

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

REVIEW PETITION (C) NO(s) . OF 2026
(Diary No(s) .58086/2025)

IN

CIVIL APPEAL NOS.7744-9457/2025

COMMISSIONER OF CUSTOMS AIR CARGO
COMPLEX (IMPORT)

Petitioner(s)

VERSUS

INTER GLOBE AVIATION LIMITED ETC.

Respondent(s)

O R D E R

Delay condoned.

Having carefully gone through the Review Petitions, the order(s) under challenge and the papers annexed therewith, we are satisfied that there is no error apparent on the face of the record or any merit in these Review Petitions, warranting reconsideration of the order impugned.

The Review Petitions are, accordingly, dismissed.

Pending application(s) shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(K.V. VISWANATHAN)

NEW DELHI;
FEBRUARY 17, 2026

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

REVIEW PETITION (CIVIL) Diary No(s). 58086/2025
IN CIVIL APPEAL NOS.7744-9457/2025

[Arising out of impugned final judgment and order dated
14-07-2025 in C.A. Nos.7744-9457/2025)

COMMISSIONER OF CUSTOMS AIR CARGO COMPLEX (IMPORT) Petitioner(s)

VERSUS

INTER GLOBE AVIATION LIMITED ETC.

Respondent(s)

IA No. 255029/2025 - CONDONATION OF DELAY IN FILING REVIEW
PETITIONS

Date : 17-02-2026 These matters were circulated today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE K.V. VISWANATHAN

By Circulation

UPON perusing papers the Court made the following
O R D E R

Delay condoned.

The Review Petitions are dismissed in terms of the
signed order.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(DIVYA BABBAR)
COURT MASTER (NSH)

(Signed order is placed on the file)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL DIARY NO(S). 6685/2025

[Arising out of impugned final judgment and order dated 05-08-2024 in CA No. 51937/2021 05-08-2024 in CA No. 51938/2021 05-08-2024 in CA No. 51939/2021 05-08-2024 in CA No. 51940/2021 05-08-2024 in CA No. 51941/2021 05-08-2024 in CA No. 51942/2021 05-08-2024 in CA No. 51943/2021 05-08-2024 in CA No. 51944/2021 05-08-2024 in CA No. 51945/2021 05-08-2024 in CA No. 51946/2021 05-08-2024 in CA No. 51947/2021 05-08-2024 in CA No. 51948/2021 05-08-2024 in CA No. 51949/2021 05-08-2024 in CA No. 51950/2021 05-08-2024 in CA No. 51951/2021 05-08-2024 in CA No. 51952/2021 05-08-2024 in CA No. 51953/2021 05-08-2024 in CA No. 51954/2021 05-08-2024 in CA No. 51955/2021 05-08-2024 in CA No. 51956/2021 05-08-2024 in CA No. 51957/2021 05-08-2024 in CA No. 51958/2021 05-08-2024 in CA No. 51959/2021 05-08-2024 in CA No. 51960/2021 05-08-2024 in CA No. 51961/2021 05-08-2024 in CA No. 51962/2021 05-08-2024 in CA No. 51963/2021 05-08-2024 in CA No. 51964/2021 05-08-2024 in CA No. 51965/2021 05-08-2024 in CA No. 51966/2021 05-08-2024 in CA No. 51967/2021 05-08-2024 in CA No. 51968/2021 05-08-2024 in CA No. 51969/2021 05-08-2024 in CA No. 51970/2021 05-08-2024 in CA No. 51971/2021 05-08-2024 in CA No. 51972/2021 05-08-2024 in CA No. 51973/2021 05-08-2024 in CA No. 51974/2021 05-08-2024 in CA No. 51975/2021 05-08-2024 in CA No. 51976/2021 05-08-2024 in CA No. 51977/2021 05-08-2024 in CA No. 51978/2021 05-08-2024 in CA No. 51979/2021 05-08-2024 in CA No. 51980/2021 05-08-2024 in CA No. 51981/2021 05-08-2024 in CA No. 51982/2021 05-08-2024 in CA No. 51983/2021 05-08-2024 in CA No. 51984/2021 05-08-2024 in CA No. 51985/2021 05-08-2024 in CA No. 51986/2021 05-08-2024 in CA No. 51987/2021 05-08-2024 in CA No. 51988/2021 05-08-2024 in CA No. 51989/2021 05-08-2024 in CA No. 51990/2021 05-08-2024 in CA No. 51991/2021 05-08-2024 in CA No. 51992/2021 05-08-2024 in CA No. 51993/2021 05-08-2024 in CA No. 51994/2021 05-08-2024 in CA No. 51995/2021 05-08-2024 in CA No. 51996/2021 05-08-2024 in CA No. 51997/2021 05-08-2024 in CA No. 51998/2021 05-08-2024 in CA No. 51999/2021 05-08-2024 in CA No. 52000/2021 05-08-2024 in CA No. 52001/2021 05-08-2024 in CA No. 52002/2021 05-08-2024 in CA No. 52003/2021 05-08-2024 in CA No. 52004/2021 05-08-2024 in CA No. 52005/2021 05-08-2024 in CA No. 52006/2021 05-08-2024 in CA No. 52007/2021 05-08-2024 in CA No. 52008/2021 05-08-2024 in CA No. 52009/2021 05-08-2024 in CA No. 52010/2021 05-08-2024 in CA No. 52011/2021 05-08-2024 in CA No. 52012/2021 05-08-2024 in CA No. 52013/2021 05-08-2024 in CA No. 52014/2021 05-08-2024 in CA No. 52015/2021 05-08-2024 in CA No. 52016/2021 05-08-2024 in CA No. 52017/2021 05-08-2024 in CA No. 52018/2021 05-08-2024 in CA No. 52019/2021 05-08-2024 in CA No. 52020/2021 05-08-2024 in CA No. 52021/2021 05-08-2024 in CA No. 52022/2021 05-08-2024 in CA No. 52023/2021 05-08-2024 in CA No. 52024/2021 05-08-2024 in CA No. 52066/2021 05-08-2024 in CA No. 52067/2021 05-08-2024 in CA No.

54632/2023 05-08-2024 in CA No. 54633/2023 05-08-2024 in CA No.
54634/2023 05-08-2024 in CA No. 54635/2023 05-08-2024 in CA No.
54636/2023 05-08-2024 in CA No. 54637/2023 05-08-2024 in CA No.
54638/2023 05-08-2024 in CA No. 54639/2023 05-08-2024 in CA No.
54640/2023 05-08-2024 in CA No. 54641/2023 05-08-2024 in CA No.
54642/2023 05-08-2024 in CA No. 54643/2023 05-08-2024 in CA No.
54644/2023 05-08-2024 in CA No. 54645/2023 05-08-2024 in CA No.
54646/2023 05-08-2024 in CA No. 54647/2023 05-08-2024 in CA No.
54648/2023 05-08-2024 in CA No. 54649/2023 05-08-2024 in CA No.
54650/2023 05-08-2024 in CA No. 54651/2023 05-08-2024 in CA No.
54652/2023 05-08-2024 in CA No. 54653/2023 05-08-2024 in CA No.
54654/2023 05-08-2024 in CA No. 54655/2023 05-08-2024 in CA No.
54656/2023 05-08-2024 in CA No. 54657/2023 05-08-2024 in CA No.
54658/2023 05-08-2024 in CA No. 54659/2023 05-08-2024 in CA No.
54660/2023 05-08-2024 in CA No. 54661/2023 05-08-2024 in CA No.
54662/2023 05-08-2024 in CA No. 54663/2023 05-08-2024 in CA No.
54664/2023 05-08-2024 in CA No. 54665/2023 passed by the Custom
Excise Service Tax Appellate Tribunal]

COMMISSIONER OF CUSTOMS AIR CARGO COMPLEX (IMPORT) Petitioner(s)

VERSUS

INTER GLOBE AVIATION LIMITED ETC.

Respondent(s)

(FOR ADMISSION and I.R.

IA No. 130536/2025 - CONDONATION OF DELAY IN FILING

IA No. 130537/2025 - CONDONATION OF DELAY IN REFILEING/CURING THE DEFECTS

IA No. 130535/2025 - STAY APPLICATION

Date : 14-07-2025 These matters were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) Mr. N Venkataraman, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Ms. Nisha Bagchi, Sr. Adv.
Mr. V C Bharathi, Adv.
Mr. Padmesh Mishra, Adv.
Ms. Priyanka Terdal, Adv.

For Respondent(s) Mr. V Lakshmikumaran, Adv.
Ms. Charanya Lakshmikumaran, AOR
Mr. Ayush Agarwal, Adv.
Ms. Neha Choudhary, Adv.
Ms. Umang Motiyani, Adv.
Ms. Nitum Jain, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

The Civil Appeals are dismissed in terms of the signed order which is placed on the file.

Pending application(s), if any, shall stand disposed of.

**(RADHA SHARMA)
ASTT. REGISTRAR-cum-PS**

**(DIVYA BABBAR)
COURT MASTER (NSH)**

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). _____ /2025
(@ DIARY NO(S). 6685/2025)

COMMISSIONER OF CUSTOMS AIR CARGO COMPLEX
(IMPORT)

APPELLANT(S)

VERSUS

INTER GLOBE AVIATION LIMITED ETC.

RESPONDENT(S)

O R D E R

Delay condoned.

We have heard learned counsel for the appellant(s).

We are not inclined to interfere in the matters.

The Civil Appeals are hence dismissed.

Pending application(s), if any, shall stand disposed of.

