

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

**PRINCIPAL BENCH-COURT NO. 4**

**CUSTOMS APPEAL NO. 506 OF 2010**

[Arising out of Order-in-Original No. 21/Commr//HKC/2010 dated 30.07.2010 passed by the  
Commissioner of Customs(Preventive) New Delhi]

**M/S PRIVILEGE AIRWAYS PVT. LTD.**

**.....APPELLANT**

3<sup>RD</sup> Floor, HDIL Towars, Anant Kanekar Marg,  
Bandra East  
Mumbai-51

Vs.

**COMMISSIONER OF CUSTOMS(PREVENTIVE)**

**....RESPONDENT**

New Custom House,  
Near IGI Airport  
New Delhi

**Appearance:**

None for the Appellant

Shri Gurdeep Singh Special Counsel for the Respondent

**with**

**CUSTOMS APPEAL NO. 507 OF 2010**

[Arising out of Order-in-Original No. 21/Commr//HKC/2010 dated 30.07.2010 passed by the  
Commissioner of Customs (Preventive) New Delhi]

**Shri SARANG WADHAWAN, DIRECTOR  
M/S PRIVILEGE AIRWAYS PVT. LTD.**

**.....APPELLANT**

3<sup>RD</sup> Floor, Dheeraj Arma, Anant Kanekar Marg,  
Bandra East  
Mumbai-51

Vs.

**COMMISSIONER OF CUSTOMS(PREVENTIVE)**

**....RESPONDENT**

New Custom House,  
Near IGI Airport  
New Delhi

**Appearance:**

None for the Appellant

Shri Gurdeep Singh Special Counsel for the Respondent

**CORAM:**

**HON'BLEMR. S S GARG, MEMBER (JUDICIAL)**

**HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 50309-50310/2026**

**DATE OF HEARING : 03/12/2025**

**DATE OF DECISION : 03/03/2026**

**P.V.SUBBA RAO**

1. M/s Privilege Airways Pvt. Ltd.<sup>1</sup> and its Director Shri Sarang Wadhawan<sup>2</sup> filed these appeals to assail the order dated 30.07.2010<sup>3</sup> passed by the Commissioner of Customs (Preventive), New Delhi in which he denied the benefit of exemption notification no.21/2002-Cus (S.No. 347B) for the Falcon 2000 aircraft imported by Privilege and confirmed demand of duty of Rs. 19,76,50,325/- under section 28 of the Customs Act, 1962<sup>4</sup>, confiscated the aircraft and imposed redemption fine of Rs. 15,00,00,000/- under section 125 of the Act and imposed a penalty of Rs. 5,00,00,000/- on Privilege under section 112(a) of the Act and penalty of Rs. 20,00,000/- under section 112(a) of the Act on Shri Wadhawan.

2. Nobody appeared on behalf of the appellants. Nobody has been appearing on behalf of the appellants after the previous counsel Shri Narasimhan had withdrawn his Vakalatnama on 6.9.2024. Registry was directed to issue notices to the appellants and the Department was also requested to attempt to serve the appellants and the matter was directed to be listed on 15.10.2024. Thereafter, the matter was listed on several dates but none appeared on behalf of the appellants.

3. We have heard learned special counsel for the Revenue and perused the records.

4. Privilege imported Falcon 2000 jet aircraft claiming conditional exemption notification no. 21/2002-Cus (S.No. 347B) which provided for exemption to aircrafts imported into India for providing Non-Scheduled (passenger) services or non-Scheduled (charter) services. Relevant portion of the notification is 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 makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue),No. 21/2002-Customs, dated the 1st March, 2002 which

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**1Privilege**  
**2Wadhawan**  
**3 Impugned order**  
**4 Act**

was published in the Gazette of India, Extraordinary, vide number G.S.R. 118(E) of the same date, namely:-

In the said notification,-

(A) In the Table,-

(i) xxxxxxxx

(ii) after S. No. 347 and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely:-

S.No.	Heading No. or Sub-heading No.	Chapter or Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
347B	8802(except 8802 60 00)	All Goods	Nil	-	104

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(B) in the Annexure, after Condition No. 102 and the entries relating thereto, the following Conditions shall be inserted, namely:-

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104.

(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) services 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 purpose, 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. **Privilege** imported the aircraft for rendering Non-Scheduled (passenger) service only and had given an undertaking to the effect. However, it was found that the aircraft was chartered out to one- M/s. Housing Development & Infrastructure Ltd.<sup>5</sup> whose directors were the same as the directors of **Privilege**. It was used exclusively for the use of the

<sup>5</sup> HDIL

directors of **HDIL**. Therefore, it was felt that **Privilege** violated condition no. 104 (ii) of the notification. Accordingly, a Show Cause Notice dated 25.5.2009<sup>6</sup> was issued to the **Privilege, Shri Wadhawan** and others proposing recovery of the duty payable on the aircraft with interest, confiscation of the aircraft and imposition of penalties on them which culminated in the impugned order.

6. There is no dispute that **Privilege** had chartered out the aircraft to **HDIL** for its exclusive use and that the undertaking given by **Privilege** at the time of import was that the aircraft would be used for Non-scheduled (passenger) service.

7. The question to be answered is whether aircrafts imported for non-scheduled (passenger) service can be used for non-scheduled (charter) service. A larger bench of this Tribunal held that it can be so used in **VRL Logistics**<sup>7</sup>. Relevant portion of this order is reproduced below:

124. Thus, for the reasons stated above, the answers to the reference are as follows:

(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) service;

(vii) CAR 2010 merely amalgamates CAR 1999 and CAR 2000 to provide a uniform code for operation of non-scheduled air transport services. It has restated and codified the position stated earlier by the DGCA through various clarifications and is explanatory in nature; and

(viii) The division bench in **King Rotors** was not correct in holding that the decision of the Tribunal in **Sameer Gehlot** was rendered per incuriam.

8. We have no reason to take a different view in this case. Respectfully following the decision of the larger bench in **VRL Logistics**, we find that the impugned order cannot be sustained and needs to be set aside.

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<sup>6</sup> SCN

<sup>7</sup> **CUSTOMS APPEAL NO. 74 of 2010-LB VRL Logistics vs Commissioner of Customs, Ahmedabad larger bench Order dated 8.8.2022**

9. The impugned order is set aside with consequential reliefs to the appellants.

[Order pronounced on 03/03/2026.]

**(S S GARG)**  
**MEMBER ( JUDICIAL )**

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

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