CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 1

Customs Appeal No. 51732 of 2019

[Arising out of Order-in-Appeal No. CC(A) CUS/D-I/ACC/IMPORT/NCH/22-180/2019-20 dated 30.04.2019 passed by the Commissioner of Customs (Appeals) New Delhi]

Interglobe Aviation Limited **Appellant**
Central Wing, Ground Floor,
Thapar House, 124 Janpath
New Delhi-110001

Versus

Commissioner of Customs, **Respondent**
Air Cargo, New Customs House,
IGI Airport, New Delhi-110037

WITH

53906 of 2018	53907 of 2018	53908 of 2018	53909 of 2018	53910 of 2018
53911 of 2018	53912 of 2018	53913 of 2018	53914 of 2018	53915 of 2018
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51171 of 2019	51172 of 2019	51173 of 2019	51174 of 2019	51175 of 2019
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51886 of 2019	51887 of 2019	51888 of 2019	51889 of 2019	51890 of 2019

Appearance

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

Shri J P Singh, Sunil Kumar and Shri Rakesh Kumar, Authorised Representatives of the Department for the Respondent.

Coram:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. C L MAHAR, MEMBER (TECHNICAL)

Date of Hearing: September 10, 2020

Date of Decision: November 02, 2020

FINAL ORDER NO. 51226-51571/2020

JUSTICE DILIP GUPTA

1. All these 346 appeals have been filed by M/s Interglobe Aviation Limited[1]. The issue raised in all these appeals is about the availability of Integrated Goods and Service Tax[2] exemption provided at serial no. 2 in the General Exemption Notification No. 45/2017 dated June 30, 2017[3], as amended by Corrigendum Notification dated July 22, 2017, to aircrafts and parts thereof that are re-imported into India after repairs.

2. The Appeals seek the quashing of the 346 orders passed by the Commissioner of Customs (Appeals)[4] that uphold the orders of assessment of Bills of Entry, as a result of which all the appeals have been dismissed by the Commissioner (Appeals).

3. The records indicate that the Commissioner (Appeals) had passed the following six main orders, while deciding the 349 Appeals that had been filed :

(i) The order dated April 30, 2019 upholding the orders of assessment of 159 Bills of Entry. This order, therefore, has led to the filing of 159 appeals before the Tribunal.

(ii) The order dated September 28, 2018 upholding the order of assessment of 39 Bills of Entry. This has resulted in the filing of 39 appeals before the Tribunal.

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1. **the Appellant**
2. **the Integrated Tax**
3. **the Exemption Notification**
4. **the Commissioner**

(iii) The order dated August 31, 2018 upholding the order of assessment of 96 Bills of Entry. Accordingly, 96 appeals have been filed before the Tribunal.

(iv) The order dated April 30, 2019 upholding the order of assessment of 9 Bills of Entry. Accordingly, 9 appeals have been filed before the Tribunal.

(v) The order dated April 30, 2019 upholding the order of assessment of 9 Bills of Entry. Accordingly, 9 appeals have been filed before the Tribunal.

(vi) The order dated February 20, 2019 upholding the orders of assessment of 37 Bills of Entry. Accordingly, 37 appeals have been filed before the Tribunal.

4. It needs to be noted that three appeals bearing no's. 53786 of 2018, 53793 of 2018 and 53806 of 2018 that had been filed to assail three orders passed by the Commissioner (Appeals) were dismissed by the Tribunal by separate orders passed on September 10, 2020, when the appeals were heard, for the reason that there was no infirmity in the order passed by the Commissioner (Appeals) dismissing these three appeals as they had been filed beyond the period prescribed for filing the appeals and the delay could not be condoned.

5. Thus, out of the 349 appeals that were filed initially by the Appellant before the Tribunal to assail the 349 orders passed by the

Commissioner (Appeals), the remaining 346 appeals are being decided by this common order.

6. The Appellant is a scheduled airline operator, 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 to M/s Pratt & Whitney, which is a maintenance and repair organisation specializing in maintenance of parts/ aircrafts. It is further stated that at times, the aircrafts also have 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. These Bills of Entry are assessed to basic customs duty and integrated tax at the applicable rates. The dispute in all these appeals is as to whether the Appellant is 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.

7. The Appellant had claimed exemption at the time of re-import from payment of basic customs duty for aircrafts/ parts under a Notification No. 50/2017 dated June 30, 2017. There is no dispute in these appeals with regard to this exemption. The dispute is in regard to the levy of integrated tax on the re-import of aircrafts/ parts. 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. The Customs Authorities, however, did not agree on this issue with the Appellant, as according to them the Appellant was not entitled to full 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 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.

8. The Commissioner, therefore, disallowed the integrated tax exemption claimed by the Appellant on all the 349 Bills of Entry and integrated tax was levied on the fair cost of repairs and the cost of insurance and freight charges, both ways. It is against the aforesaid assessment of the 349 Bills of Entry, that the Appellant had filed 349 appeals before the Commissioner (Appeals). The Commissioner (Appeals) upheld the assessments made on all the 349 Bills of Entry and, accordingly, rejected all the appeals.

9. To appreciate the contentions advanced by Shri B L Narasimhan, learned Counsel appearing for the Appellant and Shri J. P. Singh, Shri Sunil Kumar and Shri Rakesh Kumar, learned

Authorised Representatives of the Department, it is necessary to examine sections of The Customs Tariff Act 1975[5] and the Exemption Notification that are relevant for the purpose of deciding these appeals.

10. Section 2 of the Tariff Act provides that the rates at which duties of customs shall be levied under The Customs Act 1962[6] have been specified in the First and Second Schedules. It is reproduced below:

> **2. Duties specified in the Schedules to be levied.**
> "The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962) are specified in the First and Second Schedules."

11. Section 3 of the Tariff Act provides for levy of additional duty equal to excise duty, sales tax, local taxes and other charges. Sub-sections (1), (7), (8), (9), (11) and (12) of section 3 are relevant and are reproduced below. It needs to be noted that sub-section (7) of section 3 of the Tariff Act was substituted with effect from July 1, 2017.

> **"Section 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges.-**
> (1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article

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5. the Tariff Act
6. the Customs Act

shall be so liable shall be calculated at that percentage of the value of the imported article.

Provided xxxx xxxx xxxx

Explanation- xxxx xxxx xxxx

(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent as is leviable under section 5 of the Integrated Goods and Service Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section(8).

(8) For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of— (a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and (b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section.

(9) Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (10).

(11) The duty or tax or cess, as the case may be, chargeable under this section shall be in addition to any other duty or tax or cess, as the case may be, imposed under this Act or under any other law for the time being in force.

(12) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act."

12. The relevant portions of the Exemption Notification are reproduced below:

"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 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.	xxxx xxxx xxx	xxxx xxxx xxxx
2.	Goods, other than those falling under Sl 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.

13. Learned Counsel appearing for the Appellant made the following submissions:

(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. In support of this contention, reliance has been placed on the following decisions:

(a) Devidayal Electronics & Wires Limited and another versus Union of India and another[7].

(b) Commissioner of Trade Tax, U.P. versus S.S. Ayodhya Distillery[8].

(c) Union of India versus Kumho Petrochemicals Company Limited[9].

(d) Madhucon Projects Limited versus Cus., Ex. & S.T. SETT. COMM. Chennai[10];

(iii) A comparison of the Exemption Notification with Customs Notification No. 241 dated November 4, 1982, wherein exemption from payment of basic customs duty and integrated tax has been granted under different circumstances, clearly depicts that integrated tax cannot be included in **duty of customs**;

(iv) A comparison with Customs Notification No. 52/2003 dated March 31, 2003 also indicates that integrated tax cannot be included in **duty of customs**. The Central Government, through various amending notifications, specifically provided for inclusion of integrated tax,

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7. 1984 (16) ELT 30 (Bom.)
8. 2009 (233) ELT 146 (S.C.)
9. 2017 (351) ELT 65(S.C)
10. 2016 (44) STR 321 (A.P.)

wherever it deemed fit, post the introduction of Goods and Service Tax regime;

(v) Where the language of any Notification is unambiguous, the plain meaning has to be assigned to such unambiguous language;

(vi) 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;

(vii) Integrated Tax is levied under the Integrated Tax Act but collected under the Tariff Act only for convenience and is not a duty of customs;

(viii) The activity of repairs is a supply of service even if an element of supply of goods is included in it; and

(ix) In order to constitute **import of service** under Integrated Tax Act, all the ingredients mentioned therein have to be fulfilled.

14. Learned Authorised Representatives of the Department, however, supported the impugned order passed by the Commissioner (Appeals) and made the following submissions:

(i) The intention of the Exemption Notification is to give relief from levy of certain components of **duty of customs**, depending on the nature of the re-imported goods. The **duty of customs,** among others, includes (A) basic customs duty i.e. duty of customs leviable thereon under section 2 which is specified in the First Schedule and (B) additional duty, integrated tax, compensation cess leviable thereon respectively under sub-sections (1), (7) and (9) of section 3 of the Tariff

Act. In the body of the Exemption Notification, before the Table, while exempting the re-imported goods, the Notification categorically mentions **duty of customs leviable under the First Schedule**, besides integrated tax, additional duty and compensation cess, but while imposing conditions for the said exemption in column 3 of the Table, the Exemption Notification consciously uses the phrase **duty of customs** only, (and not duty of customs leviable thereon which is specified in the said First Schedule), which fact has to be given due weightage to appreciate the true intention behind the Exemption Notification;

(ii) **Duty of customs** and **duty of customs specified in the First Schedule** are two separate terms with distinct connotations and cannot be equated or substituted. To appreciate this issue, reliance can be placed on the earlier Customs Notification No. 94 of 96. The subsequent Exemption Notification is almost a replica, since after the introduction of Goods and Service Tax, CVD has been replaced by integrated tax;

(iii) An assessee cannot pick and choose Notifications to unlawfully enrich himself and if a narrow interpretation is given to the submissions made by the learned Counsel for the Appellant, there will be large revenue implications; and

(iv) Though the Exemption Notification is clear, but even if it is assumed that there is any ambiguity, then too the benefit should go the Revenue as was observed by the Supreme Court in **Commissioner of Customs (Import) Mumbai versus Dileep Kumar and**

Company[11] and in **M/s LR Brothers India Overseas Limited vs Commissioner of Central Excise**[12]**.**

15. The submissions advanced by the learned Counsel for the Appellant and the learned Authorised Representatives of the Department have been considered.

16. Section 25 of the Customs Act deals with power to grant exemption from duty. Sub-section (1) of section 25 of the Customs Act is reproduced below**:**

> **"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) xxxxxx**

17. It is in exercise of the power conferred by sub-section (1) of section 25 of the Customs Act that the Exemption Notification has been issued. The Central Government exempted 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 of 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

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11. 2018 (361) ELT 577 (S.C)
12. 2020-TIOL-145-SC-CUS

(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 Table.

18. The Exemption Notification makes reference to the Tariff Act. Section 12 of the Customs Act also provides that duties of customs on goods imported into India shall be levied at such rates as may be specified under the Tariff Act. Section 2 of the Tariff Act provides that the rates at which duties of customs shall be levied under the Customs Act are specified in the First and the Second Schedules. Section 3 of the Tariff Act deals with levy of additional duty equal to excise duty, sales tax, local taxes and other charges. Sub-section (1) provides that any article which is imported into India, shall in addition, be liable to a duty to be called as additional duty, which would be equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. Sub-section (7) provides that any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding 40 per cent as is leviable under section 5 of the Integrated Goods and Services Tax Act[13] on the value of the imported article. Sub-section (9) provides that any article which is imported into India shall, in addition, be liable to goods and services tax compensation cess on the value of the imported articles. Sub-section (11) provides that the duty, or tax or cess chargeable under section 3 shall be in addition to any other duty or tax or cess, imposed under the Tariff Act or any other law for the time being in force. Sub-section (12)

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13. Integrated Tax Act

states that the provision of the Customs Act and the rules and regulations made thereunder, including those relating to exemption from duty shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under section 3 as they apply in relation to the duties leviable under that Act.

19. There is no dispute that it is serial no. 2 of the Exemption Notification that is applicable to aircrafts/ parts re-imported into India after repairs. What would, therefore, be payable in terms of serial no. 2 would be the **duty of customs** on the fair cost of repairs carried out including cost of materials used in repairs, insurance and freight charges, both ways.

20. The Exemption Notification does not define the phrase **duty of customs.** However, section 2(15) of the Customs Act defines "duty" to mean duty of customs leviable under the Customs Act. The said section 2(15) of the Customs Act is reproduced below:

> "**2(15).** "duty" means a duty of customs leviable under this Act;"

21. Section 12 of the Customs Act deals with dutiable goods. Sub-section (1) of section 12 is reproduced below:

> "**Section 12**. Dutiable goods.-(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or exported from India."

22. A bare perusal of section 12(1) of the Customs Act shows that duties of customs shall be levied at such rates as are specified under the Tariff Act or any other law for the time being in force, on goods imported into, or exported from India. The contention of the learned Authorized Representatives of the Department is that section 12(1) of the Customs Act leaves no manner of doubt that duties of customs are levied not only under the provisions of the Customs Act and the Tariff Act but also under 'any other law for the time being in force'. Thus, the integrated tax leviable on imported goods by the Integrated Tax Act would also be a duty of customs and, therefore, the Appellant was correctly denied exemption from integrated tax leviable under section 3(7) of the Tariff Act.

23. It is not possible to accept this contention of the learned Authorized Representatives of the Department. Section 2(15) of the Customs Act defines 'duty' to mean duty of customs leviable under the Customs Act. Section 12(1) provides that the duties of customs shall be levied at such rates as may be specified in the Tariff Act or any other law for the time being in force. It only means that the rates for duties of customs can be specified either under the Tariff Act or any other law for the time being in force. It does not expand the meaning of 'duties of customs'. What is important to notice is that whereas section 2 of the Tariff Act refers to 'duties of customs', section 3 of the Tariff Act does not refer to 'duties of customs'. It only provides for levy of additional duty equal to the excise duty, sales tax, local taxes and other charges. Additional duty is levied under section 3(1) of the Tariff Act, whereas

integrated tax and compensation cess are levied under sub-sections (7) and (9) of section 3 of the Tariff Act. Sub-section (11) of section 3 also refers to duty or tax or cess chargeable under section 3.

24. The Supreme Court in **Prestige Engineering (India) Limited vs. Collector of C., Excise, Meerut**[14] observed that once an expression is defined in the Act, that expression, wherever it occurs in the Act, Rules or Notifications issued thereunder, should be understood in the same sense. It is for this reason that it has been contended by learned Counsel for the Appellant that the expression "duty of customs" appearing at serial no. 2 of the Exemption Notification can have only that meaning which is assigned to it under section 2(15) of the Customs Act, which would be the "duty" leviable under the Customs Act and any other duty or tax which is not levied under the Customs Act, but levied under other enactments cannot be treated as a "duty of customs" for the purpose of customs notification.

25. It is also relevant to refer to the judgment of the Supreme Court in **Collector of Customs, Madras vs. Indian Organic Chemicals Limited**[15]**.** Section 19 of the Customs Act relates to determination of duty where goods consist of articles liable to different rates of duty. Section 3 of the Tariff Act deals with levy of additional duty equal to excise duty. The Supreme Court held that since section 19 of the Customs Act applies to determination of

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14. 1994 (73) E.L.T. 497 (S.C)
15. 2000 (118) ELT 3 (S.C)

"duty", it would only relate to "duty" under the Customs Act as is clear from section 2 (15) of the Customs Act and not the additional duty under section 3 of the Tariff Act. The relevant portion of the judgement is reproduced below:

> **"3.** In the first place, Section 19 of the Customs Act is inapplicable to the assessment of additional duty under the Customs Tariff Act**. Section 19 applies to "duty" that is, "duty under the Customs Act",** as is clear from Section 2(15) of the Customs Act. **The method of determination of Customs duty thereunder where goods consist of articles liable to different rates of Customs duty is not applicable for the purposes of assessment of additional duty under the Customs Tariff Act."**
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> **(emphasis supplied)**

26. It is, therefore, clear that even the levy of additional duty under section 3 of the Tariff Act, which is in addition to the duty of customs under section 2 of the Tariff Act, would not be **duty of customs** for the purpose of Notifications issued under the Customs Act.

27. The Bombay High Court in **Ceat Tyres of India Limited vs. Union of India**[16] also held that the expression **duty of customs** covered only the basic customs duty and not the additional duty. The observations are as follows:

> "2. By a Notification issued under section 25 (1) of the Customs Act, 1962, the goods specified in the Table thereto were, when imported into India, exempted "from so much of that portion of the duty of Customs leviable thereon" as was in excess of the rates specified in the corresponding column of the Table. **The argument on behalf of the petitioners was that the expression "duty of customs" covered not only the basic customs duty but also additional and auxiliary duty. A Single Judge of this Court has taken the view that "duty of customs" covers only basic**

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16. 1992 (57) ELT 221 (BOM.)

> **customs duty and not additional or auxiliary duty.** The Kerala High Court has taken the same view. A special Leave Petition was filed before the Supreme Court against this judgment of the Kerala High Court and it was dismissed by order dated 12th September, 1984 in SLP (C) 16629/44, M/s Kathayee Cotton Mills Ltd. vs. Union of India. **This point must, therefore, be decided against the petitioners."**
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> **(emphasis supplied)**

28. In this connection, the judgment of the Supreme Court in **M/s Unicorn Industries vs. Union of India & Others,** [17] also needs to be referred to. The Supreme Court held that National Calamity Contingency Duty, Education Cess and Secondary and Higher Education Cess are in the nature of additional excise duty and when an exemption notification exempts duty of excise it would not automatically mean that these additional excise duties are also exempted. Thus, it was held that these additional duties do not come within the scope of the term "duty of excise".

29. Integrated Tax has been defined under section 2(12) of the Integrated Tax Act to mean the "integrated goods and services tax levied under the Integrated Tax Act. Section 5 of the Integrated Tax Act deals with levy and collection. It provides that there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both on the value as determined under section 15 of the Central Goods and Services Act and at such rates, not exceeding 40 per cent as may be notified by the Government. The proviso stipulates that the integrated tax on goods imported into India shall be levied and collected in

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17. 2019 (12) TMI 286 –Supreme Court

accordance with the provisions of section 3 of the Tariff Act on the value as determined under the Tariff Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act. Section 5 of the Integrated Tax Act is reproduced below:-

> **"Section 5. Levy of collection** - (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:
>
> Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962)."

30. It is, therefore, clear that though integrated tax is levied under section 5 of the Integrated Tax Act, but it is collected in accordance with the provisions of section 3 of the Tariff Act on the value as determined under the Tariff Act and at the point when duties of customs are levied under section 12 of the Customs Act. Thus, integrated tax is levied under section 5(1) of the Integrated Tax Act and only the procedure for collection has been provided under section 3 of the Tariff Act.

31. It also needs to be noted that the term "integrated tax" has not been defined either under the Customs Act or the Customs

Tariff Act or under the Exemption Notification. As integrated tax is not levied under section 12 of the Customs Act, it cannot be called "duty of customs". The charging section for integrated tax, in terms of which it is levied, is section 5 of the Integrated Tax Act and not section 3(7) of the Tariff Act. Section 3 (7) of the Tariff Act only provides for the manner of collection of the said integrated tax to be done by the Customs Authorities in case of import of goods. This is what was observed by the Madras High Court in **Vedanta limited vs. Union of India**[18]**.**

32. Thus, what follows from the aforesaid discussion is;

(1) 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 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.

(2) Integrated tax has also not been defined under the Exemption Notification. It has been defined under section 2(12) of the Integrated Tax Act 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

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18. 2018 (19) GSTL 637 (Mad.)

section 12 of the Customs Act, and therefore, cannot be called as **duty of customs**; and

(3) 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.

33. It is in the light of the aforesaid discussion that the meaning assigned to **duty of customs** in the Exemption Notification has to be understood.

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.

35. It is for this reason that it has been contended by the learned Authorised Representatives of the Department that omission to mention "specified in the said First Schedule" in the conditions set out in column (3) of the Table for serial no. 2 after "Duty of customs", would mean that the Government intended to include integrated tax and compensation cess in the expression **duty of customs**.

36. It is not possible to accept this reasoning advanced by the learned Authorised Representatives of the Department. In the first instance, the meaning assigned to **duty of customs,** as discussed above, is the meaning assigned to 'duty' under section 2(15) of the Customs Act, which would be the duty leviable under section 12 of the Customs Act. Mere omission to mention "specified in the First Schedule to the Tariff Act" after "Duty of customs" in the conditions set out in column (3) of the Table for Serial No. 2 cannot lead to an inference that **duty of customs** would include integrated tax and compensation cess. Column (3) of the Table refers to "Duty of customs" which would be leviable. Section 2(15) of the Customs Act defines 'duty' to mean a duty of customs leviable under the Customs Act. It is section 12 of the Customs Act which provides that the duties of customs shall be levied at such rates as may be specified under the Tariff Act. Section 2 of the Tariff Act also provides that the rates at which duty of customs shall be levied under the Customs Act are specified in the First and Second Schedules to the Tariff Act. 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.

37. This apart, it is also necessary to consider whether omission to add 'specified in the First Schedule' after 'Duty of Customs' in

the conditions set out in column (3) of the Table at serial number 2 is deliberate or unintentional. To appreciate this, it would be necessary to examine whether it was at all necessary to add 'leviable thereon which is specified in the said First Schedule' after 'duty of customs' in the main body of the Exemption Notification. As noticed above, even if 'leviable thereon which is specified in the said First Schedule' after 'duty of customs' in the main body of the Exemption Notification, had not been added, it would have necessarily meant **duty of customs** that is defined under section 2(15) of the Customs Act read with section 12 of the Customs Act and section 2 of the Tariff Act. This in turn, would relate to the First Schedule of the Tariff Act. It, therefore, follows that it is only as a matter of abundant caution and only to make the intention clear beyond any doubt that the main body of the Exemption Notification includes duty of customs specified in the First Schedule. Thus, no significance can be attached to the fact that 'specified in the First Schedule' has not been mentioned after 'Duty of customs' in the conditions set out at column no. (3) in the Table for serial number 2 of the Exemption Notification.

38. This precise issue was considered by the Supreme Court in **Union of India and others vs. Modi Rubber Limited and Others**[19]**,** though it is in the context of duty of excise levied under the Central Excises & Salt Act, 1944. The Supreme Court noticed that in some of the exemption notifications, the Central Government used specific language indicating that the exemption

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19. 1986 (25) ELT 849 (S.C)

granted was in respect of the excise duty leviable under the Central Excises & Salt Act, 1944, but in some exemption notifications only 'duty of excise' was mentioned without specifying 'leviable under Central Excises & Salt Act, 1944'. The Supreme Court observed that it is not uncommon that at times the Legislature, with a view to making its intention clear beyond doubt, uses words which may not be strictly necessary to be added since without them the same intention can be spelt out as a matter of judicial construction and this would be more so in the case of subordinate legislation by the executive. It often happens that the officer may employ words with a view to leaving no scope for possible doubts or even for greater completeness, though these words may not add anything to the word or scope of the subordinate legislation. Therefore, even if the words 'duty of excise' leviable under the Central Excises and Salt Act, 1944 did not find place, as in some of the exemption notifications, it would not necessarily lead to an inference that the expression 'duty of excise' was intended to refer to all duties of excise, including the special auxiliary duties of excise. The Supreme Court emphasised that the expression 'duty of excise' has to be interpreted bearing in mind the context in which it occurs. The Supreme Court, therefore, concluded that the expression 'duty of excise' must bear the same meaning which it has in rule 8(1), which is excise duty payable under Central Excises and Salt Act, 1944 and cannot bear an extended meaning so as to include special excise duty and auxiliary excise duty. The relevant paragraph of the judgment is reproduced below:

> **"9.....** Now, it is no doubt true that in these various notifications referred to above, the Central Government has, while granting exemption under Rule 8(1), used specific language indicating that the exemption, total or partial, granted under each such notification is in respect of excise duty leviable under the Central Excises and Salt Act, 1944. **But, merely because, as a matter of drafting, the Central Government has in some notifications specifically referred to the excise duty in respect of which exemption is granted as `duty of excise' leviable under the Central Excises and Salt Act, 1944, it does not follow that in the absence of such words of specificity, the expression `duty of excise' standing by itself must be read as referring to all duties of excise. It is not uncommon to find out that the legislature sometimes, with a view to making its intention clear beyond doubt, uses language *ex abundanti cautela* though it may not be strictly necessary and even without it the same intention can be spelt out as a matter of judicial construction and this would be more so in case of subordinate legislation by Executive. The officer drafting a particular piece of subordinate legislation in the Executive Department may employ words with a view to leaving no scope for possible doubt as to its intention or sometimes even for greater completeness, though these words may not add anything to the meaning and scope of the subordinate legislation**. Here, in the present notifications, the words `duty of excise leviable under the Central Excises and Salt Act, 1944' do not find a place as in the other notifications relied upon by the respondents. But, that does not necessarily lead to the inference that the expression `duty of excise' in these notifications was intended to refer to all duties of excise including special and auxiliary duties of excise. **The absence of these words does not absolve us from the obligation to interpret the expression `duty of excise**' in these Notifications. We have still to construe this expression what is its meaning and import and that has to be done bearing in mind the context in which it occurs. We have already pointed out that these notifications having been issued under Rule 8(1), the expression `duty of excise' in these notifications must bear the same meaning which it has in Rule 8(1) and that meaning clearly is excise duty payable under the Central Excises and Salt Act, 1944 as envisaged in Rule 2 clause (v). It cannot in the circumstances bear an extended meaning so as to include special excise duty and auxiliary excise duty."
>
> **(emphasis supplied)**

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.

40. It would also be appropriate to refer to the judgment of Bombay High Court in **Devidayal Electronics.** The Bombay High Court held that since the Notification used the word "factory" and also the word "industrial unit" in the same Notification, it has to be assumed that the said two words were intended to bear different meanings. The Court, therefore, held that the words "industrial unit" must mean something other than "factory".

41. This judgment of the Bombay High Court in **Devidayal Electronics** was approved by the Supreme Court in **Collector of Central Excise vs. Himalayan Co-op. Milk Product Union Limited**[20].

42. It would also be pertinent to refer to the decision of the Supreme Court in **S. S. Ayodhya Distillery.** The issue that arose before the Supreme Court was whether "paddy husk" can be

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20. 2000 (122) ELT 327 (S.C)

treated as "rice husk". The Supreme Court held that when two expressions have been used in the same Notification, two different meanings should be assigned thereto. The observations are as follows:

> **"11.** As paddy and rice are considered to be the separate commodities, paddy husk cannot be treated to be rice husk.
>
> Not only in the notification dated 7-9-1981 but also in the notification dated 5-6-1985 paddy husk is not mentioned. By reason of notification dated 6-6-1996 'paddy husk' was inserted. Even then, the rice husk was not deleted. No explanation was offered therefor. Both rice husk and paddy husk, thus, found place in the notification. Indisputably, therefore, paddy husk was subjected to for the first time by reason of the said notification dated 6-6-1996. Yet again, while giving a purported new look to the entry in the notification dated 15-1-2000, the words 'rice husk' and 'paddy husk' have respectively been mentioned. Even then no attempt was made to issue any clarification.
>
> Two expressions having been used ordinarily two different meanings should be assigned thereto. If by reason of a notification, taxes are sought to be imposed upon a new commodity applying Heydon's Rules (3 Co. Rep: 7a; 76 E.R. 637), it must be held that the mischief was sought to be remidied thereby.
>
> It is, therefore, difficult to agree with Mr. Gupta that rice husk and paddy husk denote the same commodity."