....., J.
(B.V. NAGARATHNA)

....., J.
(K.V. VISWANATHAN)

NEW DELHI;
JULY 14, 2025

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

PRINCIPAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 51937 OF 2021

(Arising out of Order-in-Appeal No. CC(A)-CUS/D-I/Import/NCH/422-1572/2021-22 dated 22.09.2021 passed by the Commissioner of Customs (Appeals), New Delhi)

InterGlobe Aviation Limited

Level-1, Tower-C, Global Business Park,
MG Road, Gurugram – 122002 (Haryana)

.....Appellant

VERSUS

Commissioner of Customs

Air Cargo Complex (Import)
New Customs House, Near IGI Airport
New Delhi - 110037

.....Respondent

WITH

CUSTOMS APPEALS OF THE YEAR 2021

51938	51979	52020	52106	52147	52191	52238
51939	51980	52021	52107	52148	52192	52245
51940	51981	52022	52108	52149	52193	52246
51941	51982	52023	52109	52150	52194	52247
51942	51983	52024	52110	52151	52195	52248
51943	51984	52066	52111	52152	52196	52249
51944	51985	52067	52112	52153	52197	52250
51945	51986	52068	52113	52154	52198	52251
51946	51987	52069	52114	52155	52199	52252
51947	51988	52070	52115	52156	52200	52253
51948	51989	52071	52116	52157	52201	52254
51949	51990	52073	52117	52158	52202	52255
51950	51991	52074	52118	52159	52203	52256
51951	51992	52075	52119	52160	52204	52257
51952	51993	52076	52120	52161	52211	52258
51953	51994	52077	52121	52162	52212	52259
51954	51995	52078	52122	52163	52213	52260
51955	51996	52079	52123	52164	52214	52261
51956	51997	52080	52124	52165	52215	52262
51957	51998	52081	52125	52166	52216	52263
51958	51999	52082	52126	52167	52217	52264
51959	52000	52083	52127	52168	52218	52265
51960	52001	52084	52128	52169	52219	52266
51961	52002	52085	52129	52170	52220	52267
51962	52003	52086	52130	52171	52221	52268
51963	52004	52087	52131	52175	52222	52269
51964	52005	52088	52132	52176	52223	52270
51965	52006	52089	52133	52177	52224	52271
51966	52007	52090	52134	52178	52225	52272
51967	52008	52091	52135	52179	52226	52273
51968	52009	52092	52136	52180	52227	52274
51969	52010	52093	52137	52181	52228	52275

51970	52011	52094	52138	52182	52229	52276
51971	52012	52095	52139	52183	52230	52277
51972	52013	52096	52140	52184	52231	52278
51973	52014	52097	52141	52185	52232	52279
51974	52015	52098	52142	52186	52233	52280
51975	52016	52099	52143	52187	52234	52281
51976	52017	52103	52144	52188	52235	52282
51977	52018	52104	52145	52189	52236	52283
51978	52019	52105	52146	52190	52237	52284

AND**CUSTOMS APPEAL NO. 51228 OF 2020**

(Arising out of Order-in-Appeal No. CC(A)-CUS/D-I/Import/NCH/208-226/2020-21 dated 29.07.2020 **and** Order-in-Appeal No. CC(A)-CUS/D-II/ICD-TKD-Import/349-363/2020-21 dated 29.07.2020 both passed by the Commissioner of Customs (Appeals), New Delhi)

InterGlobe Aviation Limited

Level-1, Tower-C, Global Business Park, MG Road,
Gurugram – 122002 (Haryana)

.....Appellant**VERSUS****Commissioner of Customs**

Air Cargo Complex (Import)
New Customs House, Near IGI Airport
New Delhi – 110037

.....Respondent**WITH**

CUSTOMS APPEALS OF THE YEAR 2020

51229	51234	51239	51244	51249	51254	51259
51230	51235	51240	51245	51250	51255	51260
51231	51236	51241	51246	51251	51256	51261
51232	51237	51242	51247	51252	51257	51262
51233	51238	51243	51248	51253	51258	

AND**CUSTOMS APPEAL NO. 51266 OF 2020**

(Arising out of Order-in-Appeal No. CC(A)-CUS/D-I/Import/NCH/227-600/2020-21 dated 30.07.2020 passed by the Commissioner of Customs (Appeals), New Delhi)

InterGlobe Aviation Limited

Level-1, Tower-C, Global Business Park,
MG Road, Gurugram – 122002 (Haryana)

.....Appellant**VERSUS**

Commissioner of Customs

Air Cargo Complex (Import)
New Customs House, Near IGI Airport
New Delhi – 110037

.....Respondent**WITH**

CUSTOMS APPEALS OF THE YEAR 2020

51267	51299	51331	51363	51395	51427	51459
51268	51300	51332	51364	51396	51428	51460
51269	51301	51333	51365	51397	51429	51461
51270	51302	51334	51366	51398	51430	51462
51271	51303	51335	51367	51399	51431	51463
51272	51304	51336	51368	51400	51432	51464
51273	51305	51337	51369	51401	51433	51465
51274	51306	51338	51370	51402	51434	51466
51275	51307	51339	51371	51403	51435	51467
51276	51308	51340	51372	51404	51436	51468
51277	51309	51341	51373	51405	51437	51469
51278	51310	51342	51374	51406	51438	51470
51279	51311	51343	51375	51407	51439	51471
51280	51312	51344	51376	51408	51440	51472
51281	51313	51345	51377	51409	51441	51473
51282	51314	51346	51378	51410	51442	51474
51283	51315	51347	51379	51411	51443	51475
51284	51316	51348	51380	51412	51444	51476
51285	51317	51349	51381	51413	51445	51477
51286	51318	51350	51382	51414	51446	51478
51287	51319	51351	51383	51415	51447	51479
51288	51320	51352	51384	51416	51448	51480
51289	51321	51353	51385	51417	51449	51481
51290	51322	51354	51386	51418	51450	51482
51291	51323	51355	51387	51419	51451	51483
51292	51324	51356	51388	51420	51452	51484
51293	51325	51357	51389	51421	51453	51485
51294	51326	51358	51390	51422	51454	51486
51295	51327	51359	51391	51423	51455	
51296	51328	51360	51392	51424	51456	
51297	51329	51361	51393	51425	51457	
51298	51330	51362	51394	51426	51458	

AND**CUSTOMS APPEAL NO. 50001 OF 2021**

(Arising out of Order-in-Appeal No. CC(A)-CUS/D-I/Import/NCH/227-600/2020-21 dated 30.07.2020 passed by the Commissioner of Customs (Appeals), New Delhi)

InterGlobe Aviation Limited

Level-1, Tower-C, Global Business Park,
MG Road, Gurugram – 122002 (Haryana)

.....Appellant

VERSUS

Commissioner of Customs

Air Cargo Complex (Import)
New Customs House, Near IGI Airport
New Delhi - 110037

.....Respondent**WITH**

CUSTOMS APPEALS OF THE YEAR 2021

50002	50024	50046	50068	50090	50112	50134
50003	50025	50047	50069	50091	50113	50135
50004	50026	50048	50070	50092	50114	50136
50005	50027	50049	50071	50093	50115	50137
50006	50028	50050	50072	50094	50116	50138
50007	50029	50051	50073	50095	50117	50139
50008	50030	50052	50074	50096	50118	50140
50009	50031	50053	50075	50097	50119	50141
50010	50032	50054	50076	50098	50120	50142
50011	50033	50055	50077	50099	50121	50143
50012	50034	50056	50078	50100	50122	50144
50013	50035	50057	50079	50101	50123	50145
50014	50036	50058	50080	50102	50124	50146
50015	50037	50059	50081	50103	50125	50147
50016	50038	50060	50082	50104	50126	50148
50017	50039	50061	50083	50105	50127	50149
50018	50040	50062	50084	50106	50128	50150
50019	50041	50063	50085	50107	50129	50151
50020	50042	50064	50086	50108	50130	50152
50021	50043	50065	50087	50109	50131	50153
50022	50044	50066	50088	50110	50132	
50023	50045	50067	50089	50111	50133	

AND**CUSTOMS APPEAL NO. 50101 OF 2022**

(Arising out of Order-in-Appeal No. CC(A)-CUS/D-I/Import/NCH/422-1572/2021-22 dated 22.09.2021 passed by the Commissioner of Customs (Appeals), New Delhi)

InterGlobe Aviation Limited

Level-1, Tower-C, Global Business Park, MG Road,
Gurugram - 122002 (Haryana)

.....Appellant

VERSUS

Commissioner of Customs

Air Cargo Complex (Import)
New Customs House, Near IGI Airport
New Delhi - 110037

.....Respondent**WITH**

CUSTOMS APPEALS OF THE YEAR 2022

50102	50235	50397	50516	50676	50811	50929
50103	50236	50398	50517	50677	50812	50930

50104	50237	50399	50518	50678	50813	50931
50105	50238	50400	50519	50679	50814	50932
50106	50239	50401	50520	50680	50815	50933
50107	50240	50402	50521	50681	50816	50934
50108	50241	50403	50522	50682	50817	50935
50109	50242	50404	50523	50683	50818	50936
50110	50243	50405	50524	50684	50819	50937
50111	50244	50406	50525	50685	50820	50938
50112	50245	50407	50526	50686	50821	50939
50113	50246	50408	50527	50687	50822	50940
50114	50247	50409	50528	50688	50823	50941
50115	50248	50410	50529	50689	50824	50942
50116	50249	50411	50530	50690	50825	50943
50117	50250	50412	50531	50691	50826	50944
50118	50251	50413	50532	50692	50827	50945
50119	50252	50414	50533	50693	50828	50946
50120	50253	50415	50534	50694	50829	50947
50136	50254	50416	50535	50695	50830	50948
50137	50255	50417	50578	50696	50831	50949
50138	50256	50418	50579	50697	50832	50950
50139	50257	50419	50580	50698	50833	50951
50140	50258	50420	50581	50699	50834	50952
50141	50259	50421	50582	50700	50835	50953
50142	50260	50422	50583	50701	50836	50954
50143	50261	50423	50584	50702	50837	50955
50144	50262	50424	50585	50703	50838	50956
50145	50307	50425	50586	50704	50839	50957
50146	50308	50426	50587	50705	50840	50958
50147	50309	50427	50588	50706	50841	50959
50148	50310	50428	50589	50707	50842	50960
50149	50311	50429	50590	50708	50843	50961
50150	50312	50430	50591	50709	50844	50962
50151	50313	50431	50592	50710	50845	50963
50152	50314	50432	50593	50711	50846	50964
50153	50315	50433	50594	50712	50847	50965
50154	50316	50434	50595	50713	50848	50966
50155	50317	50435	50596	50714	50849	50967
50156	50318	50436	50597	50715	50850	50968
50157	50319	50437	50598	50716	50851	50969
50158	50320	50438	50599	50717	50852	50970
50159	50321	50439	50600	50718	50853	50971
50160	50322	50440	50601	50719	50854	50972
50161	50323	50441	50602	50720	50855	50973
50162	50324	50442	50603	50721	50856	50974
50163	50325	50443	50604	50722	50857	50975
50164	50326	50444	50605	50723	50858	50976
50165	50327	50445	50606	50724	50859	50977
50166	50328	50446	50607	50725	50860	50978
50167	50329	50447	50608	50726	50861	50979
50168	50330	50448	50609	50727	50862	50980
50169	50331	50449	50610	50728	50863	50981
50170	50332	50450	50611	50729	50864	50982
50171	50333	50451	50612	50730	50865	50983
50172	50334	50452	50613	50731	50866	50984
50173	50335	50453	50614	50732	50867	50985

