Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.74 of 2010

(Arising out of OIO-06/COMMR/SIIB/2009 dated 27/11/2009 passed by Commissioner of CUSTOMS-AHMEDABAD)

Vrl Logistics Ltd **.....Appellant**
Giriraj Annexe, Circuit House Road,
Hubli, Karnataka

VERSUS

C.C.-Ahmedabad **.....Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

WITH

- **Customs Appeal No.75 of 2010 (Anand Sankeshwar Md)**
- **Customs Appeal No.80 of 2010 (Vijay Sankeshwar Md)**
- **Customs Appeal No.81 of 2010 (C Karunakara Shetty Director)**
- **Customs Appeal No.82 of 2010 (K N Umesh)**
- **Customs Appeal No.114 of 2010 (Karnavati Aviation Private Ltd)**
- **Customs Appeal No.115 of 2010 (Anurag Mathur Manager)**
- **Customs Appeal No.116 of 2010 (Mundra Port And Special Economic Zone Ltd)**
- **Customs Appeal No.117 of 2010 (Gautam S Adani)**
- **Customs Appeal No.118 of 2010 (K Venugopal)**
- **Customs Appeal No.119 of 2010 (Rajesh S Adani)**
- **Customs Appeal No.120 of 2010 (Brigadier Satwinder Singh Bhatti)**
- **Customs Appeal No.21 of 2012 (Deccan Charters Limited)**
- **Customs Appeal No.22 of 2012 (Lt Col Arun Rao Sm)**

- **Customs Appeal No.23 of 2012 (Balkrishna Shabaraya)**
- **Customs Appeal No.28 of 2012 (Eldo T Lyre)**

(Arising out of OIO-4/COMMR/SIIB/2009 dated 25/11/2009 passed by Commissioner of CUSTOMS-AHMEDABAD)

(Arising out of OIO-21/COMMR/ACC-AHMEDABAD/2011 dated 15/12/2011 passed by Commissioner of CUSTOMS-AHMEDABAD)

APPEARANCE:
Shri J C Patel along with Shri Hardik Modh, Shri Amit Laddha, Shri S J Vyas & Shri Prakash Shah & Shri Tanmay Banthia (Advocates) appeared for the appellants

Shri Ajay Jain, Special Counsel (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11057-11072 /2023

DATE OF HEARING: 09.11.2022
DATE OF DECISION: 28.04.2023

RAMESH NAIR

All these appeals are filed against the respective impugned orders which confirms the differential Customs duty and imposes penalties on all the appellants on the ground that the main appellants herein had improperly availed the benefit of exemption under Notification No. 21/2002-Cus. as amended by Notification No. 61/2007-Cus. Since the issue involved in all these appeals are common and identical, all the appeals are taken up together for final disposal.

02. A division bench of this tribunal while hearing all these customs appeals noticed that two contradictory view had been expressed by divisions benches of the tribunal in case of *CC, New Delhi* v. *Sameer Gehlot* - 2011 (263) E.L.T. 129 (Tri.-Del.) has taken a view that the benefit of Notification 21/2002-Cus. is available to the assessee and another co-ordinate Bench of the Tribunal in the case of *King Rotors & Air Charter Pvt. Ltd*. - 2011 (269) E.L.T. 343 (Tri.-Mum.) has taken a opposite view and denied the benefit of exemption notification to the assessee. Accordingly, the division bench ofthis tribunal referred the matter to Larger Bench.

2.1 The Larger Bench of the Tribunal vide Interim Order No. 3-23/2022 dated 08.08.2022 answered the question regarding admissibility of exemption Notification No. 21/2002-Cus, dated 1-3-2002 in respect of importer of aircraft as under :-

(i) The reference made to the Larger Bench has not been rendered infructuous on dismissal of the Civil Appeal filed by the department against the order of the Tribunal in Reliance Transport;
(ii) The appellants have not violated condition (b) of the explanation contained in the exemption notification;
(iii)The aircraft imported for non-scheduled (passenger)services can be used for non-scheduled (charter) services;
(iv) Aircraft imported by the appellants cannot be classified as private aircraft;
(v) The customs authority cannot examine the validity of the permission granted by the DGCA, in the absence of cancellation of the permit by the DGCA;
(vi) It is not mandatory for the importer to issue air tickets for providing non-scheduled (passenger) services;
(vii) CAR 2010 merely amalgamates CAR 1999 and CAR 2000 to provide a uniform code for operations of non-scheduled air transport services. It has restated and codified the position stated earlier by the DGCA through various clarification and is explanatory in nature; and
(viii) The division bench in King Rotors was not correct in holding that the decisions of the Tribunal in Sameer Gehlot was rendered per incuriam.

Consequential to the questions being answered by the Larger Bench as stated above, these appeals are being heard for final disposal.

03. Shri Shri S J Vyas & along with Shri Prakash Shah, Shri J C Patel, Shri Hardik Modh, Shri Amit Laddha and Shri Tanmay Banthia appeared on behalf of appellants and submits that by the impugned orders the Learned Commissioner has denied the exemption and confirmed the duty on the grounds that appellants were granted Permit for 'Non-Scheduled Air Transport (Passenger)' and not for 'Non –Scheduled Air Transport Service (Charter). Appellants did not provide Passenger services but provided Charter Service to its clients. Appellants did not issue passenger tickets and appellants did not have Published Tariff. That the aircrafts was used to

provide air transport services, on charter basis, for carriage of Chairman and Directors of the Appellant's Group companies and other staff of companies and that the Chartering of the aircraft to outside persons was for negligible duration. It is held by the Learned Commissioner that providing air transport services to Personnel of Group Companies is nothing but a corporate veil created for evasion of duty. However each of the aforesaid grounds is untenable in law in view of the decisions dated 08.08.2022 of the Hon'ble Larger Bench of Tribunal.

