

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 50247 OF 2018

[Arising out of Order-in-Original No. 09/NKU(10)ADG/DRI/N.Delhi/2017 dated 26.09.2017 passed by the Additional Director General (Adjudication), New Delhi]

M/s. Decore Exxoils Pvt. Ltd.

6, Dwarka Sadan,
Press Complex, Zone-1,
M.P. Nagar, Bhopal, MP, 462011

...Appellant

Versus

Commissioner, Customs,
New Customs House, Near IGI Airport
New Delhi

...Respondent

APPEARANCE:

Shri Shivek Trehan and Ms. Ayushi Sinha, Advocates for the Appellant
Shri N.M. Goyal, Authorised Representative for the Department

CORAM:

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

DATE OF HEARING: 27.05.2025

DATE OF DECISION: 24.11.2025

FINAL ORDER NO. 51787/2025

JUSTICE DILIP GUPTA:

M/s. Decore Exxoils Private Limited¹ has filed this appeal seeking quashing of the order dated 26.09.2017 passed by the Additional Director General (Adjudication), Directorate of Revenue Intelligence, New Delhi ² that has adjudicated the show cause notice dated 22.06.2015 issued in respect of the imports made through Air Cargo Complex, New Delhi and Air Cargo Complex, Sahar, Mumbai. The benefit of the exemption notification to the Aircraft and spare parts

-
- 1. the appellant**
 - 2. the Additional Director General**

imported by the appellant has been denied and the differential customs duty has been confirmed with penalty and interest. The Aircraft has also been confiscated with an option to the appellant to redeem the same on payment of redemption fine.

2. The appellant, formerly known as Bhaskar Essoils Pvt. Ltd., was in the business of scheduled/non-scheduled air taxi services and was organizing charter and group tours in India and abroad.

3. The appellant was initially granted a No Objection Certificate by the Ministry of Civil Aviation on 04.08.2008 to operate Non-Scheduled (Passenger) Operations³, which certificate was valid upto 03.02.2010. The No Objection Certificate was subsequently extended again on 28.06.2010 and was valid upto 01.02.2011.

4. On 28.07.2010, the Directorate General of Civil Aviation⁴ granted the appellant a No Objection Certificate to import Learjet 60XR (MSN 60-0384) Aircraft subject to compliance of the civil aviation requirements and other regulatory mandates by the DGCA.

5. On 11.12.2010, the appellant furnished an undertaking to the Assistant Commissioner of Customs stating that the imported Aircraft and its spare parts would be used exclusively for non-scheduled air transport services.

6. Pursuant to this, the appellant filed a Bill of Entry on 19.12.2010 and imported the Aircraft and its parts on payment of NIL duty claiming benefit of Notification No. 21/2002-Cus dated 01.03.2002⁵ and Notification No. 6/2006-CE dated 01.03.2006. The DGCA subsequently issued Air Operator Permit (Non-Scheduled) to the appellant on 25.01.2011 for operation of the said Aircraft and also endorsed the

3. **NSOP**

4. **DGCA**

5. **the exemption Notification**

NSOP to include the impugned Aircraft in it. Since then, the NSOP has been renewed from time to time and was valid up till 23.01.2017.

7. The appellant claims to have been operating the Aircraft for non-scheduled operations, offering charter services through its dedicated division called D B Air to group companies (which are separate legal entities) and independent third parties. After completion of every chartered flight, DB Air issued an invoice to the client.

8. On 05.06.2015, the Directorate of Revenue Intelligence⁶ issued a seizure order under section 110(1) of the Customs Act, 1962⁷ stating that Aircraft was liable to be confiscated under section 111 of the Customs Act.

9. The appellant requested for provisional release of the Aircraft by a letter 19.06.2015, which permission was granted on 29.06.2015 upon submission of a bank guarantee of Rs. 2,59,00,000/- and execution of a bond and other necessary documents.

