CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 540 OF 2010

[Arising out of the Order-in-Original No. 19/HKC/2010 dated 12/07/2010 passed by Commissioner of Customs, Preventive, New Delhi.]

M/s Mega Corporation Ltd., **......Appellant**
NSIC Complex,
Maa Anandmayee Marg,
Okhla Industrial Estate – III,
New Delhi – 110 020.

Versus

Commissioner of Customs, **....Respondent**
Preventive,
New Custom House,
New Delhi – 110 037.

WITH
CUSTOMS APPEAL NO. 541 OF 2010

[Arising out of the Order-in-Original No. 19/HKC/2010 dated 12/07/2010 passed by Commissioner of Customs, Preventive, New Delhi.]

Shri Kunal Lalani,
M/s Mega Corporation Ltd., **......Appellant**
NSIC Complex,
Maa Anandmayee Marg,
Okhla Industrial Estate – III,
New Delhi – 110 020.

Versus

Commissioner of Customs, **....Respondent**
Preventive,
New Custom House,
New Delhi – 110 037.

AND
CUSTOMS APPEAL NO. 542 OF 2010

[Arising out of the Order-in-Original No. 19/HKC/2010 dated 12/07/2010 passed by Commissioner of Customs, Preventive, New Delhi.]

Shri Anil Kumar Soni,
M/s Mega Corporation Ltd., **......Appellant**
NSIC Complex,
Maa Anandmayee Marg,
Okhla Industrial Estate – III,
New Delhi – 110 020.

Versus

Commissioner of Customs, Preventive, ...**Respondent**
New Custom House,
New Delhi – 110 037.

APPEARANCE:

Shri Kishore Kunal and Ms. Runjhun Pare, Advocates – for the appellant.
Shri Shiv Shankar, Authorized Representative for the Department.

CORAM:
HON'BLE DR. MRS. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51437-51439/2026

DATE OF HEARING : 21.08.2026
DATE OF DECISION: 09.09.2026

P.V. SUBBA RAO

M/s. Mega Corporation[1] filed **Customs Appeal No. 540 of 2010** to assail the order dated 12.7.2010[2] passed by the Commissioner in which he decided the proposals made in the show cause notice dated 15.7.2009[3] issued to the importer and others. **Shri Kunal Lalani**[4]**,** Managing Director of the importer, filed **Customs Appeal no. 541 of 2010** to assail the penalty of Rs. 10,00,000/- imposed on him. **Shri Anil Kumar Soni**[5], CEO of the importer, filed **Customs Appeal no. 542 of 2010** to assail the the penalty of Rs. 10,00,000/- imposed on him.

1. **The importer**
2. **impugned order**
3. **SCN**
4. **Lalani**
5. **Soni**

2. We have heard Shri Kunal Kishore assisted by Ms. Runjhun Pare learned counsels for the appellant and Shri Shiv Shankar, learned authorised representative for the Revenue and perused the records.

3. The importer imported an aircraft and filed Bill of Entry No. 221491 dated 30.7.2007 claiming exemption Notification No. 21/2002-Cus dated 1.3.2002 as amended (S. No. 347B) which provided for full exemption from duty subject to condition no. 104 of the notification which reads as follows:

> "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:

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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) ‘no-scheduled (passenger) services’ means air transport 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’ mean 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 operation is a dedicated company or partnership firm for the above purposes.

4. The importer submitted an NOC to import dated 27.4.2007 issued by the DGCA and NOC to operate non-scheduled air transport (charter) services dated 23.9.2005 issued by the Ministry of Civil Aviation. The importer had also given an undertaking as per condition no. 104 of the notification and accordingly the aircraft was cleared without duty.

5. Later, the officers of the Commissioner of Customs (Preventive) received intelligence that the importer was operating the aircraft without permit and had thus violated the condition no. 104 of the exemption notification and thereby had evaded duty.

6. They initiated investigation and issued a summons dated 7.8.2008 to the importer calling for relevant documents such as passenger, engine and flight logbooks of the aircraft, copy of the bill of entry, NSOP certificate, etc. Shri Mukesh Singhal, Manager and authorised signatory of the importer appeared and said that the documents would be submitted in 3 to 4 days.

7. Another summon was issued to Shri Soni, CEO of the importer and he gave his statement on 4.9.2008 under section 108 of the Customs Act, 1962[6]. He said that the importer's NOC to operate non-scheduled (charter) services was issued on 23.9.2005 which was further extended to 23.9.2007. The NOC to import was also extended till 7.9.2007 The aircraft landed in India on 10.8.2007. After clearance by the Customs, the aircraft took a test flight on 20.11.2007 and then took its first commercial flight on 29.12.2007 and from that date it had flown for over 100 hours. They raised invoices through their agents and had received payments through cheques. He further clarified that they were expecting clearance from the Ministry of Civil Aviation shortly after which they would obtain Non-Scheduled operator Permit (NSOP). **He further clarified that although they had no permits at that time, they had operated the aircraft for charter to meet their fixed expenses.**

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6. Act

8. Shri Lalani was also summoned and in his statement dated 8.9.2008, he said that they had applied for an extension of NOC to operate NSOP but the Ministry of Civil Aviation(MCA), by letter dated 13.2.2008, informed that no further extension would be considered. Thus, all the compliances/approvals/certifications were completed by 23.9.2007 but NSOP was held up due to lapse of NOC issued by the MCA. In anticipation of receiving the approvals, the appellant had undertaken first commercial flight on 29.12.2007 and had thereafter flown for over 100 hours on charter basis. He further said that if they were unable to procure an NSOP by 30.11.2008, they would pay the duty.