3.1 He Submits that Sr. No. 347B of Notification No. 21/2002- Cus. granted exemption from customs duty to aircrafts subject to fulfillment of Condition No. 104. The said condition is accordingly two-folds viz. one, it requires that the importer should be an Operator as defined in clause (a) of Explanation, who has been granted approval by the DGCA to import the aircraft for providing Non-Scheduled (Passenger) Services or Non-Scheduled (Charter) Services as defined in Clauses (b) and (C) respectively of the Explanation and two, it requires the importer to furnish an undertaking to Customs that the aircraft shall be used only for providing Non- Scheduled (Passenger) Services or Non-Scheduled (Charter) Services (as defined in the Explanation), as the case may be and in event of failure to so use the aircrafts, to pay the exempted amount of duty. There is no dispute that the Appellants are "Operator" as defined in clause (a) of Explanation. There is also no dispute that the Appellants have been granted approval by DGCA to import the aircrafts for providing Non-Scheduled (Passenger) Services, as defined in Clause (b) of the Explanation The first requirement of condition No. 104 is therefore satisfied. There is also no dispute that the Appellant has furnished undertaking to customs that the imported aircrafts shall be used only for providing Non-Scheduled (Passenger) Services, as defined in Clause (b) of the Explanation and in event of failure to so use the aircraft, to pay the duty. Therefore, the second requirement of condition No. 2 is also fulfilled. The Appellants have used the aircrafts only for providing Non-Scheduled (Passenger) Services, as defined in Clause (b) of the Explanation.

3.2 He also submits that while providing Non-Schedule (Passenger) Services, as defined in clause (b) of the Explanation, there is no prohibition against providing the said service by way of Charter of the aircraft. The said definition contains no such prohibition nor is there any such prohibition in the Civil Aviation Requirement dated 8th October 1999 issued by DGCA for

grant of permit to operate Non-Scheduled Air transport Services (Passenger). On the contrary, Para 9.2 of the said Civil Aviation Requirements (CAR) for Non-Scheduled Air Transport Services (Passenger), categorically provide Non-Schedule Operators can conduct charter /non-scheduled operations. The DGCA has in number of clarifications/ letters addressed to Customs clarified that in view of said Para 9.2, the Non-Scheduled Passenger Service Operator can conduct charter operations. The Hon'ble Larger Bench has also in para 55 of the said order dated 08.08.2022 clearly held that there is no stipulation or restriction or condition in the said definition of Air Transport service that a Tariff should be published or that such service should be rendered only on per –seat basis and not by chartering or about the category or class of persons to be transported. The Larger Bench in the said order dated 08.08.2022 held that a Non-Scheduled Passenger Service Operators is entitled to conduct Charter Operations.

3.3 He further argued that the Hon'ble Larger Bench has, in para 100 to 105 of the said order dated 08.08.2022, clearly held that there is no requirement of issue of Passenger Tickets by a Non-Scheduled Passenger Service Operator. The Hon'ble Large Bench also in Paras 83 to 85 of the said Order held that there was no requirement of having a published tariff. It is further held that merely because the Appellants can also conduct charter operations would not mean that the Appellant becomes a non-scheduled (charter) permit holder. Since the Appellants cannot be said to have become non-scheduled (charter) permit holder there was not requirement for the appellant to have published tariff.

3.4 He also argued that in the present case there is no dispute that the aircraft has been used by the appellant to provide air transport service for remuneration, to group companies by carrying their personnel as well as to provide air transport services for remuneration charged for providing air transport services to clients who are not appellant's group companies. Once it is not is dispute that aircraft has been used to provide air transport service for remuneration, it clearly constitutes public transport, which is defined in Rule 3(45) of the Aircraft Rules, 1937.

3.5 He also submits that it is clarified by the DGCA in CAR dated 1st June 2010, that a Non-Scheduled operator is allowed to operate revenue charter flights for a company within its group companies, subsidiary companies,

sister concerns, associated companies own employee, including Chairman and members of the Board, Directors of the Company and their family members, provided it is operated for remuneration, whether such service consist of a single flight or series of flights over any period of time. The Hon'ble larger Bench has in Para 82 to 124 (vii) of the said Order dated 08.08.2022 held that CAR 2010 merely restates and codified the existing position stated earlier by DGCA through various clarification and is therefore explanatory in nature and can be referred to for the earlier period also. Further, the Hon'ble Large Bench in its order held that use of aircrafts to render air transport passenger service for remuneration to group company by carrying their personnel does not amount to use of the aircraft a private aircraft and that personnel of companies which are group companies are also member of public.

3.6 He further submits that in view of above, the exemption cannot be denied on the ground that the aircraft was used to provide air transport service, on charter basis, for carriage of Chairmen and Directors of the Appellant's Group companies and other group of companies.

3.7 As regard the contention of revenue that aircrafts for period between 18.06.2008 and 07.08.2008 cannot be said to be for non-scheduled passenger service since permit of non-scheduled passenger service was issued only on 07.08.2008. He submits that this is not the ground on which the Commissioner has denied the exemption and confirmed the demand in the impugned order. Further it is thus clear that the use of aircraft for hire and reward for Non-scheduled passenger service was started only on 18.06.2008 after the aircraft had been registered with DGCA and certified to be airworthy and recommendation was issued for grant of Non-scheduled Operations permit on the basis that CAR stood fully complied. Only after compliances and recommendation only, the aircraft could be operated. The very facts that the airport authority/ civil aviation authority permitted operation, taking off and landing of the aircraft would itself show that it was fully compliant with the requirements of Non-scheduled operations. The mere facts that the formal permit was issued on 07.08.2008 cannot make the operation between 18.06.2008 to 07.08.2008 to be unauthorized or for a purpose other than non-scheduled operations and clearly the formal grant of the permit on 07.08.2008 relates back to 18.06.2008, when the letter was issued recommending the grant of the permit. The very fact that the Civil

aviation authority has not objected to the operation of the aircraft for the period 18.06.2008 to 07.08.2008 and in facts granted the formal permit on 07.08.2008 in terms of the recommendation dated 18.06.2008, itself established that the use of the aircrafts for hire and reward during that period was neither unauthorized nor can be considered to be otherwise than for non-scheduled passenger service.

3.8 He further argued that admittedly in the present case the DGCA has not found that the use of the Air craft by the Appellants is not for Non-Scheduled Passenger Service and the DGCA has from time to time renewed the permit granted to the Appellant for Non-Scheduled (Passenger) Service. It cannot therefore be said that the Appellant has violated the undertaking to use the air craft for Non-Scheduled (passenger) service. He placed reliance on the decisions of Hon'ble Supreme Court in the case of Titan Medical Systems Pvt. Ltd. Vs. CCE- 2003(151)ELT 254 (SC)

04. Shri Ajay Jain, learned Special Counsel appearing on behalf of the revenue reiterates the submission made earlier before the Larger Bench of Tribunal. He also submits that certain points are not covered by the Larger Bench decisions dated 08.08.2022.