10. On 22.06.2015, the DRI issued a show cause notice to the appellant alleging that there was a misuse of the Exemption Notification by the appellant and a demand of Rs. 8,84,89,455/- towards differential duties was raised. The show cause notice alleged that the appellant had violated the conditions of the Exemption Notification by not using the Aircraft for the intended purpose of non-scheduled operations, and instead allowed it to be used by the promoters and their family members. It also alleged that spare parts imported were not used for repair or maintenance under the Exemption Notification dated 01.03.2006 (Condition 105) and further that the appellant was not a 'dedicated company' eligible to claim the benefit under Exemption

6. DRI
7. the Customs Act

Notification (Condition 104). It also alleged that the appellant had not complied with the requirements of CAR 1010 as it did not publish tariffs or issue individual passenger tickets and that there was a violation of the Import Licensing Note to Chapter 88 of the Customs Tariff Act⁸.

11. The appellant submitted the reply to the show cause notice and denied the allegations made therein.

12. The Additional Director General, however, did not accept the submissions made by the appellant and confirmed the demand raised in the show cause notice. The relevant portions of the order are as follows:

"5.4.12 In terms of the CAR dated 01.06.2010, a Non-Scheduled Operator shall issue passenger tickets in accordance with the provisions of the Carriage by Air Act, 1972 and any other requirements which may be prescribed by DGCA and such tickets shall stipulate the conditions of carriage including the liability of the operator which shall be same as applicable to the Scheduled Air Transport Operators. In case of charter operation, a single document issued to the party chartering the flight containing all conditions may be treated as fulfilling this requirement. **However, in this case, admittedly, they have not issued individual tickets to the passengers.** Further, they have also neither issued any document containing all conditions stipulated under individual tickets as prescribed by the CAR, 2010 nor have they published a tariff for the Aircraft as is the requirement for charter. **Hence, they have not conformed to the provisions applicable to Non-Scheduled Air Transport Service, either as Passenger or Charter.**

5.4.13 The Noticee have not provided the said Aircraft for public transport of passengers. In fact, the Aircraft was mostly (about 62% of the total flights) used by the top management of the Dainik Bhaskar Group and their families, which is different from Non-Scheduled Air Transport

8. the Customs Tariff Act

service. Though, the remaining 38% of the flights have been used by outside/third parties, for which the payments were received for hiring the entire Aircraft, neither they have issued individual passenger tickets or a single/consolidated document nor they have a published tariff. Thus, even these flights do not fall in the category of Non- Scheduled Air Transport Service.

5.4.14 The Noticee had applied for and obtained DGCA approval and Permit for providing Non-Scheduled Air Transport service, which they have not provided. They had also availed Customs Duty exemption by giving specific Undertaking to provide Non- Scheduled Air Transport service only, i.e., 100% flights to be used for Non-Scheduled Air Transport service, which they have not provided. **Hence, they have violated the terms of exemption condition and thus, they are liable to pay duty due but for the said exemption.**

XXXXXXXXXXXXX

5.7 Had they disclosed to the Customs at the time of import the true purpose of import of the Aircraft, they would not have been eligible ab-initio for the benefit of Notification No. 21/2002-Cus. and related Central Excise Notification No. 06/2006-CE. Therefore, by suppressing the true purpose of the Aircraft at the time of import and by giving false Undertaking, the Noticee have evaded due Customs duty on the impugned Aircraft by way of willful misstatement and suppression of facts, thereby attracting the provision of extended period of Section 28(4) of the Customs Act, 1962."

(emphasis supplied)

13. It is this order that has been assailed in this appeal.

14. Shri Shivek Trehan, learned counsel for the appellant assisted by Ms. Ayushi Sinha, made the following submissions:

- (i)** The appellant operated as a non-scheduled air transport service provider under a valid NSOP issued by

the DGCA. The Aircraft imported by the appellant was used strictly under the scope of the permit, and its usage is fully compliant with Condition No. 104 of Exemption Notification No. 21/2002-Cus., as amended by Notification No. 61/2007-Cus;

- (ii)** The appellant had provided Air Transport Service which was a non-scheduled (passenger) service as per Condition No. 104 of the Exemption Notification and rule 3(49) of the Aircraft Rules;
- (iii)** As per the CAR 2010, Non-Scheduled (Passenger) Services can also provide Charter services. Subsequently, now both the services together have been termed as Non-Scheduled Air Transport Services and hence, the appellant also conformed to the requirements under CAR;
- (iv)** Not issuing tickets is not violative of the CAR 2010 and thereby the use of the impugned Aircraft was well within the ambit of Non-scheduled Air Transport (Charter) services;
- (v)** The appellant met the criterion of being "dedicated" to air charter operations, as is clear from the Memorandum of Association and Articles of Association of the appellant. They demonstrate that one of the principal objectives of the company is the operation of air transport services;
- (vi)** There is no bar under law that could prevent the appellant from operating non-scheduled air transport services for its group companies, provided such operations were carried out against remuneration;

- (vii) The extended period of limitation under section 28(4) of the Customs Act could not have been invoked in the facts and circumstances of the case; and
- (viii) The imported Aircraft was not liable to confiscation under sections 111(d) or 111(o) of the Customs Act.

15. Shri N.M. Goyal, learned authorised representative appearing of the department, however, supported the impugned order and made the following submissions:

- (i) The Exemption Notification clearly stipulates the condition of importation. Strict compliance with condition of the Exemption Notification is a sine qua non for the exemption claimed, as has been held by the Supreme Court in **Mediwell Hospital and Health Care Pvt. Ltd. vs. Union of India**⁹ and **M/s. Eagle Flask Industries Ltd. vs. Commissioner**¹⁰;
- (ii) The appellant had given an undertaking to the Customs that the imported Aircraft will be used only for providing Non-Scheduled Air Transport service. However, during the period from February 2011 to September 2013, no charter services were provided by the appellant and the Aircraft was mostly employed for the private use under the guise of charter to various group companies;
- (iii) The invoices for such usage of the Aircraft were raised on various group companies. The requirement under the proviso to the Exemption Notification is that the importer should be a dedicated company for the purpose of non-schedule charter services. However, the

9. **1997 (89) E.L.T. 425 (WC)**

10. **2004 (171) E.L.T. 296 (SC)**

appellant was mainly into the business of oil extraction & refining and trading commodities;

- (iv)** DB Air is a separate independent division of the appellant. It could not have provided passenger transport service and it did not issue individual passenger ticket; and
- (v)** The Aircraft was mainly used by the top management for their own use, though on paper it has been shown that the Aircraft was chartered to the own group companies of the appellant.

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

17. The Additional Director General, in the impugned order, has observed that in terms of the CAR 2010 a non-scheduled operator has to issue passenger tickets, but in the present case the appellant did not issue individual tickets to the passengers and hence the appellant had not conformed to the provisions of the non-scheduled air transport service either as passenger or charter. The Additional Director General also observed that the appellant had not provided the said Aircraft for public transport of passengers, since it was mostly used by the top management of Dainik Bhaskar Group and their families. The Additional Director General, therefore, concluded that the appellant had violated the terms of the Exemption Notification and so would have to pay customs duty. In regard to the invocation of the extended period of limitation under section 28(4) of the Customs Act, the Additional Director General held that the appellant had evaded due customs duty by making willful mis-statement and suppression of facts.

18. The Delhi High Court in **Commissioner of Customs (Preventive), New Delhi vs. Global Vectra Helicorp Ltd.**¹¹, after referring to the provisions of CAR 2010, observed that a non-scheduled operation is allowed to also operate revenue charter flights for related entities. The relevant portions of the judgment are reproduced below:

“32. In East India Hotels Ltd. (supra), this Court had noted that the term 'air transport service' is defined in wide terms and would cover transport by air of humans, animals, mails or any other thing, animate or inanimate. However, for a service to fall within the meaning of air transport service as defined in Rule 3(9) of the Aircraft Rules, it is essential that the same is provided for some kind of remuneration.

33. This Court had also referred to paragraphs 2.4 and 2.5 of the Civil Aviation Requirement (CAR), Section 3, Air Transport Series 'C' Part-III issue-II, dated 1-6-2010 issued by the DGCA. The said paragraphs are set out below:

“2.4 The carriage of passengers by a non-scheduled operator's permit holder maybe performed on per seat basis or by way of chartering the whole aircraft on per flight basis, or both. There is no bar on the same aircraft being used for either purpose as per the requirement of customers from time to time. The operator is also free to operate a series of flights on any sector within India by selling individual seats but will not be permitted to publish time table for such flights. Operation of revenue charters to points outside India may also be undertaken as per paragraph 9.2.

2.5 A non-Scheduled Operator is also allowed to operate revenue charter flights for a company within its group companies, subsidiary companies, sister concern, associated companies, own employees, including Chairman and members of the Board of Directors of the company and their family

11. (2023) 25 GSTR-OL 237

members, provided it is operated for remuneration, whether such service consists of a single flight or series of flights over any period of time.”

34. It is apparent from a plain reading of paragraph 2.5 aforesaid that a non-scheduled operator is also allowed to operate revenue charter flights for related entities.

35. Mr. Harpreet Singh's contention that the respondent was not permitted to use the helicopters for non-scheduled (passenger) services as it had imported the aircrafts for non-scheduled (charter) services is insubstantial. Condition No. 104 of the Exemption Notification would be satisfied even if the aircraft imported is used for non-scheduled (passenger) services. It is further relevant to note that non-scheduled (passenger) services would also include non-scheduled (charter) services if provided for passengers.

36. It is also material to note that the Exemption Notification was further amended by Notification No. 21/2011-Cus dated 1-3-2011 and the following explanation has been added to Condition No. 104 of the Exemption Notification:

“**2.** For the purposes of this exemption, use of such imported aircraft by a non-scheduled (passenger) operator for non-scheduled (charter) services or by a non-scheduled (charter) operator for non-scheduled (passenger) services, shall not be construed to be a violation of the conditions of import at concessional rate of duty.”

37. Although, the requirements of Condition No. 104 of the Exemption Notification are unambiguous but the aforesaid explanation inserted by way of amendment of Condition No. 104 of the Exemption Notification amply clarifies that the exemption condition would be satisfied if the aircraft imported is used for non-scheduled (passenger) services or non-scheduled (charter) services.”

(emphasis supplied)

19. A Larger Bench of the Tribunal in **VRL Logistics vs. Commissioner of Customs**¹² held that non-scheduled (passenger) operator can carry out charter service and there is no requirement of publication of tariff. The Larger Bench also held that personal of companies which are group companies of the appellant are also members of the public. It also held that as the business of the appellant includes the carriage by air of passenger for hire or reward.

20. It is, therefore, clear from the aforesaid decisions that the appellant had not violated the condition 104 of the Exemption Notification. The appellant could provide charter services even if it was granted permission to operate NSOP. Non issuance of tickets does not violate CAR 2010 and the appellant met the criterion of being 'dedicated' to air charter operations. The Memorandum of Association and Articles of Association of the appellant clearly provide that one of the principle objectives of the company is operation of air transport services. The appellant could, therefore, operate non-scheduled air transport services for its group companies as such operations were carried out against remuneration.

21. Learned counsel for the appellant also submitted that the Additional Director General was not justified in upholding the invocation of the extended period of limitation under section 28(4) Customs Act.

22. This submission deserves to be accepted. The only reason given in paragraph 5.7 of the impugned order is that the appellant suppressed information from the department and gave a false undertaking to evade payment of customs duty. There is no finding in the impugned order that facts were suppressed with intention to evade payment of duty.

12. Customs Appeal No. 74 of 2010 decided on 08.08.2022

23. The Courts have time and again held that mere suppression of fact is not enough and there has to be a deliberate attempt to evade payment of excise duty. The show cause notice must specifically deal with this aspect and the adjudicating authority is also obliged to examine this aspect in the light of the facts stated by the assessee in reply to the show cause notice. In the absence of any finding that suppression was with an intent to evade payment of duty, the extended period of limitation cannot be invoked.

24. The provisions of section 11A (4) of the Central Excise Act, 1944, which are similar to the provisions of section 28(4) of the Customs Act also deals with the extended period of limitation. They came up for interpretation before the Supreme Court in **Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay**¹³. The Supreme Court observed that section 11A(4) empowers the department to reopen the proceedings if levy has been short levied or not levied within six months from the relevant date but the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. It is in this context that the Supreme Court observed that the act must be deliberate to escape payment of duty. The relevant observations are:

"2. *****. The Department invoked extended period of limitation of five years as according to it the duty was short levied due to suppression of the fact that if the turnover was clubbed then it exceeded Rupees Five lakhs.