43. The Supreme Court made the same observations in **Kumho Petrochemicals Company Limited** and the relevant paragraph is reproduced below:

> "32. ……The learned counsel for respondent rightfully pointed out that the legislature has consciously used the expression 'may' and 'shall' at different places in the same Section, i.e., Section 9A of the Act. In such a scenario, it has to be presumed that different expressions were consciously chosen by the Legislature to be used, and it clearly understood the implications thereof. Therefore, when the word 'may' is used in the same Section in contradistinction to the word 'shall' at other places in that very Section, it is difficult to interpret the word 'may' as 'shall'. Therefore, it is difficult to read the word 'may' as 'shall'."

44. The Andhra Pradesh High Court in **Madhucon Projects Limited** also observed that two different expressions in a statute must be construed to carry different meanings and the observations are as follows:

> "IX. **Two Different expressions in a statue must be construed to carry different meanings:**
>
> **49.** As Parliament has used two different expressions in the Explanation to two distinct provisions, this Court cannot presume the effect of both the Explanations to be the same. If both the Explanations were meant to have the same effect, and to have retrospective application, it was unnecessary for Parliament to use two different expressions in the Explanations to Section 32K(1) and Section 32-O(1)(i) of the Act, as use of the same words would have sufficed. When two different expressions are used by the same statute, one has to construe these different expressions as carrying different meanings."

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.

46. Learned Authorized Representatives of the Department have placed reliance upon the exemption Notification No. 94/96 dated December 16, 1996. The relevant portion is reproduced below :

> "**Exemption to re-import of goods exported under duty drawback, rebate of duty or under bond -** In exercise of the

powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the Notification of the Government of India in the Ministry of Finance, (Department of Revenue), No. 97/95-Customs, dated the 26 May, 1995 the Central Government, 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 hereto annexed (hereinafter referred to as the said table) when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, the additional duty leviable under 3 of the said Customs Tariff Act and special duty of customs leviable under sub-section (1) of Section 68 of the Finance (No. 2) Act, 1963 (33 of 1996), 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**	**Amount of Duty**
(1)	(2)	(3)
1.	xxxx xxxx xxx	xxxx xxxx xxxx
2.	Goods, other than those falling under Sl 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 or not), insurance and freight charges, both ways.

47. It would be seen that the aforesaid Notification refers to the duties of customs leviable thereon which is specified in the said first schedule, the additional duty leviable thereon under section 3 of the Tariff Act and special duty of customs leviable under section 68(1) of the Finance Act, whereas the instant Exemption

Notification refers to duty of customs leviable thereon which is specified in the said First Schedule and the integrated tax, compensation cess leviable thereon respectively under sub-sections (7) and (9) of section 3 of the Tariff Act. Thus, the additional duty leviable thereon under Section 3 of the Tariff Act and special duty of customs leviable under section 68(1) of the Finance Act have been replaced by the integrated tax under section 3(7) and compensation cess under section 3(9) of the Tariff Act. It cannot, therefore, be contended that "duty of customs" referred to in the condition against serial no. 2 of the Exemption Notification would include integrated tax.

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.

49. It would, therefore, not be necessary to examine the contention of learned Authorised Representatives of the Department that in case of any ambiguity in an Exemption Notification, the benefit should go to the Revenue. It would also not be necessary to examine the remaining contentions advanced by the learned Counsel for the Appellant that the activity of repairs is "supply of service" or that the said activity would not fall under the category of 'import of service' under the Integrated Tax Act since

the necessary ingredients mentioned therein have not been fulfilled.

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.

[Order pronounced on November 02, 2020]

(JUSTICE DILIP GUPTA)
PRESIDENT

(C L MAHAR)
MEMBER (TECHNICAL)

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