4.1 In respect of Appeals of M/s VRL Logistics and Co-appellant (Appeal No. C/74-83/2010) he submits that the show cause notice was issued on 02.03.2008 to Appellants demanding customs duty of Rs. 6.30 crores on imported aircraft. It was found during investigation by the customs authorities that the aircraft was used for private purpose during the period 05.01.2008 to 04.04.2008. Post importation, for the period 05.04.2008 till August 2008, it was used predominantly for non charter purpose and for rest period for charter operations. Thus during two period covered by the show cause notice i.e (i) 05.01.2008 to 04.04.2008 and (ii) 05.04.2008 to August 2008, the aircraft was used neither exclusively nor predominantly for private purposes in contravention of the conditions imposed by the customs exemption notification. The Aircraft was imported on 05.01.2008. During the first period under dispute i.e. 05.01.2008 to 04.04.2008 (date of issue of NSOP), the importer had on two occasions applied and obtained permission to operate non-revenue private flights for their Chairman, Family Members and Company officials for a period of one month each. The total flying hours for the Month of March and April are 25 hours of non-charter flights. Thus it

is clear that during this period, the aircraft was used for private use and not even for charter operations in terms of permission to operate non-revenue flights. Further during the period May, 2008 to August, 2008 the number of flying hours for charter purpose was 29.55 hours and for non-charter purposes was 51.05 hrs. Thus even during the period from April to August 2008, the aircrafts was predominantly used for non-charter or private purposes. This is in complete contravention of the undertaking given at the time of importation that the aircraft will be used for only non-scheduled passenger services.

4.2 He further submits that a public transport aircraft is one which effects public transport {as per Rule 3(46) of said Rules}. Therefore, the definition of public transport become important. As per Rule 3(45) of said Rules, public transport means (i) all carriage of persons or things effected by the aircraft for remuneration of any nature whatsoever and (ii) all carriage of persons or things effected by aircrafts without such remuneration if the carriage is effected by an air transport undertaking. In terms of Rule 3(9A), an air transport undertaking means an undertaking of cargo for hire or reward. Thus from the combined reading of definition of public transport and air transport undertaking, it is clear that for a transport of passengers to be public transport, such transportation should either be for remuneration or for hire or reward. In the present case, the transportation for non-charter purpose for both the periods was for the use of Chairman , Family members and officials. There was neither any remuneration nor any reward or hire for such flights. Thus it is clear the use was not for public transport and hence for private use. The selective reading of the Larger Bench order is misleading, as the Larger Bench had nowhere stated that some of the flights conducted without remuneration can also be without hire or reward. As these non-charter flights were without remuneration or hire or reward, the same will be private flights and in contravention of the undertaking given at the time of importation.

4.3 He argued that the contention of the appellants that DGCA having renewed their permit from time to time, it is not open to the revenue to question any action on the part of appellants as only DGCA could have done so is also not correct. The Larger Bench had held that it is only the Civil Aviation Ministry that can monitor the compliance of conditions imposed. In this case there is no conflict on the use as a private aircraft because the Civil Aviation Ministry itself has given them the permission to operate non-

revenue flights for private purpose. Further the arguments that any renewal of permit by Civil Aviation Ministry means a blanket immunity from the contraventions made by importers and bars Customs from questioning the contravention is again not tenable. The Larger Bench decision has to be seen in the context in which the questions were raised before the larger Bench. In the instant case the period from February'08 to April'08 is clearly covered by the two permission obtained by them from the very Civil Aviation Ministry for operating non-revenue private flights and for the period from May to August,2008 by the predomination use for non-charter purpose. There cannot be any question of any conflict of opinion between the Customs authorities and Civil aviation Ministry on the use for private purpose during this purpose.

4.4 He also submits that Appellant in their appeals have relied upon Air Circular No.1 of 1998 to argue that the private non-revenue flights undertaken by them will be covered by the NSOP. This contention is not tenable as this circular was issued as to issue guidelines to operate charter flights to foreign destination. This circular mentioned as to who all can be permitted as passenger when a Non-revenue passenger Charter Flight is undertaken by Aircrafts belonging to Non Scheduled Operators. As can be seen this circular is not applicable to domestic sector.

4.5 As regard the Appellant M/s Karnavati Aviations and Co-Appellant (Appeal No. C/114-120/2010) he submits that the import of Aircraft was on 11.06.2008. The NSOP i.e. the permit to operate Non Scheduled Passenger Services was issued on 07.08.2008. One of the allegation in the SCN is that during the period 11.06.2008 to 06.08.2008, the imported aircraft was used for providing Non Scheduled services without possession of NSOP and the use was for private purposes. Appellant could not provide any document to identify as to in which category, they were permitted to fly during the period before they were issued the NSOP. There is nothing on record. Hence in the absence of any evidence submitted by them, this use of aircraft during the period when they were not is possession of NSOP has to be treated as private use or operation other than non scheduled operation.

4.6 He also submits that a disclosure of any information to civil aviation authorities and subsequent renewal by those authorities does not mean that the Appellant have got a blanket immunity from the consequence of all

contraventions. Further the adjudication authority has given cogent reason in support of his decision to lift the corporate veil, but the appellants have not given any legal argument. Hence the conclusion drawn by the Commissioner are correct and the Appellants have violated the conditions of the exemption Notification.

4.7 As regard the appeals of Deccan Charters and Co-appellant (Appeal No. C/21-23,28/2012) he submits that in the grounds of appeals appellant have stated that merely because one flight where the Chairman accompanied the business delegate, was used by the company, it cannot be considered as breach of exemption Notification. According to the appellants, the other flight where flower drop took place was a test flight, hence there was no contravention. However even single breach will disentitle the appellants from the eligibility from exemption. Any flight without remuneration or for hire or reward will make the aircraft as a private aircrafts which is not clearly covered by the exemption notification.

