



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडीऑ के बाजु मे, नवरंगपुरा, अहमदाबाद 380009
दूर 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 46 30 FAX (079) 2754 23 43**

निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./ F.No.VIII/ 10-29/Pr.Commr./O&A/2023-24

DIN-20240671MN0000318743

आदेशकीतारीख/ Date of Order : 24.06.2024
जारीकरनेकीतारीख/ Date of Issue : 24.06.2024

द्वारापारित :-

शिवकुमारशर्मा, प्रधानआयुक्त

Passed by :-

Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-22-2024-25 dated 24.06.2024 in the case of M/s. SpiceJet Limited, 319, Udyog Vihar, Phase IV, Gurgaon-127018.

- जिसव्यक्ति(यों) कोयहप्रतिभेजीजातीहै, उसेव्यक्तिगतप्रयोगकेलिएनिःशुल्कप्रदानकीजातीहै।
- This copy is granted free of charge for private use of the person(s) to whom it is sent.
- इसआदेशसेअसंतुष्टकोईभीव्यक्तिइसआदेशकीप्राप्तिसेतीनमाहकेभीतरसीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठको इस आदेशके विरुद्ध अपील करसकताहै।अपीलसहायकरजिस्ट्रार, सीमाशुल्क, उत्पादशुल्कएवंसेवाकरअपीलीयन्यायाधिकरण, दुसरीमंजिल, बहुमालीभवन, गिरिधरनगरपुलकेबाजुमे, गिरिधरनगर, असारवा, अहमदाबाद-380 004 कोसम्बोधितहोनीचाहिए।
- 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.
- उक्तअपीलप्रारूपसं. सी.ए.3 मेंदाखिलकीजानीचाहिए।उसपरसीमाशुल्क (अपील) नियमावली, 1982 केनियम 3 केउपनियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपीलको चारप्रतियोंमें दाखिल किया जाए तथा जिस आदेशके विरुद्ध अपीलकी गई हो, उसकी

भी उतनी ही प्रतियाँ संलग्नकी जाएँ (उनमेंसे कमसेकम एक प्रति प्रमाणित होनी चाहिए)। अपीलसे सम्बंधित सभी दस्तावेज भी चार प्रतियोंमें 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 तथ्योंका विवरण एवं अपीलके आधार शामिल हैं, चार प्रतियोंमें दाखिलकी जाएगी तथा उसके साथ जिस आदेशके विरुद्ध अपीलकी गईहो, उसकीभी उतनीही प्रतियाँ संलग्नकी जाएंगी (उनमेंसेकमसेकमएकप्रमाणितप्रतिहोगी)।
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. अपीलका प्रपत्र अंग्रेजी अथवा हिन्दीमें होगा एवं इसे संक्षिप्त एवं किसीतक अथवा विवरणके बिना अपीलके कारणोंके स्पष्ट शीर्षोंके अंतर्गत तैयार करना चाहिए एवं ऐसे कारणोंको 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 सीमाशुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धोंके अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहांके किसीभी राष्ट्रीयकृत बैंककी शाखासे न्यायाधिकरणकी पीठके सहायक रजिस्ट्रारके नामपर रेखांकित माँगड्राफ्टके जरिए अदाकी जाएगी तथा यह माँग ड्राफ्टअपीलके प्रपत्रके 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. इसआदेशकेविरुद्धसीमाशुल्क, उत्पादशुल्कएवंसेवाकरअपीलीयन्यायाधिकरणमेंशुल्कके 7.5% जहांशुल्कअथवाशुल्कएवंजुरमानाकाविवादहैअथवाजुरमानाजहांशीर्फजुरमानाकेबारेमेविवादहैउस काभुकतानकरके अपीलकीजाशकतीहै।
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. न्यायालयशुल्कअधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेशकी प्रतिपर उपयुक्त न्यायालय शुल्कटिकट 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/2023-24 dated 26.12.2023 issued by the Principal Commissioner of Customs, Customs, Ahmedabad to M/s. SpiceJet 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') 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 leave 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.

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/48-55/ACC/ ATF/SpiceJet/2023-24 dated 16.08.2023 and 25.09.2023.

3.3 Noticee vide e-mail dated 28.11.2023 submitted worksheets containing details of the quantity of ATF available on board in Kg, Rate per Kg, exchange rate of US dollar etc. from 01.01.2022 to 31.12.2022 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 Noticee had provided their details as per following formula to arrive at 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	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)

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 international flight from total remnant ATF at the termination of international journey. Notification No. 35/2017-cus dated 30.06.2023 provides for exemption from BCD and additional duty of customs leviable under Section 3 of Customs Tariff Act 1975 on quantity of ATF imported in tanks of Aircraft equivalent to the quantity of fuel which was available in the Aircraft at the time of proceeding on international flight, subject to specified conditions. The conditions include verification / ascertainment of quantity of fuel available, payment of duties of customs and central excise on such quantity and that no drawback or rebate was allowed on such fuel, at time of export (i.e. proceeding on international flight). 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 had filed Bill of Entry for each and every such domestic flights.

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 on remnant ATF could be explained below:

Table-2 (data for example only)

Particulars	Unit in Kg
a) Opening Qty of ATF in Aircraft at Ahmedabad	600
b) Uplift of ATF at Ahmedabad	1700

a) Total Qty of ATF before departure from Ahmedabad	2300
b) ATF Burnt in flight Ahmedabad-Dubai/Muscat	(1200)
a) Remaining ATF at Dubai/Muscat on arrival	1100
b) Uplift of ATF at Dubai/Muscat	1000
a) Total Qty of ATF before departure from Dubai/Muscat	2100
b) ATF burnt in flight from Dubai/Muscat - Ahmedabad	(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, has devised a new formula without following procedure of filing of Bills of Entry and thereby evaded payment of actual Customs Duty.

3.8 The manner of calculating duty by the Noticee without including cost or expense in the value of ATF is also 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 is 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 transport and cost of insurance. Wherever the cost of transportation and insurance is not ascertainable, it has to be taken as transportation @ 20% and insurance @ 1.125% of the FOB value of the goods.

3.8.5 The Noticee has not included the freight @ 20% of FOB value of the goods while determining the assessable value of the remnant ATF for payment of Customs Duty, as required under Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. Therefore, the assessable value of the remnant ATF is

required to be re-determined by including the notional freight @ 20% of FOB value of the ATF, and 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.

3.9 It is evident from the worksheet that during the period from 01.01.2022 to 31.12.2022, 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 Assessable Value of ATF (In Rs.)	Total Customs duty payable. (In Rs.)
1	17,06,410 Kgs	Rs. 23,79,51,465/-	Rs. 4,33,19,064/-

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. The Importer has also not obtained clearance of aircraft with imported dutiable 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. 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. 17,06,410 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 appears that Customs duty to the tune of **Rs. 4,33,19,064 /-(Rupees Four Crores Thirty Three Lakh Nineteen Thousand and Sixty Four 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 have 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 (remnant fuel) 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 and Rule 10(2) of the Customs Valuation (Determination of value of imported goods) Rules, 2007. The Importer has also failed to comply with the provisions of Section 47 of the

Customs Act 1962 by clearing ATF out of Customs Area (i.e. Airport) without order of proper officer.

5.1 They have 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 recovered and demanded under Section 28(1) along with interest under Section 28AA of the Customs Act, 1962.

6. In view of the above, Show Cause Notice No. VIII/10-29/Pr. Commr./O&A/2023-24 dated 26.12.2023 M/s Spice Jet Limited, 319, Udyog Vihar, Phase IV, Gurgaon – 127018 is called upon to show cause to the Principal Commissioner of Customs, Ahmedabad as to why: -

- a. the value of goods determined vide their letter dated 27.09.2023 should not be determined at **Rs.23,79,51,465/-** (Rupees Twenty Three Crore, Seventy Nine Lakh, Fifty One Thousand, Four Hundred and Sixty Five only) and Customs duty of **Rs. 4,33,19,064 /-** (Rupees Four Crore, Thirty Three Lakh, Nineteen Thousand and Sixty Four only) as detailed in Annexure A to this Notice, should not be demanded and recovered with interest from them under Section 28(1) and Section 28AA of the Customs Act, 1962 respectively.
- b. 17,06,410 Ltrs of remnant ATF valued at **Rs.23,79,51,465/-** should not be held liable for confiscation under Section 111(f) and 111(j) of the Customs Act, 1962.
- c. Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962.
- d. Penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

7. Written Submission: Noticee filed their written submission vide letter dated 29.02.2024 received by this office on 04.03.2024 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 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 01.01.2022 to 31.12.2022;

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.151/94-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 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 without prejudice to the above grounds, there can be no addition towards freight as proposed in the impugned SCN; that inclusion of

insurance charges has never been disputed by the Noticee and have been regularly paying the duty on remnant ATF by adding the insurance @1.125% in all the challans and calculations filed with the department;

