/Muscat	1000
Total Qty of ATF before departure from Dubai/Muscat/Bangkok ATF burnt in flight Dubai/Muscat/Bangkok- Ahmedabad	2100 (1000)
Remnant ATF at Ahmedabad **(B)**	1100
Differential Qty of ATF for duty computation **(B-A)**	(-1200)

3.4. 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 journey from total remnant ATF at the termination of international journey.

3.5 The Principal Commissioner of Customs, Customs, Ahmedabad has 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 the 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 was given alternate procedure in paragraph "G". However, the Noticee failed to follow any of the two prescribed procedure for clearance of remnant Aviation Turbine Fuel (ATF).

3.6. The formula applicable to the Noticee for payment of customs duty could be explained as below:

Table-2 (data for example only)

Particulars	Unit in Kg
a) Opening Qty of ATF in Aircraft at Ahmedabad b) Uplift of ATF at Ahmedabad	600 1700
a) Total Qty of ATF before departure from Ahmedabad b) ATF Burnt in flight Ahmedabad-Dubai/Muscat	2300 (1200)
a) Remaining ATF at Dubai/Muscat on arrival b) Uplift of ATF at Dubai/Muscat	1100 1000
a) Total Qty of ATF before departure from Dubai/Muscat b) ATF burnt in flight from Dubai/Muscat - Ahmedabad	2100 (1000)
Remnant ATF at Ahmedabad i.e. quantity of ATF to be taken for computation of customs duty	**1100**

3.7. 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 and thereby evaded payment of actual customs duty due to be paid to the Government. Furthermore, whatever quantity of ATF remained on board of the flight at the time of starting of international leg of journey was in fact export of ATF which did not have any bearing of Customs duty liability.

3.8. 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 extent and in the manner specified in the rules made in this behalf:*"

3.8.1. 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.

3.8.2. 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.

3.8.3. 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.

3.8.4. 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.

3.8.5. 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 the SCN, for various international flights which terminated at SVPI Airport and were later converted to domestic extension flights.

3.9. It is evident from the worksheet that during the period from 01.01.2023 to 30.04.2024, the Noticee is required to pay Customs duty on remnant ATF on board at the time of termination of International flights at SVPI Airport. The details of customs duty to be paid on remnant ATF is tabulated herein below:

Sr. No.	Total remnant ATF on board (in KGS.)	Total Customs duty payable. (In Rs.)	Customs duty paid (in Rs.)	Customs duty short paid (in Rs.)
1	2576427	4,31,33,653/-	24,25,636/-	4,07,08,017/-

3.9.1. 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.

3.9.2. 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 Customs Act 1962 nor did they seek its clearance from proper officer as per provisions of Section 47 of Customs Act 1962. Therefore, the Noticee 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 custom area without permission of the proper officer thereby rendering the impugned goods i.e. 25,76,427 Ltrs. 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 appeared that Customs duty to the tune of **Rs. 4,07,08,017/- (Rupees Four Crore, Seven Lakh, Eight Thousand and Seventeen 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 had contravened the provisions of Section 46(1) of the Customs Act, 1962 in as much as they failed to file the Bills of Entry on left over fuel on board at the time of its termination of various international flights into domestic sector. They had also contravened the provisions of Section 17(1) of the Customs

Act, 1962 and Rule 10(2) of the Customs Valuation (Determination of value of imported goods) Rules, 2007.

5.1. They failed to assess the correct assessable value of leftover fuel on board at the time of its termination of various international flight into domestic section as defined under Sub-Section (1) of Section 14 of the Customs Act, 1962, which resulted in non-payment of Customs Duty which is required to be demanded and recovered under Section 28(1) along with interest under Section 28AA of the Customs Act, 1962.

6. Pre-notice consultation in terms of the provisions of Section 28(1)(a) read with Pre-Notice Consultation Regulations, 2018 was given on 26.12.2024, however, the noticee had not submitted any reply in this regard. Therefore, it was deemed necessary to issue a Show Cause Notice in order to safeguard the interests of government revenue.