05. We have carefully considered the submissions made by both sides and perused the case records. We find that the issue in the present matters relates to the grant of benefit of Notification No. 21/2002-Cus., dated 1-3-2002 as amended by Notification No. 61/2007-Cus. on the Aircrafts imported by Appellants. They claimed exemption from duty under Notification 21/2002-Cus. as amended by Notification 61/2007-Cus. The whole dispute in these appeals arose out of rival interpretations of *Condition No. 104* of the notification (supra) which reads as follows :-

> *"(i) the aircraft are imported by an operator who has been granted approval by the competent authority in the Ministry of Civil Aviation to import aircraft for providing non-scheduled (passenger) or non-scheduled (charter) services; and*
> *(ii) the importer furnishes an undertaking to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, at the time of importation that :*
> *(a) the said aircraft shall be used only for providing non-scheduled (passenger) services or non-scheduled (charter) services, as the case may be; and*
> *(b) he shall pay on demand, in the event of his failure to use the imported aircraft for the specified purposes, an amount equal to the duty payable on the said aircraft but for the exemption under this notification :*

Explanation — For the purposes of this entry, -

(a) "operator" means a person, organization, or enterprise engaged in or offering to engage in aircraft operation;

(b) "non-scheduled (passenger) services" means air transport services other than scheduled (passenger) air transport services as defined in rule 3 of the Aircraft Rules, 1937;

(c) "non-scheduled (charter) services" means services provided by a "non-scheduled (charter) air transport operator", for charter or hire of an aircraft to any person, with published tariff, and who is registered with and approved by Directorate General of Civil Aviation for such purposes, and who conforms to the civil aviation requirement under the provision of Rule 133A of the Aircraft Rules 1937 :

Provided that such Air charter operator is a dedicated company or partnership firm for the above purposes."

5.1 The case of the revenue is that Appellants have violated the conditions of above exemption notification hence not eligible for benefits of the above exemption notification. The revenue contended that appellants are granted permit for 'Non-Scheduled Air Transport Service (Passenger), whereas the appellants provided Charter services. As per revenue an operator who has been granted a permit by the DGCA to operate non-schedule (passenger) services cannot be permitted to carry out charter services for the reason that this would be in violation of the terms of the exemption notification and the undertaking given by the operator. However in this context we find that after discussing the relevant provision the Larger Bench of Tribunal in interim order dated 08.08.2022 observed that the above exemption notification does not prohibit a non-scheduled (passenger) service permit holder to use the Aircraft for charter operations. The relevant para of Larger Bench's order is reproduced as below:-

Use of Aircraft for only non-scheduled (passenger) services

"*53. It needs to be examined, as has been contended on behalf of the appellants, whether the aircraft was used by the appellants only for providing non-scheduled (passenger) services as defined in clause (b) of the Explanation to Condition No. 104 of the exemption notification.*

54. Non-scheduled (passenger) services has been defined in the aforesaid clause (b) to mean air transport services other than scheduled (passenger) air transport services as defined in rule 3 of the Aircraft Rules. Thus, what has to be seen is whether the use of the aircraft satisfies the following two requirements of clause (b):

(i) the use should be for air transport service; and

(ii) such air transport service should be other than scheduled (passenger) air transport service as defined in rule 3 of the Aircraft Rules.

55. 'Air transport service has been defined in rule 3 (9) of the Aircraft Rules to mean service for transport by air of persons for any kind of remuneration whatsoever. There is no dispute that the appellants have used the aircraft for the transport of persons for remuneration. There is no stipulation or restriction or a condition in the said definition that a tariff should be published or that such service should be rendered only on per-seat basis and not by chartering or about the category or class of persons to be transported. Thus, the contention of the department that the appellants have rendered air transport service to their group companies by carrying personnel of their group companies is not of any relevance as there is no prohibition in the said definition against any kind of persons to be transported.

56. Rule 3 (49) of the Aircraft Rules defines "scheduled air transport service to mean an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public. Thus, for an 'air transport service' to qualify as 'scheduled air transport service', it must satisfy all the following three conditions:
(i) It must be undertaken between the same two or more places;
(ii) It must be operated according to a published time table or the flights must constitute a recognizable systematic series; and
(iii) Each flight must be open to use by members of the public.
57. If any of the aforesaid three conditions is not satisfied in respect of a passenger air transport service, the same cannot be termed as scheduled air transport service and, therefore, would be a non-scheduled (passenger) service as defined in clause (b) of the Explanation to Condition No. 104 of the exemption notification. In the present case, the aforesaid conditions are not satisfied and, therefore, the air transport service rendered by the appellants would be other than scheduled (passenger) air transport service.

58. Thus, both the requirements of clause (b) of the Explanation are satisfied. It is also not in dispute that the appellants have been granted non-scheduled operator permits, which permits have been renewed from time to time without any objection from the DGCA.

59. It has now to be seen whether the appellants have used the aircraft for providing non-scheduled (charter) services as defined in clause (c) of Condition No. 104 of the Explanation to the exemption notification.

60. Non-scheduled (charter) services have been defined in clause (c) to mean services provided by a non-scheduled (charter) air transport

operator, for charter or hire of an aircraft to any person, with a published tariff, and who is registered with and approved by DGCA for such purposes and who confirms to the Civil Aviation Requirements. An aircraft operator can be said to provide non-scheduled (charter) service only if the service satisfies the requirements of clause (c). The appellants are not registered and approved with DGCA as non-scheduled (charter) air transport operator and in some cases there is no published tariff. The appellants, therefore, cannot be said to have provided non-scheduled (charter) services as defined in clause (c).

61. The appellants have, therefore, provided non-scheduled (passenger) services, as defined in clause (b) of the Explanation to the exemption notification.

Non-scheduled (passenger) operator can carry out charter service.

62. It would now have to be seen whether there is any restriction or prohibition against providing air transport service by way of charter of aircraft, while providing non-scheduled (passenger) services.

63. As noticed above, the definitions of air transport service and non-scheduled (passenger) service do not stipulate any restriction or impose a condition that such service should be rendered only on per-seat basis and not by chartering nor is there any stipulation in CAR 1999 issued by DGCA for grant of permits to operate non-scheduled air transport (passenger) services. In fact paragraph 9.2 of CAR 1999, which deals with non-scheduled air transport (passenger) services, categorically provides that a non-scheduled operator can conduct charter operations.

64. The submission advanced by learned special counsel appearing for the department is that an operator who has been granted a permit by the DGCA to operate non-scheduled (passenger) service cannot be permitted to carry out charter services for the reason that this would be in violation of the terms of the exemption notification and the undertaking given by the operator. Learned special counsel pointed out that non-scheduled (charter) services means services provided by a non-scheduled (charter) air transport operator who is registered with and approved by DGCA for such purpose. Thus, an operator who is not registered with and approved by the DGCA for operating charter services cannot be permitted to operate charter services. Learned special counsel further pointed out that reliance placed on clause 9.2 of CAR 1999, by which a non-scheduled (passenger) operator can also use the aircraft for charter services, was not accepted by the division bench of the Tribunal in King Rotors for the reason that the two categories namely, non-scheduled (passenger) services and non-scheduled (charter) services are distinct services. Learned special counsel also submitted that an exemption notification has to be strictly construed as was pointed out by the Supreme Court in Dilip Kumar.