9. The appellant had, thereafter, paid the total duty amounting to Rs. 2,36,8,303/- through seven TR-6 challans dated from 15.9.2008 to 13.2.2009 under protest.

10. After completing the investigation, the SCN was issued to the importer to Shri Soni and to Shri Lalani stating that the importer’s permission to operate non-scheduled (charter) services was issued by MCA’s letter dated 23.9.2005 and the permission was further extended by MCA’s letter dated 23.3.2007 up to 22.9.2007 and request for further extension was denied by the MCA. The appellant had undertaken commercial flights on charter basis on 29.12.2007 and operated for over 100 hours but without any valid NSOP. Since they have operated charter flights without any permit to

operate, in terms of the undertaking they should have paid the customs duty and informed the department but they failed to do so.

11. It was also alleged in the SCN that import of aircraft by a person other than those mentioned in categories (a) to (h) is restricted and required an import licence as per Licensing note (1) and (2) of Chapter 88 of ITC (HS) for 2004-09 and therefore, the aircraft's import was unauthorised as there was no valid import licence.

12. It was, therefore, proposed to demand duty on the aircraft and appropriate the amount already deposited towards the demand, to demand interest under section 28AB of the Act and to impose penalties under section 112(a) and section 114A on the importer and under section 112(b) on Shri Lalani and Shri Soni. A corrigendum dated 10.12.2009 was issued to the SCN also proposing to confiscate the aircraft under section 111(d) and 111(o) of the Act.

13. The appellants herein resisted the proposals in the SCN which, were, however, confirmed in the impugned order the operative part of which is as follows:

(a) I confiscate the aircraft valued at Rs. 11,29,92,819/- (Rupees 11 crore twenty nine lakhs ninety two thousand eight hundred nineteen only) under section 111 (o) of the Customs Act, 1962. However, I give an option to MCL to redeem the same after paying Rs. 2,50,00,000/- (Rupees two crore fifty lakh only) as redemption fine under section 125 of the Customs Act, 1962.

(b) I confirm the demand of customs duty Rs.2,86,96,309/- (Rupees two crore, eighty six lakh ninety six thousand three hundred nine only) as per the undertaking given by the MCL at the time of importation when read with Supreme Court's judgments in the case of **Commissioner of Customs** versus **Jagdish Cancer & Research**[7] and **Commissioner of Customs** versus **C.T. Scan Research Centre (P) Ltd.**[8] I also order the appropriation of Rs. 2,36,82,303/- (Rupees two crore thirty six lakh eighty two thousand three hundred and three only) already deposited by MCL against the above demand.

(c) Since duty is not demandable under section 28 of the Customs Act, 1962, therefore, interest under section 28AB cannot be demanded.

(d) I impose a penalty of Rs. 10,00,000/- (Rupees Ten lakh only) upon Shri Anil Kumar Soni, CEO, M/s MCL, under section 112 (b) of the Customs Act, 1962.

(e) I impose a penalty of Rs. 10,00,000/- (Rupees ten lakh only) upon Shri Kunal Lalani, Managing Director, M/s MCL, under section 112 (b) of the Customs Act, 1962.

(f) I impose a penalty of Rs. 30,00,000/- (Rupees thirty lakh only), upon M/s MCL, under section 112 (a) of the Customs Act, 1962".

14. Hence this appeal.

Submissions on behalf of the appellants

15. Learned counsels for the appellants vehemently opposed the impugned order and reiterated the grounds of appeal as follows:

(i) Customs department has no jurisdiction to demand duty in the present case. The conditions of the exemption notification can only be monitored by the DGCA and not be the Customs. The authorities to decide if the aircraft has been used as per the permit granted by the DGCA and MCA are those authorities and not the customs department.

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7. 2001 (132) E.L.T. 257 (S.C.)
8. 2003 (155) E.L.T. 3 (S.C.)

(ii) The condition of the exemption notification is satisfied. The second part of condition no. 104 of the notification requires that the aircraft must be used for NSOP(charter) services and the importer had used them although it used them before the permit was issued. Existence of an NSOP permit is not a requirement under the exemption notification.

(iii) As held by the larger bench of this tribunal in **VRL Logistics Ltd.** versus **Commissioner of Customs Ahmedabad**[9]**,** in the absence of any finding by the DGCA that the importer had violated any conditions of the permit, Customs authorities cannot recover duty.