50174	50336	50454	50615	50733	50868	50986
50175	50337	50455	50616	50734	50869	50987
50176	50338	50456	50617	50735	50870	50988
50177	50339	50457	50618	50736	50871	50989
50178	50340	50458	50619	50737	50872	50990
50179	50341	50459	50620	50738	50873	50991
50180	50342	50460	50621	50739	50874	50992
50181	50343	50461	50622	50740	50875	50993
50182	50344	50462	50623	50741	50876	50994
50183	50345	50463	50624	50742	50877	50995
50184	50346	50464	50625	50743	50878	50996
50185	50347	50465	50626	50744	50879	50997
50186	50348	50466	50627	50745	50880	50998
50187	50349	50467	50628	50746	50881	50999
50188	50350	50468	50629	50747	50882	51000
50189	50351	50469	50630	50748	50883	51001
50190	50352	50470	50631	50749	50884	51002
50191	50353	50471	50632	50750	50885	51003
50192	50354	50472	50633	50751	50886	51004
50193	50355	50473	50634	50752	50887	51005
50194	50356	50474	50635	50753	50888	51006
50195	50357	50475	50636	50754	50889	51007
50196	50358	50476	50637	50755	50890	51008
50197	50359	50477	50638	50756	50891	51009
50198	50360	50478	50639	50757	50892	51010
50199	50361	50479	50640	50758	50893	51011
50200	50362	50480	50641	50776	50894	51012
50201	50363	50481	50642	50777	50895	51013
50202	50364	50482	50643	50778	50896	51014
50203	50365	50483	50644	50779	50897	51015
50204	50366	50484	50645	50780	50898	51016
50205	50367	50485	50646	50781	50899	51017
50206	50368	50486	50647	50782	50900	51018
50207	50369	50487	50648	50783	50901	51019
50208	50370	50488	50649	50784	50902	51020
50209	50371	50489	50650	50785	50903	51021
50210	50372	50490	50651	50786	50904	51022
50211	50373	50491	50652	50787	50905	51023
50212	50374	50492	50653	50788	50906	51024
50213	50375	50493	50654	50789	50907	51025
50214	50376	50494	50655	50790	50908	51026
50215	50377	50495	50656	50791	50909	51027
50216	50378	50496	50657	50792	50910	51028
50217	50379	50498	50658	50793	50911	51029
50218	50380	50499	50659	50794	50912	51030
50219	50381	50500	50660	50795	50913	51031
50220	50382	50501	50661	50796	50914	51032
50221	50383	50502	50662	50797	50915	51033
50222	50384	50503	50663	50798	50916	51034
50223	50385	50504	50664	50799	50917	51035
50224	50386	50505	50665	50800	50918	51036
50225	50387	50506	50666	50801	50919	51037
50226	50388	50507	50667	50802	50920	51038
50227	50389	50508	50668	50803	50921	51039
50228	50390	50509	50669	50804	50922	51040

50229	50391	50510	50670	50805	50923	51041
50230	50392	50511	50671	50806	50924	51042
50231	50393	50512	50672	50807	50925	51043
50232	50394	50513	50673	50808	50926	51044
50233	50395	50514	50674	50809	50927	51045
50234	50396	50515	50675	50810	50928	

AND**CUSTOMS APPEAL NO. 50028 OF 2022**

(Arising out of Order-in-Appeal No. CC(A)-CUS/D-I/Import/NCH/1577-1612/2021-22 dated 22.09.2021 passed by the Commissioner of Customs (Appeals), New Delhi)

SpiceJet Limited

319, Udyog Vihar, Phase-IV,
Gurugram – 122016 (Haryana)

.....Appellant

VERSUS

Commissioner of Customs

Air Cargo Complex (Import)
New Customs House, Near IGI Airport
New Delhi – 110037

.....Respondent**WITH**

CUSTOMS APPEALS OF THE YEAR 2022

50029	50033	50037	50041	50045	50049	50053
50030	50034	50038	50042	50046	50050	50054
50031	50035	50039	50043	50047	50051	50055
50032	50036	50040	50044	50048	50052	

AND**CUSTOMS APPEAL NO. 54503 OF 2023**

(Arising out of Order-in-Appeal No. CC(A)-CUS/D-I/Import/NCH/4802-6075/2022-23 dated 30.11.2022 passed by the Commissioner of Customs (Appeals), New Delhi)

InterGlobe Aviation Limited

Level-1, Tower-C, Global Business Park,
MG Road, Gurugram – 122002 (Haryana)

.....Appellant

VERSUS

Commissioner of Customs

Air Cargo Complex (Import)
New Customs House, Near IGI Airport
New Delhi – 110037

.....Respondent**AND**

CUSTOMS APPEALS OF THE YEAR 2023

54504	54527	54550	54573	54596	54619	54642
54505	54528	54551	54574	54597	54620	54643
54506	54529	54552	54575	54598	54621	54644
54507	54530	54553	54576	54599	54622	54645
54508	54531	54554	54577	54600	54623	54646
54509	54532	54555	54578	54601	54624	54647
54510	54533	54556	54579	54602	54625	54648
54511	54534	54557	54580	54603	54626	54649
54512	54535	54558	54581	54604	54627	54650
54513	54536	54559	54582	54605	54628	54651
54514	54537	54560	54583	54606	54629	54652
54515	54538	54561	54584	54607	54630	54653
54516	54539	54562	54585	54608	54631	54654
54517	54540	54563	54586	54609	54632	54655
54518	54541	54564	54587	54610	54633	54656
54519	54542	54565	54588	54611	54634	54657
54520	54543	54566	54589	54612	54635	54658
54521	54544	54567	54590	54613	54636	54659
54522	54545	54568	54591	54614	54637	54660
54523	54546	54569	54592	54615	54638	54661
54524	54547	54570	54593	54616	54639	54662
54525	54548	54571	54594	54617	54640	54663
54526	54549	54572	54595	54618	54641	54664
						54665

APPEARANCE:

Shri B.L. Narasimhan, Ms. Jyoti Pal and Ms. Anjali Singh, Advocates for the Appellant

Shri S.K. Rehman, Authorized Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 23.07.2024
DATE OF DECISION: 05.08.2024

FINAL ORDER NO's. 56224-57937/2024

JUSTICE DILIP GUPTA :

The issue that arises for consideration in all these 1714 appeals is whether Notification No. 36/2021-Customs dated 19.07.2021¹ issued under section 25(1) of the Customs Act, 1962² amending Notification No. 45/2017-Customs dated 30.06.2017³ would have retrospective effect from the date the Exemption Notification was issued on 30.06.2017.

2. InterGlobe Aviation Limited and SpiceJet Limited⁴ are scheduled airline operators engaged in the business of transportation of passengers and goods by air. In order to carry out the scheduled operations in India, the appellant imported aircrafts and it is stated that when the engines/ auxiliary power units or other parts of the aircrafts began to develop defects, they were exported out of India for repairs and the aircrafts also had to be exported out of India for repairs and maintenance. The repaired parts/aircrafts are thereafter re-imported into India and at the time of re-import, Bills of Entry are filed.

3. A dispute had earlier arisen as to whether the appellant would be justified in claiming exemption of integrated tax under the Exemption Notification on re-import of repaired parts/ aircrafts into India during the period from August, 2017 to March, 2019. The appellant had claimed exemption from integrated tax under the Exemption Notification for the reason that the importer is required to only pay 'duty of customs' on the fair cost of repairs and the cost of insurance and freight charges, both ways and not the integrated tax. The Customs Authorities, however, did not agree on this issue with the appellant, as according to them the

-
1. the Amendment Notification
 2. the Customs Act
 3. the Exemption Notification
 4. the appellant

appellant was not entitled to exemption from integrated tax since the phrase 'duty of customs' at serial no. 2 of the Exemption Notification, includes both the basic customs duty as also integrated tax. Thus, according to the Customs Authorities, the appellant was required to pay integrated tax, in addition to the basic customs duty, on the fair cost of repairs and the cost of insurance and freight charges, both ways. The Commissioner disallowed the integrated tax exemption claimed by the appellant and integrated tax was levied on the fair cost of repairs and the cost of insurance and freight charges. It is against the aforesaid order that the appellant had earlier filed appeals before the Tribunal. The appeals were allowed by the Tribunal by order dated 02.11.2020 in **InterGlobe Aviation Ltd. vs. Commissioner of Customs, New Delhi**⁵ holding that the appellant would be entitled to exemption from payment of integrated tax under the Exemption Notification on re-import of repaired parts/aircrafts into India.

4. Before advertng to the reasons assigned by the Division Bench of the Tribunal for taking the aforesaid view, it would be appropriate to reproduce the relevant portions of the Exemption Notification dated 30.06.2017 and they are as follows:

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby **exempts the goods** falling within any Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below when re-imported into India, from so much of the duty of customs leviable thereon which is **specified in the said First Schedule, and the integrated tax, compensation cess leviable**

5. 2020 (43) G.S.T.L. 410 (Tri. - Del.)

thereon respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table.

Table

Sl. No.	Description of goods	Conditions
(1)	(2)	(3)
1.	*****	*****
2.	Goods, other than those falling under SI No. 1 exported for repairs abroad	Duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred for not), insurance and freight charges, both ways.
3 - 5	*****	*****

Explanation. – *****

- (a) *****
- (b) *****
- (c) *****"

(emphasis supplied)

5. It was mainly sought to be contended on behalf of the appellant in the aforesaid appeals decided by the Tribunal that:

- (i) Duty of customs, as mentioned in the conditions for serial no. 2 of the Exemption Notification, cannot be interpreted to include integrated tax within its purview since a plain reading of the Exemption Notification clearly denotes that what is payable in terms of serial no. 2 is the duty of customs on the fair cost of repairs carried out including to and fro freight charges. All the other duties / taxes,

including integrated tax and compensation cess, are wholly exempted under the Exemption Notification;

- (ii) The Exemption Notification has consciously used two different expressions duty of customs and integrated tax at different places in the Notification, and so the same have to be understood differently and one cannot be substituted with the other;
- (iii) Where the language of any Notification is unambiguous, the plain meaning has to be assigned to such unambiguous language; and
- (iv) Integrated tax is not a duty of customs and, therefore aircrafts/ parts on re-import after repairs overseas are eligible for full exemption from integrated tax under the Exemption Notification.

6. The Division Bench, after referring to sections 2(15), 12(1) of the Customs Act and sub-sections (1), (7) and (9) of section 3 of the Customs Tariff Act, 1975⁶ and to the judgments of the Supreme Court in **Prestige Engineering (India) Limited vs. Collector of C., Excise, Meerut**⁷, **Collector of Customs, Madras vs. Indian Organic Chemicals Limited**⁸ and **M/s. Unicorn Industries vs. Union of India and others**⁹ and the judgment of the Bombay High Court in **Ceat Tyres of India Limited vs. Union of India**¹⁰ observed:

- (i) Though the expression duty of customs has not been defined under the Exemption Notification but it can only have that meaning which has been assigned to the

6. the Tariff Act
7. 1994 (73) E.L.T. 497 (S.C.)
8. 2000 (118) E.L.T. 3 (S.C.)
9. 2019 (370) E.L.T. 3 (S.C.)
10. 1992 (57) E.L.T. 221 (Bom.)

meaning of 'duty' under section 2(15) of the Customs Act. It would, therefore, mean the 'duty of customs' leviable under the Customs Act and any other duty not levied under the Customs Act, would not be duty of customs for the purposes of any Notification issued under the Customs Act;

- (ii) Integrated tax has also not been defined under the Exemption Notification. It has been defined under section 2(12) of the Integrated Goods and Service Tax¹¹ to mean the tax levied under the Integrated Tax Act. Integrated Tax is levied under section 5 of the Integrated Tax Act and not under section 12 of the Customs Act, and therefore, cannot be called as duty of customs; and
- (iii) Section 3 (7) of the Tariff Act only provides the manner of collection of the integrated tax by the customs authorities in case of import of goods.