13. 1995 (78) E.L.T. 401 (S.C.)

4. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or willful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. **It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty.** Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.”

(emphasis supplied)

25. This decision of the Supreme Court in **Pushpam Pharmaceuticals** was followed by the Supreme Court in **Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise, Meerut**¹⁴ and the relevant paragraph is as follows:

“27. Relying on the aforesaid observations of this Court in the case of **Pushpam Pharmaceuticals Co. v. CCE** we find that “suppression of facts” can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not render it suppression. It is settled law that mere failure to declare does not amount to wilful suppression. **There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made hereinabove that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in the proviso to Section 11-A of the Act.** We are, therefore, of the firm opinion that where facts were known to both the parties, as in the

14. (2005) 7 SCC 749

instant case, it was 7 (2005) 7 SCC 749 11 E/52953/2018 not open to CEGAT to come to a conclusion that the appellant was guilty of "suppression of facts".

(emphasis supplied)

26. In **Easland Combines, Coimbatore vs. Collector of Central Excise, Coimbatore**¹⁵ the Supreme Court observed that for invoking the extended period of limitation, duty should not have been paid because of fraud, collusion, wilful statement, suppression of fact or contravention of any provision. These ingredients postulate a positive act and, therefore, mere failure to pay duty which is not due to fraud, collusion or wilful misstatement or suppression of facts is not sufficient to attract the extended period of limitation.

27. The aforesaid decisions of the Supreme Court were relied upon by the Supreme Court in **Uniworth Textiles Ltd. versus Commissioner of Central Excise, Raipur**¹⁶ and the relevant portion of the judgment is reproduced below:

"12. We have heard both sides, Mr. R.P. Batt, learned senior counsel, appearing on behalf of the appellant, and Mr. Mukul Gupta, learned senior counsel appearing on behalf of the Revenue. We are not convinced by the reasoning of the Tribunal. **The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable.** If that were to be true, we fail to understand which form of nonpayment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. **In our opinion, the main body of the Section, in fact, contemplates ordinary default in**

15. (2003) 3 SCC 410

16. 2013 (288) E.L.T. 161 (S.C.)

payment of duties and leaves cases of collusion or wilful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso."

(emphasis supplied)

28. The Supreme Court in **Continental Foundation Joint Venture vs. Commissioner of Central Excise, Chandigarh**¹⁷ also observed in connection with section 11A(4) of the Excise Act, that suppression means failure to disclose full information with intention to evade payment of duty and the observations are as follows:

"10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as "fraud" or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with knowledge that the statement was not correct."

(emphasis supplied)

29. It is, therefore, clear that suppression of facts should be deliberate and in taxation laws it can have only one meaning, namely that the correct information was not disclosed deliberately to escape payment of duty.

17. 2007 (216) E.L.T. 177 (S.C.)

30. Thus, the extended period of limitation contemplated under section 28(4) of the Customs Act could not have been resorted to in the facts and circumstances of the case. The Additional Director General was, therefore, not justified in holding that the demand could be confirmed by invoking the provisions of section 28(4) of the Customs Act.

31. Thus, for all the reasons stated above, the impugned order dated 26.09.2017 passed by the Additional Director General cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **24.11.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 50247 OF 2018

[Arising out of Order-in-Original No. 09/NKU(10)ADG/DRI/N.Delhi/2017 dated 26.09.2017 passed by the Additional Director General (Adjudication), New Delhi]

M/s. Decore Exxoils Pvt. Ltd.

6, Dwarka Sadan,
Press Complex, Zone-1,
M.P. Nagar, Bhopal, MP, 462011

...Appellant

Versus

Commissioner, Customs,
New Customs House, Near IGI Airport
New Delhi

...Respondent

APPEARANCE:

Shri Shivek Trehan and Ms. Ayushi Sinha, Advocates for the Appellant

Shri N.M. Goyal, Authorised Representative for the Department

CORAM : **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 27.05.2025

DATE OF DECISION: 24.11.2025

ORDER

Order pronounced.

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Shreya