(iv) The entire operations carried out by the appellant were in conformity with the legislative policy.

(v) The substantive benefit of the notification cannot be denied on minor procedural infractions.

(vi) Once it is established that the claimant is eligible to an exemption, a liberal and wide construction should be given to allow the benefit to flow to the assessee.

(vii) In any case, the duty amount has been incorrectly calculated because to the FOB value, the cost of transport and transit insurance have been added on notional basis as per Rule 9(2) of the Customs Valuation Rules, 1988[10] when the actual values are available. No transportation charges were incurred because the aircraft itself was flown into India and only ferry charges of USD 23,000/- were paid which only should be added as the cost of transportation. The cost of transit insurance was only Rs. 52,500/- and the insurance policy was enclosed with the reply to the SCN.

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9. (2023) 3 Centax 168 (Tri-LB)
10. Valuation Rules

(viii) The aircraft is not liable to confiscation under section 111(o) of the Act.

(ix) Consequently, the penalties imposed under section 112 are not sustainable.

(x) The demand is time-barred as the SCN was issued beyond the normal period of limitation of six months under section 28(1) of the Act.

Submissions on behalf of the Revenue

16. Learned authorised representative for the Revenue vehemently supported the impugned order and submitted as follows:

(i) The Notification No. 21/2002-Cus (S. No. 347B) was available subject to condition no. 104. The first condition is that the operator must be approved by DGCA for NSOP (Charter) services and second that the importer must furnish an undertaking to pay the entire customs duty if the importer fails to use the aircraft for the NSOP(charter) services.

(ii) The NOC from MCA expired on 7.9.2007 and MCA expressly declined further extension by letter dated 13.2.2008. The NSOP from DGCA was never obtained before commencing commercial charter operations. Thus, the condition of the exemption was never satisfied.

(iii) The importer had not disclosed the expiry of the NOC and denial of further extension.

(iv) The aircraft operated commercially for over 100 hours without authorisation which was a breach of the undertaking and therefore, duty was correctly demanded.

(v) Violation of the condition of the exemption is not a procedural lapse but a substantive one. Exemption notifications must be strictly applied against the persons claiming it.

(vi) Duty can be demanded beyond the normal period of limitation as held by the Supreme Court in **CC** versus **CT Scan and Research**[11]**.**

(vii) The aircraft has been held correctly liable to confiscation under section 111(o) of the Act.

(viii) The penalties imposed on the importer, Shri Lalani and Shri Soni are correct and proper and call for no interference.

Findings

17. We have considered the submissions advanced by both sides and perused the records. From the list of dates and events submitted by the learned counsel for the appellants, it is clear that the MCA had issued to the appellant an NOC to import the aircraft on 8.12.2005 which was further extended by letters dated 28.12.2006 and 14.3.2007 and this last extension was for a period of six months, i.e., up to 13.9.2007 and the importer imported the aircraft within this time, i.e., on 30.7.2007. Therefore, the first part of the condition no. 104 of the notification 21/2002-Cus was fulfilled.

18. As for the permission to operate Non-scheduled (charter) services, the MCA had issued the permit to the importer on 23.9.2005 and on the importer’s request, extended it by another six months by letter dated 23.3.2007 with the

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11. 2003 (155) E.L.T. 3 (S.C.)

stipulation that no further extension would be considered. Thus, the permit to the importer to operate NSOP(charter) flights ended on 23.9.2007 and it was also made clear to it that no further extension would be granted.

19. The importer started commercial operations on 29.12.2007 and had operated NSOP (charter) services for over 100 hours without any permission. Shri Soni, the CEO of the importer clarified in his statement during the investigation that they had run the aircraft commercially, raised invoices through agents and received payments in cheques. Shri Lalan, the Managing Director of the importer, had, in his statement, clarified that they had flown the aircraft commercially to meet the huge overheads and if they fail to obtain the NSOP by 8.11.2008, they would pay the duty.

20. The importer deposited the duty under protest through seven cheques on various dates from 5.9.2008 to 13.2.2009.

21. The case of the department is that the importer could, as per condition no. 104, use the aircraft only for providing non-scheduled (charter) services for the reason that non-scheduled (charter) services means, as per the explanation to the condition no. 104, services provided by any person, who is registered with and approved by the DGCA for such purposes and who conforms to the civil aviation requirement under the provision of rule 133A of the Aircraft Rules, 1937. The appellant had undertaken commercial flights on charter basis

on 29.12.2007 and operated for over 100 hours but without any valid NSOP. This fact was stated by Shri Lalani and Shri Soni during investigation.

22. No documents have been produced by the importer at any stage including before us to show that it was authorised to operate NSOP (charter) services during that period by the MCA and DGCA or that such an authorisation was given retrospectively by the DGCA. We are, therefore, satisfied that the commercial flights undertaken by the importer during that period were non-scheduled (charter) services as per the condition no. 104 read with its explanation. They were unauthorised operations. As per the undertaking given by the importer under condition no. 104, if the operator fails to use the aircraft for the specified purpose, he shall, on demand, pay the duty payable on the aircraft but for the exemption. The importer had not disclosed the failure to use the aircraft exclusively for the purpose indicated but this was discovered on investigation. The importer paid the duty in instalments and under protest. Hence, the duty was demanded by issuing the SCN.