7. In view of the above, Show Cause Notice No. VIII/10-29/Pr. Commr./O&A/2024-25 dated 27.12.2024 was issued to M/s Spice Jet Limited, 319, Udyog Vihar, Phase IV, Gurgaon, 127018 calling upon to show cause to the Principal Commissioner of Customs, Ahmedabad as to why:-

a. 25,76,427 Ltrs of ATF valued at **Rs. 23,69,33,001/- (Rupees Twenty-Three Crore Sixty-Nine Lakh Thirty-Three Thousand One only)** should not be held liable to confiscation under Section 111(f) and 111(j) of the Customs Act, 1962.
b. the value of 25,76,427 Ltrs of remnant ATF should not be determined at **Rs. 23,69,33,001/- (Rupees Twenty Three Crore, Sixty Nine Lakh, Thirty Three Thousand and One 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 as detailed in Annexure A to this Notice and Customs duty of ***Rs.* 4,31,33,653/- *(Rs. Four Crore, Thirty One Lakh, Thirty Three Thousand, Six 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. 24,25,636/- (Rs. Twenty Four Lakh, Twenty Five Thousand, Six Hundred and Thirty Six 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:

7. The noticee vide their letter 22.05.2025 submitted written submission wherein they interalia stated as under:

7.1 That at the outset, they denies every allegation leveled in the impugned SCN and further denies having contravened any provision of the Customs Act, 1962 or the Rules made there under or ancillary to it; that they had furnished a detailed letter dated 26th July 2016 wherein the details of Customs Duty liability for the period April 2015 to March 2016 were provided together with the legal provisions and exemptions on ATF as is applicable to the Noticee; that from the details provided it is evident that the Noticee has disclosed the methodology followed and principles applied in the determination of Customs Duty liability for the period April

2015 to March 2016. The same methodology and principles have been followed in the relevant period under consideration i.e. from 01.01.2023 to 30.04.2024;

7.2 That as per the practice followed during the relevant period, every aircraft before its conversion from a domestic flight to an international flight has certain quantity of fuel in its fuel tank as per regulatory requirements; that this leftover fuel in the aircraft before the conversion is fully duty paid ATF. That after conversion, and before departure for an international flight, the aircraft is filled with bonded ATF (duty-free) which is consumed during the course of such flight outside India. Similarly, ATF is filled at the airport of the foreign destination to be consumed on its return journey to India; that Customs duty is paid on the remnant ATF at the time of re-conversion of the flight for domestic operations by applying a formula for the calculation of quantity for duty payment purposes i.e. [total quantity of left over ATF in the aircraft on return to India] *minus* [the opening quantity of duty paid fuel before departure from India]; that this formula is applied by virtue of Notification No.35/2017-Cus, which exempts the opening quantity of duty-paid fuel in the aircraft tank before departing from India from the total remnant quantity of fuel on return to India from the foreign run; that after working out of the quantity of remnant ATF as above, the Noticee works out the value of ATF by multiplying the said quantity with the invoice price of ATF and the prevalent exchange rate. On this value of remnant ATF, the Noticee then adds insurance charges @ 1.125% to arrive at the assessable value for calculation of Customs duty. The Noticee does not include any amount towards freight in such calculation as no freight cost is incurred by the Noticee, the fuel being carried in Noticee's own aircraft tank; that on the assessable value of ATF, applicable Customs Duties are paid by them;

7.3 That as per the practice followed in the airline industry, the Noticee maintains an advance deposit with the Customs Authorities, and such advance is subsequently adjusted against the customs duty liability of the Noticee computed and paid at the end of a specified period on the left-over ATF as per the above formula and methodology of calculation; that the Noticee followed the practice of intimating the Customs Authorities about the arrival of each aircraft into India and also about the quantity of ATF lying in the aircraft's fuel tank upon such arrival. For the purpose of discharging its Customs Duty liability, the Noticee would calculate the total amount due periodically and make payments for the same vide TR-6 Challans which amount was adjusted against the advance deposits made to the Customs Authorities for the left-over fuel on board;

7.4 That when an Aircraft arrives at SVPI Airport, Ahmedabad from International locations prior to the commencement of Aircraft's domestic run, the Department has alleged that the left over ATF on board in the Aircraft, on its conversion from foreign into domestic run would amount to import of ATF and would attract Customs duty and accordingly, the Department sought to levy Customs duty on the quantity of ATF in the tank of the Aircraft before it commenced its domestic run as has been exhibited by the Department in the SCN; that the Noticee strongly opposes this alleged contention and in this regard, to arrive at the quantity of ATF on which Customs duty is leviable, SpiceJet submits that the working followed as (a) The quantity of ATF in the tank of the aircraft at the time of the aircraft's arrival at Ahmedabad from the International locations (b) The said quantity of ATF in the tank of the aircraft on arrival from the International locations was to be compared with the quantity of duty paid ATF in the tank of the aircraft at the time of its outward journey from Ahmedabad, and (c) the Noticee liable to pay Customs duty only on the balance quantity of ATF in the tank of the aircraft after deducting the duty paid ATF that was left in the tank at the time of the aircraft's outbound journey;