65. What needs to be noticed is that the exemption notification does not prohibit a non-scheduled (passenger) service permit holder to use the aircraft for charter operations. A conjoint reading of the definitions contained in the Aircraft Rules, as have been adopted in the definition in clause (b) of the Explanation to Condition No. 104 of the exemption notification, makes the following position quite clear: (a) The expression "air transport service" covers service for the transport by air of person for any kind of remuneration whatsoever. The service may be individually for each seat or by chartering the entire aircraft and the remuneration may be of any kind whatsoever, such as seat-wise or daily or weekly or monthly or annual basis. There is no restriction on the mode and manner of fixing or charging the remuneration either in the exemption notification or in the Aircraft Rules;

(b) "Scheduled (passenger) air transport service" only means that air transport service which has the essential features mentioned in the definition in rule 3 (49) of Aircraft Rules, namely, it must be undertaken between the same two or more places, operated according to a time table or with flights so regular or frequent that they constitute a recognizable systematic series, each flight being open to use by the members of the public; and

(c) If a service is covered by "air transport service" defined in rule 3(9) and is other than "scheduled (passenger) air transport service" defined in rule 3(49), it is a "non-scheduled (passenger) service" within the meaning of clause (b) of the Explanation to the exemption notification.

66. It needs to be noticed that Condition No. 104 specifically refers to the definitions contained in the Aircraft Rules as also Civil Aviation Requirements issued under the provisions of rule 133A of the Aircraft Rules. Both, CAR 1999 that deals with non-scheduled (passenger) services operator and CAR 2000 that deals with non-scheduled(charter) services operator define a non-scheduled air transport services (passenger) in the same manner as defined in clause (b) of the Explanation to Condition No. 104.

67. CAR 1999 contains the following relevant provisions: (a) There will be no restriction on the type and seating capacity of the aircraft to be imported/acquired by the applicant.

(b) Non-scheduled operators can conduct charter/non-scheduled operations for transportation by air of persons, mail or goods. In such operations, the operators shall not publish their time schedules as the operations are of non-scheduled nature.

68. It is, therefore, clear that an operator providing non-scheduled(passenger) services can always provide such services either on individual seat basis or by chartering the entire aircraft and

such restriction is not contained either in Condition No. 104 or Aircraft Rules or the Civil Aviation Requirements.

69. It also needs to be remembered that charter is one way in which passenger services can be rendered; the only difference is that instead of individual seats, all the seats of an aircraft are hired out to one person. It is, therefore, difficult to conceive that by chartering the aircraft, non-scheduled (passenger) services would not be rendered as even in such a case an operator transport passengers.

70. This apart, a perusal of the definition of non-scheduled (passenger) services contained in the Explanation to Condition No.104 would show that it includes within its scope all air transport services other than scheduled (passenger) air transport services. Therefore, all services which are not scheduled services are permitted non-scheduled (passenger) services. Thus, also non-scheduled(passenger) permit holders can perform air transport services either by selling individual seat or by hiring out the entire aircraft for non-scheduled operations.

71. In this view of the matter, the contention of the learned special counsel for the department that a charter permit is required for carrying out charter operations cannot be accepted. In fact, the prohibition is on a non-scheduled (charter) holder to carry out(passenger) operations.

72. This issue can be examined from another aspect. A comparison of the definition of non-scheduled (passenger) services with non-scheduled (charter) services would show that while non-scheduled(passenger) services are of much wider category, non-scheduled(charter) services are of limited nature applicable only to small aircrafts and restricted to operators registered under the non-scheduled (charter) category. What needs to be noticed is that the exemption is available to both non-scheduled (passenger) services and non-scheduled (charter) service and neither the exemption notification nor the Aircraft Rules or Civil Aviation Requirements excludes charter operations from the ambit of non-scheduled(passenger) services.

73. The provisions of CAR 1999 and CAR 2000 do indicate that CAR2000 was issued for charter operation only so as to provide some relaxation to smaller aircrafts. Pre-dominantly, the two contain identical provisions with the exception that the CAR 2000 contains some relaxed provisions meant for smaller aircraft, as can be noticed while comparing the provisions of the two Civil Aviation Requirements----------.”

5.2 By following the above finding of Larger Bench of Tribunal we find that contention of revenue in the present case that the appellants were issued a permit for providing non-scheduled (passenger) services but the imported aircraft has been put to non-scheduled (charter) services and therefore, the

exemption should be denied is without substance. When exemption is available for use under either category, such an objection by the Department is without merit particularly when evidence has been provided by the Appellants that the Civil Aviation Requirements (CAR) permit such use vide DGCA's clarifications and the DGCA authorities have not taken any action against such use. The letter dated 08.08.2008 issued by DGCA states that a non-scheduled (passenger) permit holder can conduct charter operation and such operation would be within the purview of the non-scheduled (passenger) services permit holders.

5.3 We also find that for denial the benefit of above notification department in the present matter also contended that Appellant have not Published Tariff, therefore importer has violated the conditions of the notification. The findings on these issue by the Larger Bench of Tribunal are as follows:

> ***"Whether, non publication of tariff is violative of Explanation (c) of Condition No. 104***
>
> *83. Learned special counsel for the department placed reliance on the definition of 'non-scheduled (charter) services' contained in Explanation (c) of Condition No. 104 to the exemption notification to contend that the condition of the exemption notification has not been fulfilled by the appellant.*
>
> *84. Learned counsel appearing for the appellants submitted that it is only while defining 'non-scheduled (charter) services' that reference has been made to published tariff and, therefore, it cannot be termed as a condition to the exemption notification. The submission is that while defining 'non-scheduled (passenger) services' in clause (b) of the Explanation, there is no requirement of having a published tariff.*
>
> *85. The submission advanced by learned counsel for the appellants deserves to be accepted. Merely because the appellants can also conduct charter operations would not mean that the appellant would becomes a non-scheduled (charter) permit holder and consequently required to have a published tariff. The definition of non-scheduled (passenger) service given in clause (b) of the Explanation, as analyzed above, does not require the publication of tariff. It is also seen that under rule 135 of the Aircraft Rules, 1937, it is only the air transport undertaking offering scheduled air transport services in accordance with rules 134(1) and 134(2) that are required to publish their tariff."*

Further, the contention of revenue that use of Aircrafts without remuneration and is not public transport and hence for private use and also use of the Aircrafts for carriage of Chairman and Directors and personnel of group of

companies, hence appellant not eligible for exemption. In this context we find that the findings of Larger Bench of the Tribunal are as under: -