23. Learned counsel submitted that unless the DGCA finds that there was a violation of any permit, Customs cannot demand duty and placed reliance on **VRL logistics.** We agree that if there is a licence or permit issued by DGCA for the relevant period, the interpretation as to its scope and validity

can be done by the DGCA alone. However, in this case, for the relevant period, there is no licence or permit to the importer to operate NSOP (charter) services. Hence, **VRL logistics** and other decisions and judgments where the question is about the validity of a licence or permit, would not apply to this case.

24. Another submission of the learned counsel is that existence of an NSOP permit is not a requirement under the exemption notification. A perusal of condition no. 104 would show that it requires that the aircraft should be used only for NSOP (passenger) or NSOP(charter) services, as the case may be. In this case, the NSOP (charter) services are relevant. These, for the purpose of the condition of the notification have been explained as **'non-scheduled (charter) services' mean** 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. Clearly, approval of DGCA is essential for the flight to be considered as NSOP (charter) services under the condition of the notification. The charter flights conducted without such approval cannot be considered as NSOP(charter) services. Therefore, the commercial flights of over 100 hours conducted by the importer without approval of the DGCA cannot be considered as NSOP(charter) services.

25. Learned counsel argued that the demand was time-barred because the demand of duty for non-levy, short-levy, etc. under section 28(1) of the Act can only be raised within six months. Extended period of limitation of five years would not apply because fraud, collusion, wilful mis-statement or suppression of facts were not established. Therefore, the SCN itself was time-barred regardless of the merits and thus needs to be set aside. However, we find that although the SCN invoked section 28 of the Act, the Commissioner has not, in the impugned order, confirmed demand under section 28 of the Act but has demanded recovery of duty under section 125(2) of the Act as was held applicable by the Supreme Court in cases of post import violations of conditions of notifications in **C T Scan Research Centre (P) Ltd.** and **Jagdish Cancer and Research Centre.**

26. Learned authorised representative for the Revenue submitted that in cases of post-importation violations of the conditions of the exemption notification, the limitation under section 28(1) would not apply as held by the Supreme Court in **C T Scan Research Centre (P) Ltd.** We find that in that case, the respondent had imported goods with a post importation obligation which it had not fulfilled. The demand was issued under section 28 of the Act beyond even the extended period of limitation of five years. This tribunal had set aside the demand on the ground of limitation. On appeal

by the Revenue, the Supreme Court relied on **Commissioner** versus **Jagdish Cancer and Research Centre** and held that the limitation under section 28 would not apply in such cases. In **Jagdish Cancer and Research Centre,** the importer had a continuous obligation to treat 40% of its patients free of cost which it had not fulfilled and it resisted the demand of duty on the ground of limitation under section 28 of the Act. This Tribunal had held that the demand was time-barred. On appeal by the Revenue, the Supreme Court held that violation of the conditions of the exemption notifications would render the goods liable to confiscation under section 111(o) and as per section 125 of the Act, if the goods so confiscated are allowed to be redeemed on payment of fine, the importer will have to pay the fine and also, as per section 125(2), the duties payable on them. Therefore, the limitation under section 28 will not apply to such cases. The relevant portion of **Jagdish Cancer** is reproduced below:

> **"**9. Learned Counsel for the Centre draws our attention to Chapter XIV of the Customs Act and submits that it relates to confiscation of goods and conveyances and imposition of fines. It does not relate to imposition or demand of customs duty. Sections 124 and 125 also fall in Chapter XIV. Section 124 provides for issue of show cause notice before confiscation of goods and Section 125 relates to payment of fine in lieu of confiscation. Section 28 of the Act which falls in Chapter V provides for notice for payment of duties which has been demanded by the notice in this case. Therefore, it is submitted on behalf of the Centre that demand of customs duty and the order for payment of the same is relatable to only Section 28(1) of the Customs Act, as also found by the CEGAT. That being the position, the notice was beyond time and not by a "competent officer" authorised to issue the same. The argument, as advanced, though seems to be attractive

but on scrutiny, we find no merit in it. Section 124 reads thus :-

"**124. Issue of show cause notice before confiscation of goods, etc.-** No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may at the request of the person concerned be oral."

10. It provides that an order for confiscation of the imported goods may be made after giving a show cause notice to the importer of the goods. It also provides for imposition of fine.

Section 125 reads as under :-

"**125. Option to pay fine in lieu of confiscation.** - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1) the owner of such goods or

the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods."