7. The Division Bench, thereafter, noted:

"34. A perusal of the main body of the Exemption Notification would indicate that it refers not only to duty of customs leviable thereon which is specified in the First Schedule to the Tariff Act, but also to integrated tax and compensation cess which are leviable thereon respectively under sub-sections (7) and (9) of section 3 of the Tariff Act. However, column (3) of the Table accompanying the main Notification for serial no. 2 refers to only duty of customs (without mentioning 'leviable thereon which is specified in the First Schedule'), on the fair cost of repairs carried out with insurance and freight charges."

(emphasis supplied)

11. the integrated tax

8. And then the Division Bench held:

"36. *** It, therefore, inevitably follows that the expression duty of customs occurring in the column (3) of the Table at serial no. (2) of the Exemption Notification would only mean the duty of customs leviable under the Customs Act as have been specified in the First and Second Schedules to the Tariff Act and not to integrated tax, which is levied under section 5 of the Integrated Tax Act.**

39. What also needs to be kept in mind is that mention of duty of customs, integrated tax and compensation cess in the main body of the Exemption Notification implies that the Government was conscious of the distinction between the three.

What is also important to notice is that after the phrase "duty of customs levied thereon which is specified in the said First Schedule", there is a comma before "and the integrated tax, compensation cess leviable thereon". **This also clearly shows that duty of customs, integrated tax and compensation cess are three different entities.** Above all, all the three, namely, duty of customs, integrated tax and compensation cess have been used in the main body of the same Exemption Notification.

48. The inevitable conclusion that follows from the aforesaid discussion is that the absence of mention of integrated tax and compensation cess in column (3) under serial no. 2 of the Exemption Notification would mean that only the basic customs duty on the fair cost of repair charges, freight and insurance charges are payable and integrated tax and compensation cess are wholly exempted."

(emphasis supplied)

9. The appeals were allowed by the Tribunal by a decision dated 02.11.2020 and the operative part of the order is reproduced below:

"50. Thus, for all the reasons stated above, it is not possible to sustain the impugned orders upholding the assessments made on the 346 Bills of Entry. The 346 orders passed by the Commissioner (Appeals) are, accordingly, set aside and **it is held that the Appellant is entitled to exemption from payment of integrated tax under the Exemption Notification on re-import of repaired parts/ aircrafts into India. All the 346 Appeals are, therefore, allowed.**"

(emphasis supplied)

10. It needs to be noted that the said decision of the Tribunal in **InterGlobe Aviation** was assailed by the department before the Supreme Court and Civil Appeals are pending. It has also been stated that no stay has been granted by the Supreme Court.

11. The aforesaid decision of the Tribunal led to the issue of the Amendment Notification dated 19.07.2021 under section 25(1) of the Customs Act.

12. It would, therefore, be appropriate to reproduce this Amendment Notification dated 19.07.2021 as the issue involved in all the appeals is whether this Amendment Notification would have retrospective effect from the date of issue of the Exemption Notification i.e. 30.06.2017. It is reproduced below:

"NOTIFICATION NO. 36/2021-Customs

New Delhi, the 19th July, 2021

G.S.R. 493(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the **Central Government**, on being satisfied that it is necessary in the public interest so to do, **hereby makes the following amendments in the notification** of the Government of India, in the Ministry of Finance (Department of Revenue), No. 45/2017-Customs, **dated the 30th June, 2017**, published in the Gazette of

India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 780(E), dated the 30th June, 2017, namely: -

In the said notification, -

(i) **in the Table, against serial number 2 and 3, in column (3), for the words "Duty of customs", the words "Said duty, tax or cess" shall be substituted;**

(ii) **in the Explanation, after clause (c), the following clause shall be inserted, namely: -**

"(d) on recommendation of the GST Council **for removal of doubt, it is clarified that the goods mentioned at serial numbers 2 and 3 of the Table, are leviable to integrated tax and cess as leviable under the said Customs Tariff Act,** besides the customs duty as specified in the said First Schedule, calculated on the value as specified in column (3), and the exemption, under said serial numbers, is only from the amount of said tax, cess and duty over and above the amount so calculated."

(emphasis supplied)

13. On the same date, the Central Board of Indirect Taxes and Customs¹² also issued a clarification regarding applicability of integrated tax on repair cost, insurance and freight on goods re-imported after their export for repairs. This clarification was issued basis the recommendation made by the GST Council in its 43rd Meeting held on 28.05.2021. It states that the matter was placed before the GST Council in view of the decision rendered by the Tribunal on 02.11.2020 in **InterGlobe Aviation** and that the GST Council recommended that a suitable clarification, including any clarifactory amendment, if required, may be issued for removal of any doubt to clarify the decision of the GST Council that re-import of goods sent abroad for repairs attracts integrated tax and cess. The Circular provides that the clarifactory amendment was being issued to give effect to

12. **CBIC**

the recommendations made by the GST Council. It would be appropriate to reproduce the said Circular dated 19.07.2021 and it is as follows:

"Circular No. 16/2021-Customs

**Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes & Customs)**

New Delhi, dated 19th July, 2021

Subject: Clarification regarding applicability of IGST on repair cost, insurance and freight, on goods re-imported after being exported for repairs, on the recommendations of the GST Council made in its 43rd meeting – reg.

References have been received seeking clarification on the issues of the applicability of IGST on repair cost, insurance and freight, on goods re-imported after being exported abroad for repairs.

2. Notification Nos. 45/2017-Customs and 46/2017-Customs, both dated 30th June, 2017, issued at the time of implementation of GST, prescribe certain concession from duty/taxes on reimport of goods exported for repair outside India. These notifications, specifically serial No. 2 ibid, clearly specify that goods exported (other than those exported under claim of benefits listed), when re-imported into India, are exempt from so much of the duty of customs leviable thereon which is specified in the said First Schedule of the Customs Act, 1962, and the integrated tax, compensation cess leviable there on respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, 1975 as is in excess of the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred for not), insurance and freight charges, both ways.

3. Therefore, the said notification prescribes that duties or taxes (including BCD, IGST, etc) at the applicable rates will be payable on such imports, calculated on the value of repairs, insurance and freight, instead of the value of the goods itself. Similar concession existed in pre-GST period too, vide notification No. 94/96-Customs, whereby, the customs duty (BCD, additional duty of customs under section 3 of Customs Tariff Act, 1975, etc.) were payable on the value of repairs instead of the entire value of goods in such imports.

4. GST rate and exemptions are prescribed on the recommendation of the GST Council. The Council, at the time of roll out of GST decided to continue the concession as were available under the said notification No. 94/96-Cus, with only consequential amendment, i.e, replacing additional duties of customs with IGST and Compensation cess, as discussed in the 14th Meeting of the GST Council. Accordingly, under GST, IGST and Compensation cess were made applicable on the value of repairs, insurance and freight on re-import of goods sent abroad for repair.

5. Again, during the 37th GST Council Meeting, while examining the request to make available the credit of ITC paid on aircraft engines and parts exported for repairs and later reimported, the leviability of IGST on such imports, on the cost of repairs, insurance and freight charges, was affirmed. In fact, this was never disputed in first place and the request was to allow credit of the IGST so paid. Similarly, while examining the question of GST rate on maintenance, repair and overhauling (MRO) services in respect of aircraft, aircraft engines and other components and parts, the leviability of IGST on such re-imports was again affirmed by the GST Council in its 39th meeting, making it explicitly clear that such goods reimported after repair from outside India attract IGST on the repair, freight and insurance value. In the said discussion, the IGST levied on such goods re-imported after being exported abroad for repairs was a significant factor considered by the GST Council while deciding the rate on MRO services. **The above deliberations of the GST Council leave no doubt that the Council had consciously recommended for levy of IGST and cess,**

albeit at the repair, insurance and freight cost instead of the entire value of goods imports, on the basis of which the said notifications No. 45/2017-Cus and 46/2017-Cus were issued.

6. Recently, in the matter of **M/s Interglobe Aviation Limited versus Commissioner of Customs, in its Final Order Nos. 51226-51571/2020 dated the 2nd November, 2020** {2020 (43) G.S.T.L. 410 (Tri. - Del.)}, the Hon'ble CESTAT Principal Bench, New Delhi on analysis of notification No. 45/2017-Customs, has interpreted that intention of legislation was only to impose basic customs duty on the fair cost of repair charges, freight and insurance charges on such imports of goods after repair. The Hon'ble CESTAT has thus concluded that integrated tax and compensation cess on such goods would be wholly exempt. An appeal has been preferred by the Department before the Hon'ble Supreme Court against the said Order.

7. In the above background, the matter was placed before the GST Council in its 43rd Meeting held on the 28th May, 2021. **The GST Council deliberated on the issue and recommended that a suitable clarification, including any clarificatory amendment, if required, may be issued for removal of any doubt, to clarify the decision of the GST Council that re-import of goods sent abroad for repair attracts IGST and cess (as applicable) on a value equal to the repair value, insurance and freight.**

8. Accordingly, as recommended by the GST Council, it is clarified that notification Nos. 45/2017-Customs and 46/2017-Customs, both dated the 30th of June, 2017 were issued to implement the decision of the GST Council taken earlier, that re-import of goods sent abroad for repair attracts IGST on a value equal to the repair value, insurance and freight. Further, in the light of the recommendations of the GST Council in its 43rd Meeting, a clarificatory amendment has been made in the said notifications, vide notification Nos. 36/2021-Customs and 37/2021- Customs, both dated 19th July, 2021,

without prejudice to the leviability of IGST, as above, on such imports as it stood before the amendment.

9. The contents of this circular may please be brought to the notice of trade and industry through issue of Trade/ Public notices. The field formations may also be suitably sensitized in this regard. Difficulty, if any, in the implementation of this Circular may be brought to the notice of this office."

