

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). _____ OF 2026

@SLP (C) NO(S). _____ OF 2026

@DIARY NO. 26745 OF 2026

**INTERNATIONAL AIR CHARTER OPERATIONS (I)
PVT. LTD. & ORS.**

APPELLANT(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

ORDER

1. Delay condoned.

2. Leave granted.

3. These appeals arise out of the judgment and order passed by the High Court of Delhi in W.P. (C) No. 15231 of 2023 dated 24.11.2023 as well as the order in Review Petition No. 174 of 2024 dated 30.01.2026.

4. Heard Ms. Akriti Chaubey, learned counsel for the appellants and Mr. Gurmeet Singh Makker, learned counsel for the respondents.

5. The main issue relates to applicability of Notification dated 03.05.2007 providing exemption from payment of customs duty on import of aircrafts. However, for some reason or the other, the appellants could not contest their

claim under this notification on merits and their applications or appeals all through came to be dismissed on technical reasons. The short facts necessary for the disposal of the present appeals are as follows.

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6. Pursuant to grant of a No Objection Certificate (NOC) dated 12.12.2007 for import of aircrafts for “Non-Schedule Operations”, the appellants imported an aircraft after furnishing an undertaking as per Condition No. 104 of the Notification dated 03.05.2007. Under the said condition, the aircraft was to be used only for Non-Scheduled Air Transport (passenger) services and in the event the aircraft was not used for the specified purpose, the appellants were required to pay an amount equal to the duty payable on such aircraft. The imported aircraft was cleared on the basis of the exemption from payment of customs duty under the Notification.

7. Pursuant to investigation initiated by the Commissioner of Customs (Preventive), a Show Cause Notice came to be issued on 17.11.2008, alleging that the appellants were operating charter services, when their permit was restricted to passenger services only. The show-cause culminated in the Order-in-Original dated 29.06.2009, holding the appellants liable to pay customs duty of Rs. 6,24,50,565/-, along with an equivalent penalty. The directors were also held liable to pay Rs. 25 lakh each as penalty.

8. The appellants challenged the order before CESTAT, which disposed of their appeals on 04.01.2017, on the ground that there were conflicting decisions of the Tribunal, which were *sub-judice* before this Court and granted liberty to the appellants to approach the CESTAT once the question of law is decided. Consequently, the appellants filed appeals before this Court. However, the pending civil appeals were not decided on merits as the issues raised therein did not fall within the four corners of Section 130-E of the

Customs Act. The question of law was left open. In view of the fact that in the pending civil appeals, this Court did not decide the question of law, the appellants withdrew their appeals.

9. In the meanwhile, the Assistant Commissioner (Recovery) issued the first demand notice to the appellants on 30.11.2021. Further, a three-judge bench of the CESTAT decided the question of law in *M/s VRL Logistics Ltd. v. Commissioner of Customs, Ahmedabad*¹, holding that the expression “Non-Scheduled (Passenger) Services” contained in Condition No. 104 included all air transport services within its scope, including charter services on 08.08.2022. It is the case of the appellants that the said decision has also been applied in all similar cases.

10. When the Customs Authority issued a second demand notice on 06.10.2023, the appellants filed a writ petition. The High Court dismissed the writ petition on 24.11.2023 (impugned order I) holding that, as the appellants withdrew their Civil Appeals before the Supreme Court unconditionally, the Order-in-Original dated 29.06.2009 had attained finality, and the demand notices are only consequential.

11. In the above-referred circumstances, appellants also filed a restoration application before the CESTAT, pursuant to the liberty given in its order dated 04.01.2017. The CESTAT by its order dated 26.02.2024 held that the appellants ought to have taken liberty from the Delhi High Court for restoration, and in the absence of such liberty, it would be inappropriate for the

¹ Customs Appeal No. 74 of 2010-LB

CESTAT to allow the restoration application and hear the appeal on merits.

The relevant portion is extracted –

“6. It was for the Writ Petitioners to have taken liberty from the Delhi High Court to approach the Tribunal for recall of the order dated 04.01.2017 but such leave was not taken.

7. In such circumstances, it will not be appropriate for the Tribunal to recall the order and hear the appeal on merits.

8. The applications are, accordingly, rejected. All the pending Miscellaneous Applications which seek to amend the Restoration Application stand disposed of.”

12. In the meanwhile, appellants filed a Review Petition against the order of the learned Single Judge dated 24.11.2023 which came to be dismissed on 30.01.2026 by the second order impugned before us. The relevant portion of the order is as follows;

“9. Though the learned CESTAT, in its Order dated 04.01.2017, had left it open to the petitioners to approach the learned CESTAT again after the final verdict of the Supreme Court, it was stated that the petitioners must do so “within the prescribed time, if advised so”. The appeals before the Supreme Court of the petitioners were withdrawn by the petitioners on 26.11.2021. Instead of approaching the learned CESTAT in terms of the liberty granted vide its Order dated 04.01.2017, the petitioners kept quiet and filed the present petition on or about 23.11.2023, inter alia challenging the subsequent Demand Notices dated 30.11.2021 and 06.10.2023.

10. This Court, therefore, held that once the underlying order, that is, the Order dated 29.06.2009 passed by the Adjudicating Authority was not in challenge, the challenge to the Demand Notices could not be sustained and the petitioners, therefore, could not rely upon the liberty that was granted to the petitioners vide Order dated 04.01.2017 passed by the learned CESTAT to maintain the Writ Petition.

11. The petitioners thereafter again approached the learned CESTAT by filing applications, not seeking to avail the remedy that has been reserved in the petitioners vide Order dated 04.01.2017, but to seek a recall of the Order dated 04.01.2017. We fail to

understand how those applications were even maintainable as the petitioners now are relying on the very same order dated 04.01.2017 to maintain the present Review Petition.”

13. Having heard Ms. Akriti Chaubey and Mr. Gurmeet Singh Makker, we are of the opinion that the appellants never had an opportunity of presenting their case on merits before any forum, at any point of time. Right of appeal being a precious remedy, Courts shall endeavour to ensure that an aggrieved party has at least one appellate forum to address its grievances. High Court dismissed the writ by holding that the appellants did not take the permission of the Supreme Court for reviving the appeal before CESTAT and the CESTAT dismissed the application for restoration on the ground that the High Court did not give such a liberty. We are of the opinion that the mistakes, if any, occurred because of the anxiety of the appellants to somehow or the other have their appeal restored before CESTAT. These problems can be resolved if we allow the prayers in the writ petition and revive and restore the appeal before the CESTAT.

14. Having considered the matter in detail, we are of the opinion that interest of justice will be subserved if the appellants' application for restoration of the CESTAT Customs Appeal No. 603 of 2009 is allowed and the appellants are permitted to pursue the statutory appeal. For this purpose, we set aside the judgment and order of the High Court in Writ Petition No.15231 of 2023 dated 24.11.2023 and RP No.174 of 2024 dated 30.01.2026 and direct that the Customs Appeal No. 603 of 2009 be restored to its original number.

15. In view of the above, the Civil Appeals arising out of Special Leave Petition(s) Diary No. 26745 of 2026 are allowed and consequently Customs Appeal No. 603 of 2009 on the file of CESTAT is restored to its original number. We further direct that the CESTAT shall take up and dispose of the appeal within a period of three months from today.

16. Pending application(s), if any, stand disposed of.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

**NEW DELHI;
SEPTEMBER 29, 2026.**