11. Whenever an order confiscating the imported goods is passed, an option, as provided under sub-section (1) of Section 125 of the Customs Act, is to be given to the person to pay fine in lieu of the confiscation and on such an order being passed according to sub-section (2) of Section 125, the person "shall in addition be liable to any duty and charges payable in respect of such goods". A reading of sub-sections (1) and (2) of Section 125 together makes it clear that liability to pay duty arises under sub-section (2) in addition to the fine under sub-section (1). Therefore, where an order is passed for payment of customs duty along with an order of imposition of fine in lieu of confiscation of goods, it shall only be referable to sub-section (2) of Section 125 of the Customs Act. It would not attract Section 28(1) of the Customs Act which covers the cases of duty not levied, short levied or erroneously refunded etc. The order for payment of duty under Section 125 (2) would be an integral part of proceedings relating to confiscation and consequential orders thereon, on the ground as in this case that the importer had violated the conditions of notification subject to which exemption of goods was granted, without attracting the provisions of Section 28(1) of the Customs Act. A reference may beneficially be made to a decision of this Court reported in *Mohan Meakins Ltd.* v. *Commissioner of Central Excise, Kochi*, 2000 (115) E.L.T. 3 (S.C.) = (2000) 1 SCC 462 wherein it has been observed in Para 6 "..... Therefore, there is a mandatory requirement on the adjudicating officer before permitting the redemption of goods, firstly, to assess the market value of the goods and then to levy any duty or charge payable on such goods apart from the redemption fine that he intends to levy under sub-section (1) of that section." In this view of the matter the objection raised by the Centre that Section 28 of the Customs Act would be attracted is not sustainable.

12. The next question which falls for consideration is, as to whether or not a new ground or case for confiscation has been carved out as found by the CEGAT. According to the CEGAT, Para 3 of the notice relates to confiscation of goods under Section 111(o) of the Customs Act on the ground of non-submission of certificate under Condition 4(iii) of the Notification. Therefore, confiscation could be ordered only on the ground of non-submission of certificate and on no other ground. It is further pointed out by the CEGAT that Para 5 of the notice relates to

payment of customs duty only, on the ground of violation of conditions relating to providing free treatment as well as on account of non-submission of certificate under Condition No. 4(iii) of the Notification. In connection with the above argument, it would be relevant to refer to para 7 of notice, a perusal of which would indicate that confiscation of the subject goods was intended for violation of *various conditions* of Notification No. 64/88, dated 1-3-1988. We find, that *various* conditions which were violated are indicated earlier in paragraphs 3 and 5 of the notice. Para 3 contained only one condition not various conditions. We, therefore, feel that reading the notice parawise and confining it watertight within each paragraph, would not be a correct way of construing a notice. It is to be read as a whole to find out as to whether the person concerned is made aware of the various grounds on the basis of which action is proposed to be taken as well as nature of the action. The view taken by the CEGAT on the point indicated above is erroneous and cannot be upheld.

13. Learned Counsel for the respondent has next urged that looking to the total picture of the free treatment provided by the Centre, it is to be noticed that shortfall in providing free treatment is marginal. The percentage of persons provided free treatment cannot be precise. During certain period, it may be a little less or a little higher. He has also drawn our attention to a chart prepared by the respondent and filed with an affidavit before the CEGAT, showing that the treatment provided to outdoor patients is 39.8 per cent and instead of 10 per cent indoor patients is 8.9 per cent. In connection with this submission, it may be observed that this aspect of the matter has been considered by the Commissioner as well as CEGAT in some details and ultimately it has been found that there was a shortfall which is also not disputed by the respondent. A perusal of the condition in the Notification indicates that on an average, *at least* 40 per cent of all outdoor patients should be provided free treatment. It is, thus, at least 40 per cent or may be above. It is submitted that condition nowhere indicates that within what period, the prescribed percentage is to be achieved. It is submitted that it should be during the life of the equipment imported. Thus, shortfall of particular year may be made good in the following year. We are not impressed by this argument. It would, not at all, be necessary to prescribe any period to achieve the given percentage of patients treated free. It should generally be all through the period. It being *at least* 40 per cent, there is hardly any occasion to say that in case there is more than 40 per cent in a given period, that may make good

the deficiency in the previous or the following year. In any case, over and above all, it has not been in dispute that the Centre did not have inpatient facility. According to the condition of notification 10% of total beds in hospital are to be kept reserved for patients of the families having an income of less than Rs. 500/- per month. The case of the Centre, in this connection, is that they had an arrangement with another hospital in the proximity which is a sister concern of the Centre, with whom the Centre had entered into an agreement for reserving 10 per cent beds. Payments in respect of these inpatients is to be made by the Centre. We feel that the 10 per cent of the total number of beds are supposed to be reserved for patients of such families in the hospital where the equipment is installed. The purpose of the Notification for grant of exemption from payment of customs duty would not be served by making payment of expenditure incurred on some inpatients in some other hospital as alleged. It has also not been shown that alleged arrangements had the approval of the concerned authority or that it was brought to their notice at all.

14. The pleas raised by M/s. Jagdish Cancer & Research Centre fail to convince us that it had been able to fulfil the conditions of the notification for providing free treatment to the patients as required therein. We find that the findings of the CEGAT on other points and the order passed are not sustainable. In the result, the appeal is allowed and the order passed by the CEGAT is set aside and the order passed by the Commissioner of Customs (Import), Mumbai is restored. There would, however, be no order as to costs.

27. Therefore, the question of demand of duty in cases of violation of the post import conditions of an exemption notification has attained finality. If the conditions are violated, the goods will be liable to confiscation under section 111(o) of the Act and if they are allowed redemption under section 125 of the Act, duty also has to be paid as per section 125(2) of the Act. Neither the normal period of limitation nor the extended period of limitation under section 28 would apply.

28. Learned counsel also contested the method adopted to calculate the duty. He submitted that cost of freight was wrongly taken on notional basis as 20% of the FOB value of the aircraft under Rule 9(2) of the Valuation Rules. He submitted that this is an unusual case and unlike the normal goods which are transported in a ship or aircraft, the aircraft itself was flown to India and therefore, the only cost of transport was the cost of flying it to India and it cost only USD 23,000/-. Similarly, he submits that the actual cost of transit insurance as per the insurance policy was only Rs. 52,500/-. Hence, the notional cost of transit insurance could not have been invoked. The commissioner rejected both these contentions in paragraph 44 of the impugned order on the ground that since the assessment was not challenged by the importer and it could not do so now.

29. We agree with the learned counsel that when the actual costs of transport and transit insurance were available, notional figures could not be added. While it is true that assessment-once completed can be modified only through one of the known methods and the importer had not appealed against the assessment, it is equally true that the issue has been now re-opened by the department by issue of the SCN. An assessment under section 17 would be completed as soon as the proper officer issues an order clearing the goods for home consumption under section 47 of the Act. Once this order is issued, the goods cease to be imported goods and

there cannot be any further assessment. However, the assessment can be modified through any of the five methods:

(i) An appeal to the Commissioner (Appeals) under section 128 of the Act by either side; this can assail any part of the assessment but the appeal has to be filed within the time prescribed under section 128;

(ii) An SCN under section 28 can be issued to recover duties not levied not paid, short levied, short paid or erroneously refunded by the Revenue; this option is available only to the Revenue and that too only for the purpose of recovering duties and not for any other purpose; the notice has to be issued within the normal period of limitation, or, as the case may be, the extended period of limitation;

(iii) Finalisation of provisional assessment under section 18 of the Act, where applicable;

(iv) Amendment of the documents under section 149 of the Act by the importer with permission of the proper officer; and

(v) Correction of clerical or arithmetical mistakes under section 154 by the proper officer.

30. Although the SCN proposed demanding duty under section 28 in this case, noting that the section would not apply, the Commissioner confirmed the demand only under section 125(2) of the Act. Since section 28 would not apply, he also dropped the proposal to demand interest under section 28AB. The mistake pointed out by the learned counsel in this case is taking the notional figures of cost of transport and

transit insurance instead of the actual figures is evidently a clerical and arithmetical error. Once it has been pointed out, the Commissioner should have corrected it and recomputed the amount of duty accordingly. We, therefore, find in favour of the importer on the question of computation of duty.

31. In this case, the SCN, read with the corrigendum, proposed confiscation of the goods under sections 111(d) and (o) of the Act but the impugned order confiscated the goods only under section 111(o) of the Act which reads as follows:

> **Section 111. Confiscation of improperly imported goods, etc. -** The following goods brought from a place outside India shall be liable to confiscation: -
> **......**
> (o) any goods **exempted, subject to any condition**, **from duty or any prohibition in respect of the import** thereof under **this Act or any other law for the time being in force**, **in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer**;

32. Section 111 renders certain goods liable to confiscation. Clause (o) of this section renders the following three categories of goods liable to confiscation:

(i) Goods which are exempted from duty subject to any conditions if the conditions are not observed;

(ii) Goods whose import is prohibited under the Customs Act but there is an exemption from the prohibition subject to fulfilment of some conditions and the conditions are not observed;

(iii) Goods whose import is prohibited under some other law for the time being in force and there is an exemption from the prohibition subject to fulfilment of some conditions and the conditions are not observed;

33. However, if the proper officer sanctions the non-observance of the conditions, then it goes out of the purview of section 111(o) of the Act. This section does not stipulate who is the proper officer who can sanction the non-observance of the conditions. The term 'proper officer' has been defined in section 2(34) of the Act defines this term as follows:

> 2. **Definitions**.—In this Act, unless the context otherwise requires,—
> …….
>
> (34) "proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs under section 5;

34. The question which would arise is whose function is to the determine if the conditions for exemption from duty or exemption from prohibition of import are. Evidently, it is the officer who does the assessment. The proper officer for assessment of the Bill of Entry- such as the Assistant Commissioner or Deputy Commissioner in the assessment group in the Custom House- will also be the proper officer to determine if the conditions for exemption from duty or exemption from prohibition on import are violated and if so, when such violations can be sanctioned. It must be noted that although self-assessment of bill of entry by the importer under section 17 of the Act is also an assessment, the power to

sanction non-fulfilment of the conditions has not been given to the importer but has been given only to the proper officer (just the power to reject the transaction value and re-determine the value under the Valuation Rules is given only to the proper officer and not to the importer).