(emphasis supplied)

14. The Commissioner, in the orders impugned in the appeals, considered the Amendment Notification dated 19.07.2021 as also the Circular dated 19.07.2021 issued by the CBIC and observed that a conjoint reading of the two would make it clear that Explanatory Note 'd' is clarificatory in nature and hence would have retrospective effect. The relevant portions of the order of the Commissioner are reproduced below:

"5.4 From this, it is abundantly clear that the intent of the GST Council, the supreme Constitutional body for making policy in respect of GST, has always been to levy IGST on such imports. In fact, this intent flows from the fact that such imports were subjected to Additional Duty of Customs also prior to introduction of GST in terms of Notification No. 94/96-Cus dated 16.12.1996. It is also evident that the GST Council has made its intent clear on several occasions. **In light of this. I respectfully note that the impugned goods shall be liable to integrated tax and the exemption from the same is not available to them.** Since position of law and legislative intent has been made abundantly clear by the GST Council itself, the cited judgments of Hon'ble Tribunal are distinguishable and I respectfully follow the clarification issued by the GST Council.

5.5 I also note that, CBIC has issued Notification No. 36/2021-Customs dated 19th July, 2021 wherein

Notification No. 45/2017-Customs has been amended suitably. *****

5.6 Conjoint reading of Circular No 16/2021-Cus dated 19.07.2021 and the said notification make it crystal clear that the explanation 'd' is clarificatory in nature. The intentions of GST council amplified in the said circular have been implemented by this amendment. As it had always been intention of the legislature that IGST should be leviable on such re-imports, the explanation added in the notification 45/2017-Cus by Notification No 36/2021-Customs dated 19.07.2021 will have retrospective effect as it does not change position of law but only clarifies it in more specific terms.

5.7 The Appellant has contended that the amendment done by Notification no. 36/2021-Cus dated 19.07.2021 has changed position of law and has to be prospective in nature. They have cited certain case laws in this regard. I note that cited case laws relate to Income tax Act and not Customs Act, 1962 or exemption there under. Secondly, as evident from Circular No. 16/2021-Cus dated 19.07.2021, the legislative intent was always to levy IGST on impugned imports. In fact, prior to GST, such imports were subjected to Additional Duty of Customs also. Thus the amendment done to clarify this position by way of an explanation has to be construed retrospectively. I refer to ruling of the Hon'ble Supreme Court in case of W.P.I.L. Ltd. vs. Commissioner of Central Excise, Meerut, U.P. [2005 (181) E.L.T. 359 (S.C.)] which held that clarificatory notification shall have retrospective effect.*****

As can be noted, in the above quoted case, the policy of the Government had remained consistent and hence a clarificatory amendment was held to be retrospective in preset case also, the policy of the GST Council as well as the Government had been consistent and hence the explanation 'd' has to be considered to have retrospective application.

5.8 *****

It may be noted that the legislative intent has been clearly indicated in Circular No. 16/2021-Cus dated 19.07.2021 and for implementation of the same, explanation 'd' has been introduced. Thus explanation 'd' need to be considered to have retrospective effect.

5.10 From above two paragraphs, it is evident that legislative intent is paramount and any interpretation which goes against such intent has to be negated. In the case at hand, the legislative intent has been made amply clear by the Circular No 16/2021-Cus dated 19.07.2021. This leaves no scope in interpreting that explanation 'd' in Notification no. 45/2017-Cus as added by Notification No 36/2021-Customs dated 19.07.2021 has to be considered to have retrospective effect.

5.11 In view of above discussion and findings, I have not reasons to differ from the impugned assessments wherein IGST has been levied on impugned imports as it is in accordance with the legislative intent."

(emphasis supplied)

15. Shri B.L. Narasimhan, learned counsel for the appellant assisted by Ms. Jyoti Pal and Ms. Anjali Singh made the following submissions:

- (i) The issue as to whether the phrase 'duty of customs' as mentioned under serial no. 2 of the Exemption Notification includes integrated tax has been settled by the Tribunal in the decision rendered on 02.11.2020 in **InterGlobe Aviation** and subsequent decisions in **Interglobe Aviation Ltd. vs. Commissioner of Customs' Spice Jet Limited vs. Commissioner of**

Customs (General), New Delhi¹³; Jet Airways India Ltd. vs. Commissioner of Customs (Import), Mumbai¹⁴; M/s. Jet Airways (India) Ltd. vs. Commissioner of Customs (Air Cargo)¹⁵; and Jet Airways (India) Ltd. vs. Commissioner of Customs¹⁶;

- (ii) The amendments made in Exemption Notification dated 30.06.2017 by the Amendment Notification dated 19.07.2021 are substantive amendments, which cannot be said to have retrospective operation;
- (iii) Retrospective amendments can be carried out only under section 25(2A) of the Customs Act;
- (iv) If a statute has conferred a power to do an act and has also laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the said act in any other manner than that which has been prescribed. As the only manner in which the retrospective explanatory amendment can be carried out under section 25(2A) of the Customs Act has not been undertaken in the Amendment Notification, the amendment cannot be given any retrospective effect. In this connection reliance has been placed on the judgment of the Delhi High Court **Commr. Of C. Ex. & S.T., LTU, Delhi vs. Nangalmal Sugar Complex¹⁷;**
- (v) The amendments made by the Amendment Notification are not 'clarificatory'. They are substantive amendments and hence, cannot be given retrospective operation. A

13. 2021 (1) TMI 663 – CESTAT New Delhi
 14. 2021 (2) TMI 1113 – CESTAT Mumbai
 15. 2021 (9) TMI 1134 – CESTAT Chennai
 16. 2021 (1) TMI 577 – CESTAT New Delhi
 17. 2020 (371) E.L.T. 501 (Del.)

clarificatory provision is generally made to supply an obvious omission or to clear doubts as to the meaning of previous language. The test, as accepted from time to time by various courts, is to first consider the meaning of the provision to which an Explanation is to be added without the Explanation and compare the same with the meaning as given by the added Explanation, and if the result is same, then alone the Explanation can be considered as clarificatory and given retrospective effect from the inception of the original provision;

- (vi)** The newly inserted Explanation (d) reveals that phrases such as 'clarified', 'for removal of doubt', have been used. As the implications of the Exemption Notification prior to and post amendment are not the same, mere usage of expressions like 'for removal of doubts' or 'it is clarified' in the newly inserted Explanation (d), will not, by itself, make such amendments clarificatory. The Amendment Notification has created a new and additional liability of integrated tax on the re-import of goods, which was not payable under the un-amended Notification, as interpreted by the Tribunal in **InterGlobe Aviation**. Thus, once the amendment creates a new liability it cannot have retrospective effect. In this connection reliance has been placed on the judgment of the Supreme Court in **Sedco Forex International Drill. Inc. and others vs. Commissioner of Income Tax and another**¹⁸; and

18. 2005 (11) TMI 25-SC

(vii) While interpreting an Exemption Notification, what is relevant is the text and the language employed in the Notification and not the intention of the Government or the authority issuing the Exemption Notification. In this connection reliance has been placed on the Constitution Bench judgment of the Supreme Court in **Hemraj Gordhandas vs. H.H. Dave Assistant Collector of Central Excise & Customs**¹⁹.

16. Shri S.K. Rehman, learned authorized representative appearing for the department, however, supported the impugned order and made the following submissions:

- (i)** The Exemption Notification dated 30.06.2017 refers to 'duty of customs' and not 'duty of customs leviable under the First Schedule' and, therefore, 'duty of customs' would include basic customs duty and integrated tax;
- (ii)** Integrated tax is not a duty of customs leviable under the Customs Act, but is levied on import of goods under the Tariff Act;
- (iii)** In clause (ii) of the Amendment Notification, it has been provided that the words 'duty of customs' shall be substituted by 'Said duty, tax or cess' and, therefore, it would have retrospective effect from the date the Exemption Notification was issued on 30.06.2017. In support of this contention, reliance has been placed on the judgment of the Supreme Court in **Government of India vs. Indian Tobacco Association**²⁰; the decision of the Tribunal in **Principal Commissioner of CGST vs.**

19. 1978 (2) E.L.T. J 350 (S.C.)

20. 2005 (187) E.L.T. 162 (S.C.)

M/s. OM Fragrances²¹; the judgment of the Karnataka High Court **Commr. Of C. Ex. & ST, Bangalore** vs. **Fosroc Chemicals (India) Pvt. Ltd.**; and the judgment of the Madras High Court in **Mehler Engineered Products India Pvt. Ltd. vs. Union of India²²**;

- (iv) There is no dispute that during the period Exemption Notification dated 16.12.1996 was operating upto 30.06.2017, duty of Customs included basic customs duty and countervailing duty. There is also no dispute that in terms of the Amendment Notification dated 19.07.2017 duty of customs, integrated tax or cess would be leviable. Therefore, the beneficial Notification which was available prior to 30.06.2017 and available after 19.07.2021 should not be denied during the period from 01.07.2017 to 18.07.2021; and
- (v) The GST Council in its 43rd Meeting held on 28.05.2021 had made it clear that the benefit of the Exemption Notification for both basic customs duty and integrated tax shall be retrospective. The decision of the GST Council, therefore, should be given due importance.

17. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

18. Section 12 of the Customs Act provides that except as otherwise provided in the Customs 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

21. **Excise Appeal No. 51718 of 2018 decided on 29.09.2022**
22. **2018 (364) E.L.T. 27 (Mad.)**

the Tariff Act or any other law for the time being in force, on goods imported into, or exported from, India. Section 2 of the Tariff Act stipulates that the rates at which duties of customs shall be levied under the Customs Act have been specified in the First and Second Schedules. Section 3 of the Tariff Act provides for levy of additional duty equal to excise duty, sales tax, local taxes and other charges.

19. Section 25 of the Customs Act deals with power to grant exemption from duty. It is reproduced below:

“Section 25. Power to grant exemption from duty. –

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions to be fulfilled before or after clearance as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

(2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette, at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

Explanation.- "Form or method", in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

(4) Every notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette."

20. It would be seen that section 25(1) of the Customs Act empowers the Central Government to grant exemption from payment of duty by issuing a Notification in the Official Gazette. It is in exercise of the powers conferred under section 25(1) of the Customs Act that the Exemption Notification dated 30.06.2017 was issued by the Central Government. The said Exemption Notification exempts the goods falling within any Chapter of the First Schedule to the Tariff Act and specified in column (2) of the Table when re-imported into India, from so much at the duty of customs leviable thereon which is specified in the First Schedule, and the integrated tax, compensation cess leviable thereon, respectively under sub-sections (7) and (9) of section 3 of the Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table.

21. The main body of the Exemption Notification refers not only to duty of customs leviable thereon which is specified in the First Schedule to the Tariff Act, but also to integrated tax and compensation cess, but column (3) of the Table accompanying the main Notification against serial number 2 refers to only 'duty of customs' on the fair cost of repairs carried out with insurance and freight charges.

22. It is for this reason that the Division Bench of the Tribunal in **InterGlobe Aviation** held that the expression duty of customs occurring in the column (3) of the Table at serial number (2) of the Exemption Notification would only mean the duty of customs leviable under the Customs Act as have been specified in the First and Second Schedules to the Tariff Act and not to integrated tax, which is levied under section 5 of the Integrated Tax Act.

23. Learned authorized representative appearing for the Department, however, submitted that some relevant facts could not be pointed out to the Tribunal when the arguments were advanced before the Bench in **InterGlobe Aviation**. In this connection, learned authorized representative pointed out, while making reference to the Exemption Notification dated 30.06.2017, that there is a difference between the terms 'duty of customs' and 'duty of customs leviable under the First Schedule'. Learned authorized representative, therefore, submitted that 'duty of customs' would include 'basic customs duty and integrated tax'. Learned authorized representative also pointed out that the Exemption Notification No. 94/96 dated 16.12.1996 was required to be considered while appreciating the subsequent Exemption Notification dated 30.06.2017, but this was not done.

24. Learned counsel for the appellant, however, pointed out that both the aforesaid submissions were considered and examined by the Division Bench of the Tribunal in **InterGlobe Aviation**.

25. A perusal of the decision rendered by the Tribunal in **InterGlobe Aviation** does reveal that both the aforesaid submissions were considered. The decision rendered by the Tribunal in **InterGlobe Aviation** was subsequently followed by at least five Division Benches of the Tribunal. There is no good reason to take a different view.

26. The aforesaid decision of the Tribunal in **InterGlobe Aviation** resulted in the issuance of the Amendment Notification dated 19.07.2021 by the Central Government. This Amendment Notification specifically mentions that it was being issued under section 25(1) of the Customs Act. As noticed above, two amendments were made; the first amendment is that against serial numbers 2 and 3, in column (3), for the words 'Duty of customs', the words 'Said duty, tax or cess' be substituted; and the second amendment is by way of insertion of clause (d) in the Explanation, which provides that on recommendation of the GST Council for removal of doubt, it is clarified that the goods mentioned at serial numbers 2 and 3 of the Table, are leviable to integrated tax and cess, and the exemption, under said serial numbers, is only from the amount of said tax, cess and duty over and above the amount so calculated.

27. In all the appeals, the Bills of Entry were filed for the period prior to the issuance of the Amendment Notification dated 19.07.2021. They would, therefore, be covered by the un-amended Exemption Notification dated 30.06.2017. The decision of the Tribunal in **InterGlobe Aviation** would, therefore, govern all the appeals.

28. However, two submissions have been made by the department. The first is that the some important facts could not be placed before the Tribunal in **InterGlobe Aviation** and, therefore, it should be reconsidered; and the second is that the Amendment Notification, though issued on 19.07.2021, would have retrospective effect from the date the Exemption Notification was issued on 30.06.2017. The contention, therefore, is that the appellant would have to pay the integrated tax also for the period from 30.06.2017 upto 19.07.2021, which otherwise was not leviable under the un-amended Exemption Notification. The Commissioner (Appeals) has accepted this contention of the department, which decision of the Commissioner (Appeals) has been assailed in these appeals.

29. The first contention of the department has been considered in the earlier part of this order.

30. To examine whether the Exemption Notification dated 19.07.2021 can have retrospective effect, it would be necessary to examine the provisions of sub-sections (1), (2A) and (4) of section 25 of the Customs Act. While **sub-section (1)** gives power to the Central Government to exempt generally, either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon, **sub-section (2A)** empowers the Central Government, for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1), to insert an Explanation in such notification at any time within one year of issue of the notification under sub-section (1), and every such Explanation shall have effect as if it had always been the part of the first such notification. **Sub-section (4)** of section 25 of the Customs Act specifically states that every

notification issued under sub-sections (1) or (2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette.

31. The Exemption Notification dated 19.07.2021 was not issued under sub-section (2A) of section 25 of the Customs Act. It was issued under sub-section (1) of section 25 of the Customs Act. In any case, a notification under sub-section (2A) of section 25 of the Customs Act can be issued only within one year from the date of issuance of the notification under sub-section (1) of section 25 of the Act. In the present case, as the Exemption Notification was issued on 30.06.2017 under sub-section (1) of section 25 of the Customs Act, the notification under sub-section (2A) of the Customs Act could have been issued only on or before 29.06.2016.

32. The issue that would arise for consideration, therefore, is whether the Exemption Notification dated 19.07.2021, that was issued under sub-section (1) of section 25 of the Customs Act, can have retrospective effect.

33. The main body of the Amendment Notification mentions that the Central Government 'hereby makes the following amendments' in the Exemption Notification dated 30.06.2017. It does not state that the amendment would apply retrospectively from the date the Exemption Notification was issued on 30.06.2017 nor does Explanation (d) state that it has been inserted with retrospective effect.

34. Section 25(4) of the Customs Act provides that every notification issued under sub-section (1) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette. In the absence of any specific stipulation in the Amendment Notification providing otherwise, the said Amendment

Notification shall come into force on the date of its issue by the Central Government i.e. 19.07.2021. The Amendment Notification dated 19.07.2021 cannot, therefore, have retrospective effect.

30. This view finds support from the judgment of the Meghalaya High Court in **Border Trade & Chamber of Commerce, Moreh Town vs. Union of India and others**²³. The High Court held that if any explanation is inserted in a notification for the purpose of clarifying the scope and applicability, the same can be issued only within one year of the date of issuance of the principal notification, as contemplated under sub-section (2A) of the Customs Act and since the amending notification issued under sub-section (1) does not provide anything otherwise, it would come into force on the date of issuance and not before. The relevant portion of the judgment of the High Court is reproduced below:

“Thus, as per Sub-section (2A) of Section 25 *ibid.*, if any explanation was to be inserted in the notification for the purpose of clarifying the scope and applicability, the same was required to be issued within one year of the date of issuance of the principal notification. **Obviously, the notification as issued on 27.01.2017 is not the one issued under Sub-section (2A) of Section 25 of the Act of 1962. Moreover, the notification itself clearly states that the same has been issued in exercise of the powers conferred by Sub Section (1) of Section 25 of the Act of 1962 for the purpose of amendment of the principal notification dated 13.08.2008. In the notification dated 27.01.2017, nothing has otherwise been provided as regards the date of its enforcement. Therefore, it remains beyond the pale of doubt that its operation would be governed by Clause (a) of Sub-section (4) of Section 25; and, accordingly, it has come into force on the date of issuance and not before.**”

(emphasis supplied)

23. 2017 (4) TMI 142 - Meghalaya High Court

31. The provisions of clauses (i) and (ii) of the Amendment Notification dated 19.07.2021 can also be independently examined to find out whether the Amendment Notification would have retrospective effect.

32. Clause (i) of the Amendment Notification dated 19.07.2021 provides that against serial numbers 2 and 3, in column (3), for the words 'Duty of customs', the words 'Said duty, tax or cess' shall be substituted. Clause (ii) seeks to insert Explanation (d) to the Exemption Notification. It states that 'on recommendation of the GST Council, for removal of doubt, it is clarified that the goods mentioned at serial numbers 2 and 3 of the Table, are leviable to integrated tax and cess as leviable under the said Tariff Act, besides the customs duty', and the exemption, under said serial numbers, is only from the amount of said tax, cess and duty over and above the amount so calculated.

33. The department seeks to take aid of Explanation (d) that was inserted by the Amendment Notification dated 19.07.2021 to contend that since the words 'for removal of doubt' and 'it is clarified' have been used in Explanation (d), the amendment contained in clause (1) would necessarily have retrospective effect.

34. It needs to be remembered that the Amendment Notification does not state that it is retrospective in nature and only an inference is sought to be drawn by the department that the amendment would have retrospective effect because of use of the words 'it is clarified' and 'for removal of doubt'.

35. A clarificatory provision generally seeks to supply an obvious omission or to clear doubts on the meaning of the language used

in the previous provisions. It makes explicit or clears the meaning of a provision contained in the Act, which meaning was already implicit. The Courts have repeatedly held that in such a situation it is necessary to first consider the meaning of the provision to which Explanation is added without such Explanation, and then compare the same with the meaning given by the added Explanation. If the result is same, then alone the Explanation can be considered to be clarificatory in nature and given a retrospective effect from the inception of the original provision. The provision sought to added cannot be presumed to be clarificatory merely because the provision attached to Notification bears the nomenclature such as 'it is clarified' or 'for the removal of doubts'. It has to be determined, in each case, whether the provision is clarificatory, basis the test laid down by the Courts.

36. In the present case, the Exemption Notification, before its amendment on 19.07.2019, provided for payment of 'duty of customs' on the repair value of the re-imported goods. The Tribunal, in the decision rendered on 02.11.2020 in **InterGlobe Aviation**, held in very clear terms that the phrase 'duty of customs' referred to in the condition against serial number 2 would not include integrated tax. By the Amendment Notification dated 19.07.2021, the phrase 'duty of customs' has been substituted with the phrase 'Said duty, tax or cess'. The effect of the amendment would be that basic customs duty, integrated tax and cess would be required to be paid on the repair value of the re-imported goods as a condition of grant of exemption. It is, therefore, clear that the requirement to pay customs duty and integrated tax on the repair value of re-imported goods pre-amendment and post amendment is not the same. Mere usage of the

words 'for removal of doubts' or 'it is clarified' in the newly inserted Explanation (d) will not, by itself, make the amendment clarificatory in nature. The amendment made on 19.07.2012 is substantive in nature as it seeks to additionally impose integrated tax, which otherwise pre-amendment was not to be paid on the re-import of goods. The fact that prior to the amendment, integrated tax was not required to be paid is clear from the provisions of the Customs Act, the Tariff Act and the decision of the Tribunal in **InterGlobe Aviation**. It cannot, therefore, be urged that despite the creation of a new liability to pay integrated tax under the Amendment Notification, the amendment would still be retrospective in nature.

37. In this connection, it would be pertinent to refer to the judgment of the Supreme Court in **Sedco Forex International**. The Supreme Court, in the context of an Explanation that was added to section 9(1)(ii) of the Income Tax Act, 1961 to overcome the decision of the Gujarat High Court, observed that an explanation to a provision may either clear the ambiguity in the main provision or may add and widen the scope of the main section. If it clarifies, it may be given retrospective effect, but if it changes the law it must not be presumed to be retrospective, despite the use of 'it is declared' or 'for removal of doubts'. The relevant portions of the judgment of the Supreme Court are reproduced below:

"5.3***** As was affirmed by this Court in **Goslino Mario** [2000] 241 ITR 314, a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. [See also: *Reliance Jute and Industries vs. CIT* (1980) 1 SCC 139]. **An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in**

the main provision or an Explanation can add to and widen the scope of the main section. If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force. But if it changes the law it is not presumed to be retrospective irrespective of the fact that the phrases used are 'it is declared' or 'for the removal of doubts'.

There was and is no ambiguity in the main provision of section 9(1)(ii). It includes salaries in the total income of an assessee if the assessee has earned it in India. The word "earned" had been judicially defined in **S.G. Pgnatale** [1980] 124 ITR 391 by the High Court of Gujarat, in our view, correctly, to mean income "arising or accruing in India". **The amendment to the section by way of an Explanation in 1983 effected a change in the scope of that judicial definition so as to include with effect from 1979, "income payable for service rendered in India"** When the Explanation seeks to give an artificial meaning to "earned in India" and bring about a change effectively in the existing law and in addition is stated to come into force with effect from a future date, there is no principle of interpretation which would justify reading the Explanation as operating retrospectively."

(emphasis supplied)

38. This decision of the Supreme Court in **Sedco Forex International** was considered and relied upon by the Supreme Court in **M.M. Aqua Technologies Ltd. Vs. Commissioner of Income Tax, Delhi-III**²⁴ and it was held:

"22. Second, a retrospective provision in a tax act which is "for the removal of doubts" cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it

24 . 2021 (8) TMI 520 – Supreme Court

earlier stood. This was stated in **Sedco Forex International Drill. Inc. v. CIT**, (2005) 12 SCC 717 as follows:*****

23. This being the case, Explanation 3C is clarificatory – it explains Section 43B(d) as it originally stood and does not purport to add a new condition retrospectively, as has wrongly been held by the High Court”

39. In **Virtual Soft Systems Ltd. vs. Commissioner of Income Tax**²⁵, the Supreme Court observed :

“54. **Even if the statute does contain a statement to the effect that the amendment is declaratory or clarificatory, that is not the end of the matter. The Court will not regard itself as being bound by the said statement made in the statute but will proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is an amendment which is intended to change the law and which applies to future periods.** In this connection, see the following:-

56. Otherwise also, it has been consistently held that a provision must be read subject to the rule that in the absence of an express provision or clear implication, the Legislature does not intend to attribute to the amending provision, a greater retrospectivity than is expressly mentioned. It is settled law that a taxing provision imposing liability is governed by the normal presumption that is not retrospective.

59. **There is nothing in the language of Section 271(1)(c) as amended by the Finance Act, 2002 w.e.f. 1.4.2003 to suggest that the**

25. 2007 (2) TMI 147 – Supreme Court

amendment is retrospective. The amendment in clause (iii) and simultaneously in Explanation 4(a) carried out enlarges the scope of penalty under Section 271(1)(c) to include even cases where assessment has been completed at loss. The same being in the nature of a substantive amendment would be prospective, in the absence of any indication to the contrary ***"**

(emphasis supplied)

40. In **Union of India & Ors. vs. M/s Martin Lottery Agencies Ltd.**²⁶, the Supreme Court held:

"24. *** The explanation, in our opinion, cannot be said to be a simple clarification as it introduces a new concept stating that organizing of the lottery is a form of entertainment. ******* The Explanation so read appears to be a charging provision. It states about taxing need. It can be termed to be a sui generis tax. If it is a different kind of tax, the same may be held to be running contrary to the ordinary concept of service tax. It may, thus, be held to be a stand alone clause. A constitutional question may have to be raised and answered as to whether the taxing power can be segregated. **If by reason of the said explanation, the taxing net has been widened, it cannot be held to be retrospective in operation.**

No doubt, the explanation begins with the words `for removal of doubts'. Does it mean that it is conclusive in nature? In law, it is not. It is not a case where by reason of a judgment of a court, the law was found to be vague or ambiguous. There is also nothing to show that it was found to be vague or ambiguous by the executive. In fact, the Board circular shows that invocation of clause (ii) had never been in contemplation of the taxing authorities.

26. 2009 (5) TMI 1 – Supreme Court

36. **It is, therefore, evident that by reason of an explanation, a substantive law may also be introduced. If a substantive law is introduced, it will have no retrospective effect.**

The notice issued to the assessee by the appellant has, thus, rightly been held to be liable to be set aside. Subject to the constitutionality of the Act, in view of the explanation appended to this, we are of the opinion that the service tax, if any, would be payable only with effect from May, 2008 and not with retrospective effect.

37. **In a case of this nature, the Court must be satisfied that the Parliament did not intend to introduce a substantive change in the law. As stated hereinbefore, for the aforementioned purpose, the expressions like 'for the removal of doubts' are not conclusive.** The said expressions appear to have been used under assumption that organizing games of chance would be rendition of service. We are herein not concerned as to whether it was constitutionally permissible for the Parliament to do so as we are not called upon to determine the said question **but for our purpose, it would be suffice to hold that the explanation is not clarificatory or declaratory in nature."**

(emphasis supplied)

41. The aforesaid decision of the Supreme Court in **Martin Lottery Agencies** was followed by the Supreme Court in **Sree Sankaracharya University of Sanskrit & Ors. vs. Dr. Manu & Anr.**²⁷. The Supreme Court distinguished the role of a clarificatory/explanation from that of a substantive amendment and held that an explanation/clarification cannot expand or alter the scope of the original provision. The relevant portion of the judgment of the Supreme Court is reproduced below :

27. 2023 (5) TMI 1246 –Supreme Court

“9.2 From the aforesaid authorities, the following principles could be culled out:

- i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.
- ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.
- iii) An explanation/clarification may not expand or alter the scope of the original provision.
- iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.”

42. The Bombay High Court and the Delhi High Court have also examined this position.

43. In **Greatship (India) Ltd. vs. Commissioner of Service Tax, Mumbai**²⁸, the Bombay High Court examined whether the Notification dated 27.02.2010 was clarificatory in nature or whether it resulted in a substantive change in law and made the following observation:

“19. **From the analysis of the aforesaid judgments of the Apex Court, it would be clear that if the statute uses the words “it is declared” or “it is clarified for removal of doubts”, then it will be presumed that the amending law is declaratory or**

28. 2015 (39) STR 754 (Bom.)

clarificatory. However, merely using the said words would not be sufficient to conclusively hold that the Act is declaratory. Even by use of such words, a statute may introduce new rules of law and that in such case, it would amount to substantial change in the law and will not be necessarily retrospective. It has been held that for determining the nature of the Act regard must be had to the substance rather than the form. It has been held that if a new Act is to explain an earlier Act, it would be without object unless construed retrospectively. It has been further held that an explanatory Act is generally passed to supply an omission or to clear up doubts as to meaning of previous Act. However, in the absence of clear words indicating that the meaning of the Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous.”

(emphasis supplied)

44. The Delhi High Court in **Commissioner of Income Tax, New Delhi vs. Rajasthan Mercantile Co. Ltd.**²⁹ examined whether the amendments carried out in Explanation 2 to section 37(2A) of the Income Tax Act, 1961 could be considered as declaratory and be given retrospective effect and observed that an ‘explanation’ is usually issued to clarify or resolve any ambiguity and mere use of the word ‘explanation’ cannot be the determining factor to ascertain the proper meaning and scope of the provision. The Delhi High Court further observed that if an explanation alters or widens the scope of the main provision, it cannot be applied to past periods when the explanation was not in force. The relevant portions of the judgment of the Delhi High Court are reproduced below :

“22. Mr. Gupta, for the Revenue tried to lead us on a different path. According to the learned counsel.

29. (1995) 211 ITR 400

Explanation 2, is clarificatory in nature, declaratory in character, and explanatory in substance; therefore, it is not affected by any rule against retrospectivity; the Explanation brings into force the real meaning of the term "entertainment expenditure" and, therefore, should be read as if it was there all along. The learned counsel took us through a few decisions on this aspect:

Commissioner of Income-tax v. India Steamship Co. Ltd., [(1992) 196 ITR 917] is a decision of the Calcutta High Court. ***** The Court held that the retrospectivity need not be confined to the period after 1-4- 1974, because, the Explanation was clarificatory in nature, intended to clear up any doubt or ambiguity as to the true meaning of the relevant provision. Therefore, this meaning was held as the true meaning governing the provision for the assessment year 1972-73 also. At page 935 the Court held:

It is no doubt true that, ordinarily, a statute, and particularly when the same has been made applicable with effect from a particular date should be construed prospectively and not retrospectively. But this principle will not be applicable in a case where the provision construed is merely explanatory, clarificatory or declaratory. It cannot be disputed that the object of the Explanation is to explain the meaning and intendment of the Act itself."

29. **In the instant case, the Explanation 2 in question, actually purports to be a provision defining the concept of entertainment expenditure, by including a few kinds of expenditures within its scope.** Only because a provision attached to a section bears the nomenclature, as 'Explanation', it cannot always be considered as conveying the true and natural meaning of the words or the provisions of the Act. **The meaning attributable to the relevant provisions of the Act without the**

Explanations shall have to be considered first, to find out whether, it created an artificial situation, or created ambiguity, and if so, the Explanation may be considered as having injected the true and real meaning to those provisions from the very inception of the provisions to which the Explanation is added."

(emphasis supplied)

45. What follows from the aforesaid judgments of the Supreme Court and the High Courts is that an Explanation to a provision may either clear the ambiguity in the main provision or it may add and widen the scope of the main provision. A provision is said to be clarificatory if a consideration of the meaning of the provision to which the Explanation has been added when compared to the meaning given by the added Explanation remains the same. However, if the meaning changes, it cannot be said to be clarificatory in nature. If the Explanation is clarificatory in nature, it may be given retrospective operation, but if it changes the law and alters or widens the scope of the main provision, it cannot be given retrospective operation.

46. In the present case, though Explanation (d), inserted by the Amendment Notification dated 19.07.2021, proceeds to state that 'for removal of doubts' it is clarified, but the fact is that it imposes integrated tax, which otherwise prior to the introduction of the Explanation was not leviable under the unamended Exemption Notification dated 31.06.2017. It cannot, therefore, be said to be retrospective in nature, more so when neither clause (i) nor clause (ii) specifically mentions that it is retrospective in nature. Section 25(4) of the Customs Act also makes it abundantly clear that every Notification issued under sub-section (1) or

sub-section (2A) of section 25 of the Customs Act shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette. At the cost of repetition, the Amendment Notification dated 19.07.2021 issued under section 25(1) does not provide that it would be applicable retrospectively. Thus, in terms of section 25(4) of the Customs Act, it would come into force on the date of its issue by the Central Government for publication in the Official Gazette.

47. Explanation (d), as would be seen, merely clarifies clause (i) of the Amendment Notification dated 19.07.2021. When both clause (i) and Explanation (d) are read together, the same meaning is arrived at. However, when Explanation (d) is compared with the un-amended Exemption Notification, different meanings come out.

48. Learned authorized representative appearing for the department, however, placed emphasis on the use of the word 'substituted' in clause (i) of the Amendment Notification dated 19.07.2021 and submitted that this would mean that it should be given retrospective effect. To substantiate this submission, learned authorized representative placed reliance upon the decision of the Supreme Court **Indian Tobacco Association**.