7.5 That Notification No. 151/94-Cus dated 13.07.1994/ 35/2017-Cus dated 30.06.2017 provides for exemption from payment of Customs duties on quantity of

fuel in the tanks equal to the quantity of the same type of duty paid fuel taken out of India at the time of departure to an international destination;

7.6 That in para 3.3.2 of the SCN the Department has tabulated a formula alleging that the Noticee adopts the same for determining its customs duty liability on left over ATF. The said table is reproduced hereunder:

Particulars	Unit in Kg
Opening Qty. of ATF in Aircraft at Ahmedabad	600
Uplift of ATF at Ahmedabad	1700
Total Qty of ATF before departure from Ahmedabad **(A)**	2300
ATF Burnt in flight Ahmedabad-Dubai/Muscat/Bangkok	(1200)
Remaining ATF at Dubai/Muscat/Bangkok on arrival	1100
Uplift of ATF at Dubai/Muscat	1000
Total Qty of ATF before departure from Dubai/Muscat/Bangkok	2100
ATF burnt in flight Dubai/Muscat/Bangkok- Ahmedabad	(1000)
Remnant ATF at Ahmedabad **(B)**	1100
Differential Qty of ATF for duty computation **(B-A)**	(-1200)

In reality, the Noticee is not following the same and contention of the Department is vehemently being denied. The methodology adopted by the Noticee and as explained in above paras are tabulated as under:

Particulars	Unit in Kg
Opening Qty. of ATF in Aircraft at Ahmedabad **(A)**	600
Uplift of ATF at Ahmedabad	1700
Total Qty of ATF before departure from Ahmedabad	2300
ATF Burnt in flight Ahmedabad-Dubai/Muscat/Bangkok	(1200)
Remaining ATF at Dubai/Muscat/Bangkok on arrival	1100
Uplift of ATF at Dubai/Muscat	1000
Total Qty of ATF before departure from Dubai/Muscat/Bangkok	2100
ATF burnt in flight Dubai/Muscat/Bangkok- Ahmedabad	(1000)
Remnant ATF at Ahmedabad **(B)**	1100
Differential Qty of ATF for duty computation **(B-A)**	500

The Noticee is discharging the duty liability on the differential 500 Kgs of ATF by availing the exemption benefit provided by virtue of Notification No. 35/2017-Cus.

7.7 That the Department has grossly erred in calculating the demand of Rs.4,33,19,064/- based on the Arrival Quantity of ATF instead of considering the balance quantity of ATF left over in the tank of the inbound Aircraft after deducting the duty paid ATF that was left over in the tank of the said Aircraft at the time of its departure from Ahmedabad for its International run; that Customs Department in other States has duly considered our methodology and principles in computing the Cost of ATF and thereby has given them the benefit of the exemption as applicable under Notification No. 35/2017-Cus; that the Department has accepted their methodology of computing the left over value of ATF in the inbound aircraft tanks by deducting the quantity of duty paid fuel to arrive at the balance quantity on which the Customs Duty liability has been derived at; that they have not suppressed any facts regarding the quantity of balance ATF or mislead the department with the intent to evade the payment of Customs duty for the relevant period; that the remaining contentions of the impugned SCN are an extension/ corollary of the grounds discussed in their submission.

PERSONAL HEARING:

8. The Personal Hearing was fixed on 08.05.2025 for M/s. SpiceJet Ltd. Ms Leena Mallick, Assistant General Manager (Taxation-Finance) of M/s. SpiceJet Limited attended the Personal Hearing on 19.05.2025 in virtual mode wherein she

stated that they are paying insurance charges @ 1.125% of FOB value; however, they are not liable to pay the differential customs duty demanded in the SCN. She further stated that they will submit a detailed defence reply by 22.05.2025.

DISCUSSION AND FINDINGS:

9. I have carefully gone through the Show Cause Notice dated 27.12.2024, relevant case records and the Noticee's submission dated 22.05.2025 and records of personal hearing.

9.1 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. 23,69,33,001/- (Rupees Twenty-Three Crore, Sixty-Nine Lakh, Thirty-Three Thousand, One only) and Customs duty of Rs. *4,31,33,653/- (Rs. Four Crore, Thirty One Lakh, Thirty Three Thousand, Six 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 the noticee is eligible for benefit of Notification No. 151/94-Cus dated 13.07.1994 & 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 25,76,427 Ltrs. of ATF valued at Rs. 23,69,33,001/- (Rupees Twenty Three Crore, Sixty Nine Lakh, Thirty Three Thousand and One 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. 24,25,636/- (Rs. Twenty Four Lakh, Twenty Five Thousand, Six Hundred and Thirty Six 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?

10. The core issue involved in the present case is 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.

10.1 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.

11. Whether insurance @ 1.125 % of the FOB value 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 determined at Rs. 23,69,33,001/- (Rupees Twenty Three Crore, Sixty Nine Lakh, Thirty Three Thousand and One only)?

11.1 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***

11.2 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.***

11.3 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.

11.4 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 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."

11.5 I find that said Minutes of the Meeting is based on the clarification given by the CBIC vide their letter dated 12.04.2021. 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 @1.125% is appropriately includible in the assessable value of the Remnant Fuel.

11.6 I further find that the noticee in their defence submitted that they have been regularly paying the customs duty on remnant ATF by adding the insurance @1.125% in all the challans and calculations filed with the department. Thus, it is undisputed fact that the insurance charges is liable to be included in the assessable value.

11.7 In the said Show Cause Notice dated 27.12.2024 against the Noticee, it was proposed to re-determine the assessable value at Rs. 23,69,33,001/- in Annexure-A wherein 1.125% of Insurance is included. In view of the discussion held in Para 11.1 to 11.6 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. 23,69,33,001/- for the purpose of levying Customs duties.

12. Whether noticee is eligible for benefit of Notification No. 35/2017-Cus dated 30.06.2017? 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?

12.1 I find that exemption under Notification No. 35/2017-Cus dated 30.06.2017, 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.

12.2 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. 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.

12.3 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."

12.4 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."

12.5 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. 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. 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 any 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, no concrete evidence to that effect has been submitted by them. 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. I further find that the Noticee 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.

12.6 I find that the Noticee contended that the Department has erred in calculation of Remnant ATF and made a wrong calculation by adopting a methodology as mentioned in para 3.3.2 of the SCN. They submitted that they have actually adopted different formula for calculation of duty liability. Both the methods, as alleged by the Department and as claimed to be followed by the Noticee, are reproduced for better understanding of the facts of the case.

Table-I (Methodology as alleged in the SCN)

Particulars	Unit in Kg
Opening Qty. of ATF in Aircraft at Ahmedabad	600
Uplift of ATF at Ahmedabad	1700
Total Qty of ATF before departure from Ahmedabad **(A)**	2300
ATF Burnt in flight Ahmedabad-Dubai/Muscat/Bangkok	(1200)
Remaining ATF at Dubai/Muscat/Bangkok on arrival	1100
Uplift of ATF at Dubai/Muscat	1000
Total Qty of ATF before departure from Dubai/Muscat/Bangkok	2100
ATF burnt in flight Dubai/Muscat/Bangkok- Ahmedabad	(1000)
Remnant ATF at Ahmedabad **(B)**	1100
Differential Qty of ATF for duty computation **(B-A)**	(-1200)

Table-II (Methodology claimed to be adopted by the Noticee)

Particulars	Unit in Kg
Opening Qty. of ATF in Aircraft at Ahmedabad **(A)**	600
Uplift of ATF at Ahmedabad	1700
Total Qty of ATF before departure from Ahmedabad	2300
ATF Burnt in flight Ahmedabad-Dubai/Muscat/Bangkok	(1200)
Remaining ATF at Dubai/Muscat/Bangkok on arrival	1100
Uplift of ATF at Dubai/Muscat	1000
Total Qty of ATF before departure from Dubai/Muscat/Bangkok	2100
ATF burnt in flight Dubai/Muscat/Bangkok- Ahmedabad	(1000)
Remnant ATF at Ahmedabad **(B)**	1100
Differential Qty of ATF for duty computation **(B-A)**	500

From the records, I note that the Noticee, vide letter dated 18.12.2024, submitted the duty calculation data and duty payment details on remnant ATF. However, this information was submitted at the last moment despite issuance of a letter dated 20.05.2024, a reminder dated 12.08.2024, and summons dated 17.10.2024 and 21.11.2024. This delay, despite multiple correspondences, reflects the Noticee's lack of seriousness towards the issue. In the said letter, the Noticee provided the calculation of assessable value in the format shown in Table-III.