35. A doubt may arise as to if the proper officer can sanction non-observance of the conditions which are mandated by the law or notification and if he does so, he would not be going beyond the law. However, section 111(o) of the Act itself confers such power on the proper officer. Evidently, it is meant to deal with minor infractions which may technically be violations of the conditions of the exemption.

36. Section 25 of the Act empowers the Central Government to grant exemption from duties either fully or partially and either conditionally or unconditionally. It reads as follows:

> **Section 25. Power to grant exemption from duty. –**
>
> (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.
>
> (2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

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

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

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

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

(4A) Where any exemption is granted subject to any condition under sub-section (1), such exemption shall, unless otherwise specified or varied or rescinded, be valid upto 31st day of March falling immediately after two years from the date of such grant or variation:

Provided that in respect of any such exemption in force as on the date on which the Finance Bill, 2021 receives the assent of the President, the said period of two years shall be reckoned from the 1st day February, 2021.

(6) Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

(7) The mineral oils (including petroleum and natural gas) extracted or produced in the continental shelf of

India or exclusive economic zone of India as referred to in section 6 and section 7, respectively, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), and imported prior to the 7th day of February, 2002 shall be deemed to be and shall always be deemed to have been exempted from the whole of the duties of customs leviable on such mineral oils and accordingly, notwithstanding anything contained in any judgement, decree or order of any court, tribunal or other authority, no suit or other proceedings in respect of such mineral oils shall be maintained or continued in any court, tribunal or other authority.

(8) Notwithstanding the exemption provided under sub-section (7), no refund of duties of customs paid in respect of the mineral oils specified therein shall be made.

37. Section 11 of the Act empowers the Central Government to impose restrictions on imports and exports. It reads as follows:

Section 11. Power to prohibit importation or exportation of goods.-

(1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.

(2) The purposes referred to in sub-section (1) are the following :-

(a) the maintenance of the security of India;

(b) the maintenance of public order and standards of decency or morality;

(c) the prevention of smuggling;

(d) the prevention of shortage of goods of any description;

(e) the conservation of foreign exchange and the safeguarding of balance of payments;

(f) the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver or any other goods;

(g) the prevention of surplus of any agricultural product or the product of fisheries;

(h) the maintenance of standards for the classification, grading or marketing of goods in international trade;

(i) the establishment of any industry;

(j) the prevention of serious injury to domestic production of goods of any description;

(k) the protection of human, animal or plant life or health;

(l) the protection of national treasures of artistic, historic or archaeological value;

(m) the conservation of exhaustible natural resources;

(n) the protection of patents, trademarks, copyrights, designs and geographical indications;

(o) the prevention of deceptive practices;

(p) the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India;

(q) the fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security;

(r) the implementation of any treaty, agreement or convention with any country;

(s) the compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India;

(t) the prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;

(u) the prevention of the contravention of any law for the time being in force; and

> (v) any other purpose conducive to the interests of the general public.
>
> (3) Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

38. Many other laws in India also impose restrictions on imports but they are enforced by the Customs by virtue of section 111(o) of the Customs Act.

39. The power of the Central Government to impose restriction on imports under section 11 of the Act and the power of the central government to exempt payment of duty under section 25 of the Act and the power of the proper officer to sanction non-observance of the conditions of the exemption all flow from the Customs Act. However, section 111(o) of the Act does not empower the proper officer to change the scope of the exemption notification or to change the conditions for import. It only empowers him to sanction non-fulfilment of some of the conditions of the exemption notification in the particular case.

40. For example, goods could be exempted from duty subject to they being installed in the factory and a certificate to that effect being produced within, say, 3 months and if the importer produces it, say, after 4 months, the conditions of the

exemption have not been observed but the proper officer has the power to sanction such non-observance. Similarly, if there are minor deficiencies in the documents submitted to claim exemption from any prohibition on import, the proper officer can sanction such non-observance of the conditions. It is not necessary that in all such cases to issue an SCN and litigate the matter.

41. If the proper officer sanctions non-observance of any condition, then such goods go out of the scope of section 111(o) – be it with respect to exemption from prohibition on import under the Customs Act, other Acts or exemption from payment of duty. The decision of the proper officer to sanction non-observance of the conditions is also part of his quasi-judicial act of assessment. It is appealable by either side. In this case, nothing on record shows that any such sanction was sought by the appellant or issued by the proper officer. If the proper officer had not sanctioned the non-observance of the conditions and the matter becomes a subject matter of SCN, the assessment of duty is re-determined by the adjudicating authority or appellate authorities or courts in this case, who can, likewise, look into the non-observance of the conditions and if they can be sanctioned.