> ***"Whether the aircraft can be used by members of public***
>
> *86. The definition of "private aircraft" under rule 3(43) of Aircraft Rules, does not warrant the view that if tariff is not published, the use of aircraft would be private. In terms of rule 3(43), private aircraft is other than public transport aircraft. Public transport aircraft is defined in rule 3 (46) as aircraft which effects public transport and public transport is defined in rule 3(45) to mean all carriage of persons or things effected by aircraft for a remuneration of any nature whatsoever, and all carriage of persons or things effected by aircraft without such remuneration if the carriage is effected by an air transport undertaking. Air transport undertaking is defined in rule3(9A) to mean an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward. It would follow from the aforesaid definitions that where the aircraft is used for carriage of persons for a remuneration it is a public transport aircraft and not a private aircraft. There is no stipulation in the said definitions that if tariff is not published, the use of air craft would be as a private aircraft. Admittedly, in the present case, the appellants have used the aircraft for carriage of persons for remuneration. Further, where the business of an undertaking includes carriage by air of persons it would be an air transport undertaking and if such an undertaking also uses the aircraft to effect carriage of persons without remuneration, it would still be public transport aircraft and not a private aircraft. Therefore, even assuming that some flights are conducted for carriage of persons without remuneration, it would be still a public transport aircraft and not a private transport aircraft.*
>
> *87. Even otherwise, the purpose of having a published tariff is to apprise the public of the rates at which the aircraft would be available. The appellants hire the aircrafts to customers pursuant to tenders/negotiations. The purpose of having a published tariff is, therefore, substantially complied with.*
>
> *88. Learned special counsel appearing for the department submitted that the aircraft is being provided for private use and is not available to use by the public.*
>
> *89. Learned counsel for the appellants submitted that the aircraft is available not only to group companies but also to other customers.*
>
> *90. In the first instance, personnel of companies which are group companies of the appellant are also members of public. The aircraft is, therefore, available for use by the public. Even otherwise, this cannot be a reason to hold that the air transport service provided by the appellants would fall outside the scope of non-scheduled (passenger) service."*

5.4 In view of above,after analyzing various legal provisions the Larger Bench of Tribunal has taken a reasonable view in this regard and the same cannot be faulted especially in the absence of any restriction in the notification not to permit use of the aircraft by the importing company or its holding company. If the Government finds such use not to be in line with the intended purpose of the exemption, it can always amend the notification specifically disallowing exemption for a particular kind of use such as use by Group Companies. Further the question whether the transport undertaken by the Appellant is public transport or private has to be determined with reference to the Appellant's status as "Air Transport Undertaking" and not by the reference to the non-remuneration flights undertaken during the certain period or use of group companies as contended by the revenue. Even such non-remuneration flights qualify as public transport under Rule 3 (45) of Aircraft Rules.

5.5 Further it is also not possible to accept the contention of the department that Larger Bench did not examine all the points/issues disputed in the present matter. All the issues were examined at length by the Larger Bench in order dated 08.08.2022. We also find that the Larger Bench of Tribunal in order dated 08.08.2022 on the issue that whether the Customs authorities have the Jurisdiction to decide violation to the exemption notification held as under:-

> ***"Whether the customs authorities have the jurisdiction to decide violation of the exemption notification***
>
> *91. A perusal of the exemption notification clearly shows that it merely requires the conditions set out by the DGCA and the conditions imposed by the Civil Aviation Ministry be complied with for the operations of the non-scheduled operators. It, therefore, follows that it should be the jurisdictional authorities under the Civil Aviation Ministry which alone can monitor the compliance. As stated above initially by exemption notification dated 01.03.2007, entry no. 346 Condition No. 101 was introduced in the exemption notification dated 01.03.2002 whereby the effective rate of duty on import of aircraft for scheduled air transport service was made „nil. As no exemption was granted to non-scheduled air transport service and private category aircraft, the Ministry of Civil Aviation made a strong representation for granting exemption for non-scheduled (passenger)service and non-scheduled (charter) services under conditions to be specified and recommended by the Civil Aviation Ministry. It is for this reason, as would be apparent from the statement made by the Hon'ble Finance Minister in the Parliament, that the exemption*

notification dated 03.05.2007 was issued granting 'nil' rate of duty on import of aircraft for non-scheduled (passenger) service as well as non-scheduled (charter) services subject to Condition No. 104.

92. The alleged misuse of the aircraft, as suggested by the customs authority, has repeatedly been clarified by DGCA and the Civil Aviation Requirements relating to non-scheduled (passenger)services. It is the DGCA which is empowered to issue the Civil Aviation Requirements under rule 133A of the Aircraft Rules. The DGCA has not complained of any violation by the non-scheduled(passenger) services operator and in fact has been renewing the permits from time to time. It is only when the competent authority under the Director General of Civil Aviation Ministry finds as a fact that the permit holders have violated the conditions that it would be open to the customs authorities, in terms of the undertaking given by and others the permit holders, to require payment of the duty, which otherwise was exempted by the notification.

93. Learned counsel for the appellants have submitted that whenever a fiscal benefit is granted on the basis of a certificate issued by another statutory authority, it is only that statutory authority which is empowered to monitor compliance of the conditions of the certificate and to initiate action, in case of non compliance. In this connection learned counsel have placed reliance upon the decisions of the Supreme Court in Zuari Industries Ltd. vs. Commissioner of C. Ex. & Customs, Titan Medical Systems Pvt. Ltd. vs. Collector of Customs, New Delhi and Vadilal Chemicals Ltd. vs. State of Andhra Pradesh.

94. Learned special counsel appearing for the department has however placed reliance upon the decision of a larger bench of the Tribunal in Bombay Hospital Trust vs. Commissioner of Customs, Sahar, Mumbai, and also division bench decision of the Tribunal in Patel Engineering Ltd. vs. Commissioner of Customs (Import), Mumbai. Learned special counsel for the department also placed reliance upon the decision of the Supreme Court in Sheshank Sea Foods Pvt. Ltd. vs. Union of India

.

95. In Titan Medical Systems, by an exemption notification, certain goods which were imported into India against an advanced licence for the purpose of manufacture were exempted from duty of customs. A show cause notice was, however, issued by the customs to show cause as to why penalty should not be imposed for not having complied with the conditions of the exemption notification. The Supreme Court found that the licencing authority had not taken steps to cancel the licence, and in fact the licencing authority did not even claim that there was any misrepresentation. Thus, when an advanced licence had been issued and not questioned by the licencing authority, the customs authorities could not refuse exemption on an allegation that there was a misrepresentation and even if there was any misrepresentation, it was for the licencing authority to take steps. The relevant portion of the judgment of the Supreme Court is reproduced below:

13. As regards the contention that the appellants

were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf.