49. It is not possible to accept this submission advanced by the learned authorized representative appearing for the department. In the main body of the Amendment Notification dated 19.07.2021, it has been specifically stated that 'in exercise of the powers conferred by section 25(1) of the Customs Act, **the Government makes the following amendments** in the Notification of the Government of India'. The judgment of the Supreme Court in **Indian Tobacco Association** also does not lay down that in all

cases where amendment has been carried out by way of "substitution", the substantive provision will have a retrospective effect. This is clear from paragraph 26 of the judgment, which is reproduced below :

"26. We are not oblivious of the fact that in certain situations, the Court having regard to the purport and object sought to be achieved by the legislature may construe the word "substitution" as an "amendment" having a prospective effect but such a question does not arise in the instant case."

50. It also needs to be noted that in paragraph 16 of the aforesaid judgment in **Indian Tobacco Association**, the Supreme Court observed that the amendment under consideration does not take away any substantive right nor any penal consequence has been imposed. The Supreme Court also made it clear that the amendment only removes an obvious mistake. In fact, relying upon the doctrine of fairness, the Supreme Court observed :

"28. **The doctrine of fairness also is now considered to be a relevant factor for construing a statute.** In a case of this nature where the effect of a beneficent statute was sought to be extended keeping in view the fact that the benefit was already availed of by the agriculturalists of tobacco in Guntur, it would be highly unfair if the benefit granted to them is taken away, although the same was meant to be extended to them also. **For such purposes the statute need not be given retrospective effect by express words but the intent and object of the legislature in relation thereto can be culled out from the background facts.**

29. The question has furthermore to be considered having regard to the language and object discernible from the statute read as a whole. **The Respondents were not ineligible from obtaining the benefit. Once they are held to be eligible for obtaining the**

benefit, the amended notification being an exemption notification should receive the beneficent construction.

30. It is not a case where the Respondents, like the cases of Mahaan Dairies (supra) and Tata Iron & Steel Co. Ltd. (supra) were ineligible from claiming the benefit. The subsequent notification, thus, should receive a beneficent construction."

(emphasis supplied)

51. Reliance placed by the learned authorized representative of the department on the decision of the Tribunal in **OM Fragrances** is misplaced. In paragraph 22 of the decision, the Tribunal observed that since no substantive right had been taken away nor any penal consequences had been imposed and only an obvious mistake was sought to be removed, the amendment would be retrospective in nature. The relevant paragraph 22 of the decision of the Tribunal in **OM Fragrances** is reproduced below :

"22. These decisions would not help the appellant as they deal with amendment by substitution. In any case, the Supreme Court also made it clear that in such a situation the amendment would be retrospective since no substantive right had been taken away nor any penal consequences had been imposed and only an obvious mistake was sought to be removed. In the present case, if the contention of learned authorized representative appearing for the department is accepted, the respondent would be subjected to higher rate of duty than what was prevailing at that time the search was conducted."

52. In the present case, as noticed above, the Amendment Notification creates a new liability in the form of integrated tax to be borne by the appellant. It is not an amendment which confers a benefit upon the appellant.

53. Learned authorized representative appearing for the department, however, made an attempt to submit that since the amendment was made in the Exemption Notification, it must be treated that the Explanation was a beneficial piece of legislation for the assessee.

54. This submission has been stated to be merely rejected. It is difficult to conceive how the amendment that seeks to levy integrated tax on an assessee, which otherwise was not leviable prior to the amendment, can be considered to be a beneficial piece of legislation for the assessee.

55. Though it is correct that for the period upto 30.06.2017, the Exemption Notification No. 94/96 dated 16.12.1996 levied basic customs duty and countervailing duty and the Amendment Notification dated 19.07.2017 levied both basic customs duty and integrated tax, but it is equally true that Exemption Notification dated 30.06.2017, which operated from 01.07.2017 to 18.07.2021, merely levied duty of customs and did not levy integrated tax. It is not possible to accept the contention of the learned authorized representative of the department that the Exemption Notification for the intervening period, therefore, should be interpreted in such a manner so as to included integrated tax in the duty of customs. The text and language employed in the Notification has to be seen and in the instant case Notification dated 30.06.2017 is very clear and was also interpreted by the Tribunal in **InterGlobe Aviation** to mean that integrated tax would not be included in the duty of customs.

56. In the end, learned authorized representative appearing for the department referred to the 37th and 39th meeting of the GST Council as also the Circular dated 19.07.2021 issued by the CBIC and the 43rd

meeting of the GST Council to contend that the Amendment Notification dated 19.07.2021 should be construed retrospectively.

57. The Circular dated 19.07.2021 was issued on the same date the Amendment Notification dated 19.07.2021 was issued. This Circular refers to 14th, 37th and 39th meeting of the GST Council and mentions that the Council had recommended for levy of integrated tax and cess on the repair, insurance and freight cost instead of the entire value of the goods on the basis of which the Exemption Notification dated 30.06.2017 was issued but the Tribunal in **InterGlobe Aviation** decided that 'duty of customs' would not include integrated tax. The Circular also notes that the GST Council in its 43rd Meeting recommended that a suitable clarification, including any clarificatory amendment, if required, may be issued for removal of any doubt to clarify the decision of the GST Council that re-import of goods sent abroad for repairs attracts integrated tax and cess on the value equal to the repair value, insurance and freight and the Amendment Notification dated 19.07.2017 had been issued to give effect to the decision of the GST Council.

58. The contention of learned counsel for the appellant is that retrospectivity to the Amendment Notification dated 19.07.2021 is neither borne out from the meeting of the aforesaid GST Council or the Circular dated 19.07.2021 and in any case intendment has not be considered while examining the text of a notification.

59. The contention advanced by the learned counsel for the appellant deserves to be accepted. There can be no doubts that while interpreting an Exemption Notification, it is the text and the language employed in the Notification that is relevant and the intention of the Government or the

authority issuing the Notification would, therefore, not be significant. The Exemption Notification dated 30.06.2017 had been examined by the Tribunal in the decision rendered on 02.11.2020 in **InterGlobe Aviation** and it was categorically held, on a consideration of the provisions of the Customs Act, Tariff Act and the text of the Exemption Notification dated 30.06.2017, that 'duty of customs' would not include integrated tax.

60. In this connection reference can be made to the Constitution Bench judgment of the Supreme Court in **Hemraj Gordhandas** wherein it was observed that in a taxing statute there is no room for intendment and what has to be seen is the clear meaning of the words. The relevant observation of the Supreme Court are reproduced below:

"5 *** It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words.** The entire matter is governed wholly by the language of the notification. **If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority.** If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different but that is not the case here. **In this connection we may refer to the observations of Lord Watson in Salomon v. Salomon and Co., 1897 AC 22 at p. 38:**

"Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express

words or by reasonable and necessary implication.”

It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in Crawford v. Spooner, (1846) 6 Moo PC 1(9):

“***** we cannot aid the legislature’s defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there.” Learned Counsel for the respondents is possibly right in his submission that the object behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to power-looms by constituting themselves into co-operative societies. **But the operation of the notification has to be judged not by the object which the rule-making authority had in mind but by the words which it has employed to effectuate the legislative intent.** Applying this principle we are of opinion that the case of the appellant is covered by the language of the two notifications dated July 31, 1959 and April 30, 1960 and appellant is entitled to exemption from excise duty for the cotton fabrics produced for the period between October 1, 1959 to April 30, 1960 and from May 1, 1960 to January 3, 1961. It follows therefore that the appellant is entitled to the grant of a writ in the nature of certiorari to quash the order of the Assistant Collector of Central Excise of Baroda dated November 26, 1962 and the appellate order of the Collector of Central Excise dated November 12, 1963.”

(emphasis supplied)

61. This proposition was reiterated by the Constitution Bench of the Supreme Court in **Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company**³⁰ and the relevant portions of the judgment are reproduced below:

“25.....Indeed, it is well-settled that in a taxation statute, there is no room for any intendment; that

30. 2018 (361) ELT 577 (SC)

regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. **Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption.** Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.

34. In *Hansraj Gordhandas v. H.H. Dave*, Asst. Collector of Central Excise & Customs, Surat and Ors., AIR 1970 SC 755 = (1969) 2 SCR 253 = 1978 (2) E.L.T. J350 (S.C.) [hereinafter referred as *Hansraj Gordhandas case* for brevity], wherein this Court was called upon to interpret an exemption notification issued under the Central Excise Act ***** The Court did not countenance such purposive interpretation. **It was held that a taxing legislation should be interpreted wholly by the language of the notification** *****

44. **In *Hansraj Gordhandas case (supra)*, the Constitutional Bench unanimously pointed out that an exemption from taxation is to be allowed based wholly by the language of the notification and exemption cannot be gathered by necessary implication or by construction of words; in other words, one has to look to the language alone and the object and purpose for granting exemption is irrelevant and immaterial.**"

(emphasis supplied)

62. In ***Income Tax Officer, District II(ii), Kanpur & Ors. vs. Mani Ram Etc.***³¹, the Supreme Court quoted the observations made by Lord Radcliffe and the relevant portion is reproduced below:

31. (1969) 72 ITR 203

"7 ***** In in re Mac Manasway **and again by my noble and learned friend Lord Radcliffe in Inland Revenue Commissioners v. Dowdall, O'Mahoney & Co. Ltd. that the beliefs or assumptions of those who frame Acts of Parliament cannot make the law."**

(emphasis supplied)

63. Learned counsel for the appellant, however, also pointed out that where integrated tax was to be levied, it was specifically mentioned in the Notification. In this connection, learned counsel for the appellant referred to serial number 1 of the Exemption Notification dated 30.06.2017 which had also been noticed by the Tribunal in the decision rendered on 02.11.2021 in **InterGlobe Aviation**.

64. The submission advanced by the learned counsel also deserves to be accepted. In paragraph 45 of the decision of the Tribunal in **InterGlobe Aviation**, the following observations were made by the Tribunal :

"45. In this connection it would also be relevant to refer to the entries at serial no. 1 of the Exemption Notification. Serial no. 1 specifically refers to what types of duties or taxes are leviable under different situations. There is a specific reference to integrated tax in column (3) in connection with serial no. 1 (d) and to integrated tax and compensation cess in connection with serial no. 1(e). **There is, therefore, enough intrinsic evidence in the Exemption Notification itself to show that integrated tax cannot be understood as duty of customs in the Exemption Notification."**

(emphasis supplied)

65. The aforesaid discussion leads to the inevitable conclusion that the Amendment Notification dated 19.07.2021 cannot be said to be retrospective in nature. Findings to the contrary recorded by the

Commissioner (Appeals) in the impugned orders on the basis of the Circular dated 19.07.2021 issued by CBIC basis the minutes of the meeting of the GST Council cannot, therefore, be sustained. The orders impugned in all the 1714 appeals are, therefore, set aside and all the appeals are allowed.

(Order pronounced on **05.08.2024**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)