7.7 That there is no 'cost of transport' of ATF, hence no additions are warranted under Rule 10(2) of CVR, 2007. It is submitted that Rule 10(2) of CVR, 2007, is only a subordinate legislation that owes its existence to proviso to Section 14(1) of the Customs Act; that it cannot exceed the scope permitted by the proviso to Section 14(1); that as per the proviso to Section 14(1), only an amount paid or payable towards cost of transportation is permitted to be included in the transaction value; that this mandates that there should be a liability on the importer to pay an amount for transportation and only such amount can be included in the value of the imported goods; that thus, in the present case where no such amount is actually paid/ becomes payable by the Noticee or accrues to a third party, the question of addition of notional freight does not arise; that in the case of **InterGlobe Aviation supra**, the Hon'ble Tribunal has finally settled this issue in favour of the airlines; that it has been held that no freight is attributable to fuel in the tank of the aircraft; that the Tribunal has held that fuel cost incurred by the airlines form part of commercial consideration while fixing ticket charges for passenger transportation by aircraft, likewise, it should form part of cost for fixation of cargo charges for the transportation of goods carried as cargo on the aircraft; that the fuel in the tank of aircraft is not used for transport of the fuel itself as a cargo or goods rather the said fuel is necessary for the transportation of passenger / other cargo by the aircraft; that therefore, the ATF carried in tank of aircraft cannot be caused to be imported as goods; that in their own case at Mumbai, the Ld. Additional Commissioner of Customs, Mumbai Airport vide Order no. ADC/AK/ADJN/94-A/2017-18 dated 30.11.2017 has dropped the demand which was raised on account of non-inclusion of cost of freight in value of ATF and further the said order was upheld by the Principal Commissioner of Customs, Mumbai vide Order dated 24.02.2020. ; **that they relied on the judgment of the Hon'ble Supreme Court in the case of Wipro Ltd vs. Assistant Collector of Customs, reported as 2015 (319)ELT 177 (S.C.);**

7.8 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. 151/94; 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.

8. Personal Hearing.: The Personal Hearing was fixed on 23.04.2024 for M/s. Spicejet Ltd. Ms. Leena Mallick, Asstt. Manager (Taxation-Finance) appeared on behalf of M/s. Spicejet Ltd, in virtual mode wherein she reiterated the submission as detailed in their written submission dated 29.02.2024 received by this office on 04.03.2024.

9. I find that present Show Cause Notice is issued on 26.12.2023 under Section 28 (1) of the Customs Act, 1962 and in terms of Section 28 (9)(a) of the Customs Act, 1962 duty was required to be determined within six months from the date of notice. Thus the duty was required to be determined under Section 28 (8) of the Customs Act, 1962 on or before 25.06.2024.

In the present case, Personal Hearing was held on 23.04.2024 and during the adjudicating proceeding, it was noticed that in an identical issue, Hon'ble Supreme Court has disposed of the Civil Appeal Civil Appeal Diary No. 10284 of 2020 filed by the Commissioner of Customs (General), New Delhi reported in 2024 (387) E.L.T. 4 (S.C.) wherein it has been held as under:

"2. This Court by the order dated 15th October, 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.

3. Accordingly, a report of the Committee signed by all the members on 3rd June, 2021 has been placed on record.

4. 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 3rd June, 2021.

5. Hence, the appeals are disposed of by directing the parties to abide by what is recorded in the Minutes of the Meeting dated 3rd June, 2021 of the Committee constituted by this Court in terms of the order dated 15th October, 2020."

Since the said Minutes of the Meeting dated 3rd June, 2021 was not found from the website of Supreme Court, letter was written to Commissioner of Customs (General), New Delhi and it was not possible to proceed further to adjudicate the matter in absence of copy of Minutes of Meeting dated 03.06.2021. Therefore, as per Proviso to Section 28 (9) of the Customs Act, 1962, Chief Commissioner of Customs has extended further period of six months to determine the duty under Section 28 (8) of the Customs Act, 1962.

The said copy of the Minutes of the Meeting dated 3rd June, 2021 is received from Commissioner of Customs (Delhi Air Port) IGI, AIR Port, New Delhi on 04.06.2024 and therefore, I proceed to adjudicate the said Show Cause Notice dated 26.12.2023.

10. Discussion and findings: I have carefully gone through the Show Cause Notice dated 26.12.2023, relevant case records and the Noticee's submission dated 29.02.2024 and records of Personal Hearing.

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

- a. Whether notional freight @ 20% 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? and whether the value of goods determined vide their letter dated 27.09.2023 should not be determined at Rs.23,79,51,465/- (Rupees Twenty Three Crore, Seventy Nine Lakh, Fifty One Thousand, Four Hundred and Sixty Five only) and Customs duty of Rs. 4,33,19,064 /- (Rupees Four Crore, Thirty Three Lakh, Nineteen Thousand and Sixty Four only) as detailed in Annexure A to this Notice, should be demanded and

recovered with interest under Section 28(1) and Section 28AA respectively of the Customs Act, 1962?

- b. Whether 17,06,410 Ltrs of remnant ATF valued at Rs.23,79,51,465/- should be held liable for confiscation under Section 111(f) and 111(j) of the Customs Act, 1962?
- c. Whether Penalty should be imposed under Section 112(a) of the Customs Act, 1962?
- d. Whether Penalty should be imposed under Section 117 of the Customs Act, 1962?

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 leviable 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 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 liable to Customs Duty at the applicable rates. The Noticee have also not disputed the fact regarding liability of Customs Duty on such remnant fuel.

12. Whether notional freight @ 20% 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? and whether the value of goods determined vide their letter dated 27.09.2023 should be determined to Rs.23,79,51,465/- (Rupees Twenty Three Crore, Seventy Nine Lakh, Fifty One Thousand, Four Hundred and Sixty Five 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 notional freight @20% 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 transportation to the place of importation 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 transportation 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) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;

(b) the cost of insurance to the place of importation :

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

12.3 I find that noticee has contended that the Hon'ble Tribunal in the case of InterGlobe Aviation has settled this issue in favour of the airlines and it has been held that no freight is attributable to fuel in the tank of aircraft.

12.4 In similar issue, I find that 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 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 3rd June, 2021 hence, 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 3rd June, 2021 of the Committee constituted by this Court in terms of the order dated 15th October, 2020.

12.5 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."

12.6 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 Para 3.1 and 3.2 of the Minutes of the Meeting dated 12.04.2021 as stated above, I find that notional freight @ 20% of the FOB value is not required to be included in the assessable value of the Remnant Fuel. Therefore, notional freight @ 20% of the FOB included in the Assessable value is required to be deducted from the total assessable value proposed to be re-determined at **Rs.23,79,51,465/-** (Rupees Twenty Three Crore, Seventy Nine Lakh, Fifty One Thousand, Four Hundred and Sixty Five only) in the Show Cause Notice.

12.7 As per Para 3.3 of the Minutes of the Meeting dated 12.04.2021, I find that insurance @1.125% is appropriately included in the assessable value of the Remnant Fuel. Further, Noticee in their written submission dated 29.02.2024 have also admitted that on the value of remnant ATF, they have added insurance charges @ 1.125% to arrive at the assessable value for calculation of Customs duty.

12.8 In the said Show Cause Notice dated 26.12.2023 against the Noticee, it was proposed to re-determine the assessable value at **Rs.23,79,51,465/-** in Annexure A wherein the 20% freight of FoB Value of Remnant Fuel and 1.125% of Insurance is included. In view of the discussion held in Para 12.1 to 12.6 above, said notional freight of 20% is not required to be included in the assessable value as proposed in the Show Cause Notice and it is required to be

re-determined at **Rs. 19,86,61,233/- (Rupees Nineteen Crore, Eighty Six Lakh, Sixty One Thousand, Two Hundred and Thirty Three only)** after deduction of value of notional freight of 20% (Rs. 3,92,90,232/-) considered in the assessable value of remnant fuel as proposed to be determined in the said Show Cause Notice.

13. 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 flight 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., 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.*

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. 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. ParamnidhiSadhukhan, 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 Hon’ble Supreme Court in the case of Krish 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 intent. 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. 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 intentment 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; that the rate of Duty of Customs or Central Excise was the same at the time of arrival and departure of such aircrafts and no drawback of Duty of Customs or rebate of Duty of Central Excise had been claimed on such fuel at the time of departures of such aircrafts from India. The Noticee has merely made statements that the fuel was Duty paid and they had not claimed drawback, however, no supportive 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. I find that 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 Importer has also not obtained clearance of aircraft with imported dutiable ATF on board under provisions of Section 47 of the 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 30.06.2017 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 I find that the Noticee have in their written submission dated 29.02.2024 have stated that other state have duly considered their methodology and principles in computing the Cost of ATF and thereby has given them benefit of exemption notification no. 151/94-Cus dated 13.07.2014. I find that in the present case, department has held inadmissible of exemption notification no. 35/2017-Cus dated 30.06.2017. Though the conditions stipulated in Notification No. 151/94-Cus dated 13.07.2014 stated by the noticee are same, however, as discussed in Para 13.1 to 13.5, Noticee is not eligible for the benefit of said Notification No. 35/2017-Cus dated 30.06.2017 as mentioned in the Show Cause Notice dated 26.12.2023.