(emphasis supplied)

96. Learned special counsel for the department has, however, placed reliance upon the decision of a larger bench of the Tribunal in Bombay Hospital Trust. The conditional notification in issue provided that the importer of the Hospital Equipment must provide free treatment to 40% of the outdoor patients and reserve 10% beds for free treatment of patients with family income of less than Rs.500/- . Examination of compliance with the said condition was purely one of verification of the fact of free treatment and it was held that customs had jurisdiction to verify the same. Such verification did not involve any interpretation of the provisions of another enactment. Nor was it a case of difference of opinion between the interpretation of any such provision on the part of customs on the one hand and the Director General of Health Services on the other. This decision, therefore, does not help the respondents. It also needs to be noted that the decision of the larger bench of the Tribunal was delivered by a learned Member who had also delivered the decision of the Tribunal in Sameer Gehlot. The learned Member was, therefore, aware of the difference between the nature of conditions involved in the two cases.

97. In Patel Engineering Ltd., the undertaking was that the machinery shall be used exclusively for construction of roads and shall not be sold or disposed of in any manner for a period of five years from the date of import. The allegation was that the importer had diverted the machine to other entities before completion of the said period of five years. The verification of compliance of the undertaking was one purely of fact, namely whether the machine had been disposed of before expiry of five years. It was held that the customs had jurisdiction to verify the same. Such verification did not involve any interpretation of the provisions of another enactment. The said decision, therefore, would also not help the respondents.

> *98. In Sheshank Sea Foods Pvt. Ltd., the condition of the Customs Notification which was in issue was that the exempted goods shall not be sold, loaned, transferred or disposed of in any manner. The Supreme Court held that customs had jurisdiction to investigate whether said condition was violated. Verification of compliance with the said condition was one purely of fact, namely whether the goods had been sold or otherwise transferred, and did not involve any interpretation of the provisions of another enactment. This decision will also, therefore, not help the respondents.*
>
> *99. It, therefore, follows that it is the jurisdictional authorities under the Civil Aviation Ministry that alone can monitor the compliance of the conditions imposed and the Customs Authorities can take action on the basis of the undertaking submitted by the importer only when the authority under the Civil Aviation Ministry holds that the conditions have been violated.*

From the above, it can be seen that all the issues raised by the learned Special counsel by the revenue during the hearing and in his submission has been considered by the larger bench hence, no substantial different material was brought to deviate from the answers given by the Hon'ble Larger Bench. We further find that the post hearing learned special counsel made a submission dated 10th February, 2023 wherein, he heavily relied upon the recent decision of Hon'ble Delhi High Court in the case of East India Hotel Ltd. Vs. Commissioner of Customs Delhi which is reproduced below:-

> *"39. The contention that it would not be open for the Customs Authorities to question the use of the aircraft as the DGCA has not raised any allegation that the appellant has violated the terms of its permit, is unmerited. The Customs Authorities are required to examine whether the conditions for availing exemption under the Notification are satisfied. In terms of the Notification, the appellant has also furnished an undertaking as required under clause (ii) of condition no 104 of the Notification. This undertaking has been furnished to the Customs Authorities and we are unable to accept that the Authorities are not entitled to examine whether the said undertaking has been complied with. The Customs authorities are not required to examine whether the conditions of the permit (NSOP) issued by the DGCA have been violated and if so, the consequences of such violation under the Aircraft Act or the Aircraft Rules, as that question would be required to be examined only by the DGCA. But that does not mean that they are disabled in any manner in examining whether the conditions for availing the benefit under the Notification are satisfied."*

5.6 Dealing with the additional submissions of the learned special counsel and judgments, we find that in the case of VLR Logistics, it was contended

by the learned Special counsel that use of Aircraft for the period involved was partly without remuneration and is not public transport hence, for private use. In support of his contention, the learned special counsel relied upon Clause 43, 45 & 46 of Rule (3) of Aircraft Rules which respectively defines private aircraft a public transport and public transport aircraft to contend that use of aircraft was not private transport. We find that the learned special counsel heavily relied upon the Hon'ble Delhi High Court judgment in the case of East India Hotel Ltd. that to count the aircraft is used without any consideration and is not used for air transport. In this regard, the appellant has contended that this partner has not disputed that the aircraft was not available to public at large for use thereof and in fact used by the various customers of the appellant. The appellant had published tariff for charter service, the appellant has produced advertisement in various media and invoices raised on various customers for use of aircraft to support its case that the aircraft was used for remuneration and was used for providing 'Air Transport Service'. This is not a case where aircraft is not allowed to be used for any remuneration or whatsoever which is duly supported by the invoices produced by the appellant.

5.7 We further find that the larger bench as in Paragraph 86 observed that therefore, even assuming that some flights are conducted for carriage of persons without remuneration it would still be public transport aircraft and not private aircraft. The facts of the East India Hotels Ltd. and the present case is entirely different for the reason that as per the records produced by the appellant, both before the learned Commissioner and before us clearly indicate that the appellant had declared to the world at large that the said aircraft is available for charter hire for remuneration. In the present facts it is not possible to hold that aircraft was used without any remuneration or whatsoever as in the case of East India Hotels Ltd. the aircraft was never used for remuneration and was always used for private use. In any event, the aircraft is permitted to be used from the date of its import till the date for Non-Scheduled chartered operations and permission granted to the appellant is being renewed from time to time till date. This also supports our views that aircraft is not used for private use.

5.8 We further find that the appellant's business includes the carriage by air of passenger for hire or reward, the appellant is Air Transport undertaking within the meaning of Rule 3(9A) of Aircraft Rules. In view of the undisputed fact on record that the appellant did provide Air Transport

Service for reward once, we find that the appellant is an Air Transport undertaking even carriage of passengers by appellant without remuneration is public transport as defined in Rule 3(45) of Aircraft Rules, 1937 which reads as follows:-

> *"Public Transport means all carriage of persons or things effected by aircraft for a remuneration of any nature whatsoever, and all carriage of persons or things effected by aircraft without such remuneration if the carriage is effected by an air transport undertaking"*

The question whether 'Air Transport Undertaking' by the appellant is public transport or private has to be determined with reference to the appellant's status as "Air Transport Undertaking" and not in reference to the certain non-remuneration flights undertaken during certain period i.e. 05.01.2008 to 04.04.2008 and May to August 2008. We find that the appellant's status of Air Transport Undertaking is not in dispute. In view thereof, it cannot be held that use of aircraft by the appellant was a private use because of some of the non remuneration flights claimed to have been undertaken by the appellant during the said period.