Table-III

Date	Aircraft	Left over Fuel at AMD before departure to Intl Sector	Left Over Fuel at AMD after returning from Intl Sector	Balance fuel/(QTY) in Kgs)	Rate of fuel per KG	Rate : INR/USD	Value	Insurance cost (1.125%)	Total (Ass. Val)
01-Jan-23	VT-MXI	3130	4180	1,050	$ 1.38	83.55	1,21,392	1,366	1,22,758

The Noticee contended that the Department has erred in the calculation methodology and that they were following a different methodology as shown in Table-II, but they failed to provide any supporting calculation sheet or documents in support of their claim. From the Table-III, I observe that the Noticee has deducted the "**Left over Fuel at AMD before departure to Intl Sector**" from the "**Left Over Fuel at AMD after returning from Intl Sector**." However, I further find that nowhere in the said format is the fuel uplift from Ahmedabad is mentioned. Therefore, it cannot be said that the uplift from Ahmedabad was excluded from the calculation of duty liability on remnant ATF. From Table-I and Table-III, I clearly find that the Department has rightly made its allegation based on data provided by the Noticee. Therefore, the contention of the Noticee that the Department has erred in the calculation methodology and has adopted a different methodology is not sustainable, and I reject the same.

12.7 The Noticee further contended that other states have duly considered their methodology and principles in computing the Cost of ATF and have thereby granted them benefit of exemption notification no. 35/2017-Cus dated 30.06.2017. 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. I further find that the noticee failed to produce evidence in support of their claim that 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. I have already discussed in detail in para 12.1 to para 12.5 above and held that that the benefit of the Notification No. 35/2017-Cus dated 30.06.2017 cannot be allowed to the noticee due to non-fulfillment of the conditions mentioned in the subject Notification. 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.

13. Further, I find that the Noticee has quoted and relied on various case laws/judgments in their defense submission to support their contention on some issues raised in the Show Cause Notice. I am of the view that conclusions in those cases may be correct, but they 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 apply here

directly. Therefore, I find that 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. Further, the decision is an authority for what it decides and not what can be logically deduced there from.

14. As regard proposal in the show cause notice for demand of differential Customs Duty along with applicable interest, I find that I have already held and confirmed the re-determined assessable value of imported remnant fuel at Rs. 23,69,33,001/- (Rupees Twenty-Three Crore, Sixty-Nine Lakh, Thirty-Three Thousand, One only) as proposed in the Show Cause Notice. I, therefore, find and hold that on this re-determined assessable value of Rs. 23,69,33,001/-, the total differential Duty amounting to Rs. 4,31,33,653/- (BCD @ 5% Rs. 1,18,46,650/- + CVD @11% Rs. 2,73,65,762/- + SWS@10% Rs. 39,21,241/-) is required to be demanded and recovered from M/s. SpiceJet 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 has paid an amount of Rs. 24,25,636/- towards their duty liability, therefore, I order to appropriate the same against their total duty liability of Rs. 4,31,33,653/-.

15. Whether 25,76,427 Ltrs. of ATF valued at Rs. 23,69,33,001/- (Rupees Twenty-Three Crore Sixty-Nine Lakh Thirty-Three Thousand One only) should be held liable to confiscation under Section 111(f) and 111(j) of the Customs Act, 1962.

15.1 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. 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, but 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).*

15.2 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:-

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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 25,76,427 Ltrs. of ATF whose value has been re-determined at Rs. 23,69,33,001/- (Rupees Twenty Three Crore, Sixty Nine Lakh, Thirty Three Thousand and One 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.

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

16.1 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.

17. Whether penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

17.1 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.

18. 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. 23,69,33,001/- (Rupees Twenty Three Crore, Sixty Nine Lakh, Thirty Three Thousand and One 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. 4,31,33,653/- (Rs. Four Crore, Thirty One Lakh, Thirty Three Thousand, Six 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. 24,25,636/- 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 18 (ii) above as applicable in terms of Section 28AA of the Customs Act, 1962;

(iv) I hold 25,76,427 Ltrs. of ATF imported during the period under consideration valued at **Rs. 23,69,33,001/- (Rupees Twenty-Three Crore, Sixty-Nine Lakh, Thirty-Three Thousand and One 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. 2,30,00,000/- (Rupees Two Crore, Thirty Lakh only) in lieu of confiscation under Section 125 of the Customs Act, 1962;

(v) I impose penalty of **Rs. 25,00,000/- (Rupees Twenty Five 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.

19. 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.

20. The Show Cause Notice No. VIII/10-29/Pr. Commr./O&A/2024-25 dated 27.12.2024 is disposed off in above terms.

RECEIVED
CUSTOMS (HQ), A'BAD.
DATE : 02/06/25
SIGN. :
NAME .D.J.VASAVA Dispatch

2.6.2025

(Shiv Kumar Sharma)
Principal Commissioner,
Customs, Ahmedabad

DIN-20250671MN000000AD66

F.No. VIII/10-29/Pr.Commr/O&A/2024-25

Date: 02.06.2025

To,
M/s SpiceJet Limited,
319, Udyog Vihar, Phase IV,
Gurgaon – 127018

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.