42. We have also examined if the non-fulfilment of the condition no. 104 of the notification by the importer in this case can be sanctioned. We find that this is not a case where

the aircraft had to be flown out of some compulsion or necessity- such as refuelling, repairs, etc. or some unavoidable conditions. Had that been the case, we would have considered sanctioning the non-observance of the conditions. In this case, the importer had violated condition no. 104 of the notification by consciously operating the aircraft for over 100 hours commercially without any authorisation from the DGCA or MCA.

43. Learned counsel argued that non-fulfilment of the condition no. 104 can only be examined by the DGCA and not by MCA. We disagree. Extending the benefit of an exemption notification or otherwise is a part of the assessment process which is done by the Customs. If duty has to be recovered for non-fulfilment of the conditions, it also has to be done by the Customs. Neither the DGCA nor MCA have any role in the matter. It would have been a different matter if any document, licence or permit issued by DGCA or MCA is questioned or interpreted in any manner so as to fasten the liability of duty. In such a case, evidently, the authority which issued the licence or permit can only explain its scope and if it had been violated. In this case, for the relevant period, the importer had NO licence or permit authorising to fly NSOP(charter) services. No such licence or permit for the relevant period has been produced by the learned counsel even before us.

44. **In the facts of this case, it is clear as crystal that condition no. 104 of the exemption notification was violated and hence the aircraft was liable to confiscation under section 111(o) of the Act and has been correctly confiscated.**

45. During the investigation itself, the aircraft was seized but it was provisionally released and hence a redemption fine was imposed in lieu of confiscation in the impugned order under section 125 of the Act.

46. As held by the Supreme Court in **Jagdish Cancer and Research Centre** and **CT Scan Research Centre (P) Ltd.,** duty has to be paid as per section 125(2) of the Act and the limitation under section 28 of the Act – whether normal period or extended period- will not apply to this case. In the impugned order, the Commissioner confirmed the demand of duty following these judgments of the Supreme Court.

47. Since the demand of duty was not confirmed under section 28, the Commissioner has not, confirmed demand of interest under section 28AB holding that it would not apply.

48. Since the aircraft was already released provisionally on bond, in the impugned order, the Commissioner imposed a redemption fine of Rs. 2,50,00,000/- on the importer under section 125 of the Act. Section 125 provides for imposition of a redemption fine not exceeding the market value of the

confiscated goods. The value of the aircraft was Rs. 11,29,92,819/- and the redemption fine imposed was less than 25% of it's market value. In our considered view, this is quite reasonable and calls for no interference.

49. Penalties under section 112 can be imposed for acts or omissions which rendered the goods liable to confiscation. This section reads as follows:

> **SECTION 112. Penalty for improper importation of goods, etc.-**Any person, -
>
> (a) **who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation** under section 111 , or abets the doing or omission of such an act, or
>
> (b) **who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation** under section 111 , shall be liable, -
>
> (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;
>
> (ii) **in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher**:
>
> **Provided** that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

> (iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;
>
> (iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;
>
> (v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

50. Before 2015 (which is the relevant time), section 112 (ii) read as follows:

> "ii) in the case of dutiable goods, other than prohibited goods, **to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater**;"

51. The duty confirmed by the impugned order is Rs. 2,86,96,309/-. As per section 112(ii) of the Act as applicable during the relevant period, the penalty could not exceed this amount. The penalty imposed in the impugned order was only Rs. 10,00,000/- on each of the appellants herein which is less than 5% of the duty amount.

52. The importer had imported goods without paying duty and had violated the condition 104 of the exemption notification by flying it commercially without authorisation for

over 100 hours which rendered the aircraft liable to confiscation and therefore, the penalty of Rs. 10,00,000/- imposed on the appellant is reasonable and needs to be sustained.

53. Shri Soni was the CEO of the importer and Shri Lalani was the Managing Director of the importer both of who took the decisions which led the aircraft being used in violation of condition no. 104 of the notification. Hence, both had rendered themselves to penalties under section 112(b). The penalty of Rs. 10,00,000/- imposed on each is less than 5% of the duty which need to be upheld.

54. In view of the above, the impugned order is modified and the appeal of the importer is partly allowed to the extent of directing re-computation of the duty payable reckoning the actual cost of transport and transit insurance of the aircraft instead of notional values under Rule 9(2) of the Valuation Rules. Rest of the impugned order is upheld.

55. **Customs Appeal No. 540 of 2010** filed by M/s. Mega Corporation Ltd. is partly allowed and the matter is remanded to the Commissioner for the limited purpose of re-calculating the duty considering the actual cost of transport and transit insurance of the aircraft instead of notional values. Rest of the impugned order qua M/s. Mega Corporation is upheld.

56. **Customs Appeal No. 541 of 2010** filed by Shri Kunal Lalani is dismissed.

57. **Customs Appeal No. 542 of 2010** filed by Shri Anil Kumar Soni is dismissed.

(Order pronounced in open court on 09/09/2026.)

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

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

PK