14. I find that in the Show Cause Notice, Customs Duty proposed to be demanded and recovered is Rs.4,33,19,064/- (Rupees Four Crore, Thirty Three Lakh, Nineteen Thousand and Sixty Four only) against the proposed redetermination of assessable value at Rs.23,79,51,465/- (Rupees Twenty Three Crore, Seventy Nine Lakh, Fifty One Thousand, Four Hundred and Sixty Five only) in the Show Cause Notice. As I have already re-determined the assessable value at Rs. 19,86,61,233/- (Rupees Nineteen Crore, Eighty Six Lakh, Sixty One Thousand, Two Hundred and Thirty Three only), differential duty is required to be re-calculated on the re determined assessable value of Rs. 19,86,61,233/- (Rupees Nineteen Crore, Eighty Six Lakh, Sixty One Thousand, Two Hundred and Thirty Three only) which arrives as Rs. 3,61,66,277/- (BCD @ 5% Rs.99,33,062/- + CVD @11% Rs.2,29,45,372/- + SWS@10% Rs.32,87,843/-). The said short paid duty of Rs. 3,61,66,277/- (Rupees Three Crore, Sixty One Lakh, Sixty Six Thousand, Two Hundred and Seventy Seven only) is required to be demanded and recovered under Section 28 (1) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962 and duty of Rs.71,52,787/- is required to be set aside/dropped due to reduction in assessable value of Remnant Fuel on account of non inclusion of notional Freight @20% therein.

15. Whether 17,06,410 Ltrs. of ATF valued at Rs. 19,86,61,233/- (Rupees Nineteen Crore, Eighty Six Lakh, Sixty One Thousand, Two Hundred and

Thirty Three 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 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 the instant case, the Noticee have cleared the remnant fuel from the Customs area without obtaining the Out of Charge order from the proper officer of Customs. By giving reference to a sample provisional Bill of Entry, which is attached to their letter dated 06.04.2023 under Annexure-3, the Noticee is found to have stated that they were filing provisional Bills of Entry and getting the same converted into final Bills of Entry after following the procedure stipulated in Public Notice No.09/2018 dated 12.02.2018 of the Principal Commissioner of Customs, Ahmedabad. But on perusal of the copy of the aforesaid sample Bill of Entry, it is found that the same is not finally assessed by the proper Officer and no out of charge order has been issued by the proper Officer. Thus, 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 or Import Report in respect of such imported goods viz. the remnant fuel. 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 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:

“....

....

....

23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates 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 I also find that 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 *inter alia* 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 17,06,410 Ltrs. of ATF whose value has been re-determined at Rs. 19,86,61,233/- (Rupees Nineteen Crore, Eighty Six Lakh, Sixty One Thousand, Two Hundred and Thirty

Three 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 ::

18.1 The value of goods determined vide the Noticee's letter dated 27.09.2023 is re-determined at Rs. 19,86,61,233/- (Rupees Nineteen Crore, Eighty Six Lakh, Sixty One Thousand, Two Hundred and Thirty Three 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.

18.2 I confirm the Customs Duty amounting to Rs. 3,61,66,277/- (Rupees Three Crore, Sixty One Lakh, Sixty Six Thousand, Two Hundred and Seventy Seven 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 drop the demand of Rs. 71,52,787/- as discussed in Para 14 above.

18.3 I order recovery of Interest at the applicable rate on the Customs Duty as mentioned at Para 18.2 above in terms of the provisions of Section 28AA of the Customs Act, 1962.

18.4 I order to confiscate **17,06,410 Ltrs.** of ATF valued at Rs. 19,86,61,233/- (Rupees Nineteen Crore, Eighty Six Lakh, Sixty One Thousand, Two Hundred and Thirty Three only) under the provisions of Sections 111(f) and 111(j) of the Customs Act, 1962 and impose a Redemption Fine of **Rs.1,00,00,000/- (Rupees One Crore only)** under the provisions of Section 125(1) of the Customs Act, 1962 in lieu of confiscation.

18.6 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)(ii) 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;

18.7 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/2023-24 dated 26.12.2023 is disposed off in above terms.

SKS
24.06.2024
(Shiv Kumar Sharma)
Principal Commissioner

DIN: 20240671MN0000318743

F.No. VIII/10-29/Pr. Commr./O&A/2023-24

Date: 24.06.2024

To,

M/s Spice Jet Limited,
319, Udyog Vihar, Phase IV,
Gurgaon - 127018

Copy to:

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