5.9 In view of our above discussion and finding, we are of the view that the ratio of the decision in case of East India Hotels Ltd. is clearly distinguishable on facts and in as much as East India Hotels Ltd,. did not qualify as 'Air Transport Undertaking' within the meaning of Aircraft Rules as the aircraft was always used without any remuneration or whatsoever as opposed to use of the aircraft by the appellant. In the present case on remuneration and records in form of invoices clearly support the contention of the appellant that the aircraft was used for remuneration which is not disputed by the department.

5.10 As per our above discussion, we are of the view that the aircraft is not used for private purpose in breach of the undertaking and conditions of the notification. Further, we find that the Civil Aviation Authority has not treated the operation of the aircraft for the period 05.01.2008 to 04.04.2008 and May to August 2008 as being private aircraft and in fact issued permit on 04.04.2008 for Non- Scheduled operations in terms of recommendations dated 23.03.2007 and renewed such permits from time to time till date supports the case of the appellant that the aircraft was used for non-scheduled operations for hire or reward.

5.11 We further find from the show cause notice and impugned order of the learned Commissioner, the department has proceeded on the basis that the

use of aircraft, post importation was in breach of undertaking given by the appellant, the confiscation of the aircraft and demand of duty and imposition of penalties is on the footing that the appellant has contravened post import conditions. In Sameer Gehlot case reported at 2011 (263) E.L.T. 129 (Tri.-Del.), the tribunal has held as under:-

> ***10.*** *The impugned exemption under consideration before us has only pre-import conditions and there is no separate post-import condition. The pre-import conditions requiring an approval from DGCA and an undertaking to be furnished at the time of importation have already been fulfilled and thereafter, the exemption has been granted at the time of import. The respondents, therefore, cannot be charged with violation of a pre-import condition at a later point of time. If the Government wanted that the customs authorities should monitor the subsequent use of the aircraft, then it would have provided a suitable post-import condition in the exemption notification. Of course, the Department can proceed in terms of the undertaking executed for violation of the terms of the undertaking but that has not been done in this case. Rather a show-cause notice has been issued invoking Section 28 of the Customs Act, 1962 vide paragraphs 25 and 27 of the notice. It is settled law that Section 28 can be invoked only in the case of short-levy, non-levy and erroneous refund. Where an exemption has been allowed after the importer has fulfilled the pre-import conditions, such a case cannot be categorised either as a case of short-levy or as a case of non-levy. In the absence of any post-import condition in the exemption notification, action cannot also be taken under Section 111(o) which, in any case, has not been invoked in the show-cause notice.*

From the above, we find that there is no post import condition in the notification hence, the duty demand, imposition of penalties and confiscation of the aircrafts are not sustainable.

5.12 Without prejudice, we further find that in Reliance Transport and Travel Private Limited- 2019 (369) ELT 1317 (Tri.-Del.), the learned Commissioner relied upon the ratio of the hon'ble Apex court judgment in the case of Jagdish Cancer and Research Centre and held that demand under Section 28 of the Act cannot be sustained for violation of the post import condition and the learned Commissioner has travelled beyond the scope of show cause notice and confirmed the demand by enforcing the bond which was not accepted by the tribunal. In the present case, the demand is confirmed under Section 28 and interest under Section 28AA. Both are not sustainable in view of the Hon'ble Supreme Court judgment in the case of

JAGDISH CANCER AND RESEARCH CENTRE in which it is held that Section 28 does not apply to violating to post import condition.

5.13 We find that the Hon'ble Delhi High Court subsequent to passing of the EAST INDIA HOTELS LTD. judgment, delivered further judgment on the identical issue in the case of M/s. GLOBAL VECTRA HELICORP LTD. vide order dated 06.04.2023. There were two issues before the Hon'ble Delhi High Court the first issue was that with regard to jurisdictional Customs Authority to examine whether condition of exemption notification are fulfilled or not. Though this issue is decided in favour of the department but this issue however is not in conflict with the larger bench of this tribunal. The second issue is on merit, here the Hon'ble Delhi High Court held that the decision in East India Hotels Ltd. the issue was whether the aircraft was meant for private use as no remuneration was charged. In that case the Hon'ble Delhi High Court distinguished its own earlier judgment in the case of East India Hotels Ltd. and hence on merit held in favour of the importer and dismissed the department's appeal. In the East India Hotels Ltd. case the Hon'ble High Court of Delhi held that there is not "Air Transport Service" as per Rule 3(9) of Aircraft Rules because as per the definition it was mandatory to charge any kind of remuneration. On this ground Hon'ble Delhi High Court in East India Hotels Ltd. also distinguished its decision both in JAGDISH CANCER AND RESEARCH CENTRE and SAMEER GEHLOT case. In other words East India Hotels Ltd. was not concerned with the conflict in the case of King Rotors & Air Charter P.Ltd. and hence the subject matter was different from the issues before the larger bench. In East India Hotels Ltd. on its own peculiar facts that no remuneration was charged consequently, in M/S. GLOBAL VECTRA HELICORP LTD. case, the Hon'ble Delhi High Court applied the ratio of East India Hotels Ltd. in favour of the importer only because M/s. GLOBAL VECTRA HELICORP LTD. remuneration was charged even though tariff was not published. It, therefore falls that judgment in M/s. GLOBAL VECTRA HELICORP LTD. supports the case of the appellants. In the present case ,the appellants have raised in majority of cases the invoices and charged freight and collected remuneration hence, the aircraft has been used for "Non-scheduled Passengers Operations" and/or Non-Scheduled Chartered Operations which are not barred as per clarification of DGCA permissible for permit holder for non-scheduled passenger operations. We make it clear that our above observations are adopted in respect of all the present appeals.

06. As per our above discussions and findings and following the principles laid down by the larger bench in its judgment dated 08.08.2022 and also considering the judgments of EAST INDIA HOTELS LTD and M/s. GLOBAL VECTRA HELICORP LTD. given by the Hon'ble Delhi High Court, we are of the view that there is no contravention of any of the conditions of the exemption notification in question. Hence, the appellants are legally eligible for exemption notification. Accordingly, the impugned orders are set aside. Appeals are allowed with consequential relief if any, in accordance with law.

(Pronounced in the open court on 28.04.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul