
(2024) 03 CESTAT CK 0023

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 455 Of 2009

M/S. Jet Lite (India) Ltd

APPELLANT

Vs

Commissioner Of Customs

RESPONDENT

Date of Decision : 18-03-2024

Acts Referred:

Customs Valuations (Determination Of Price Of Imported Goods) Rules, 1988 — Rule 4, 9(2)

Customs Act, 1962 — Section 14(1), 74

Citation : (2024) 03 CESTAT CK 0023

Hon'ble Judges : Dr. D.M. Misra, Member (J); R. Bhagya Devi, Member (T)

Bench : Division Bench

Advocate : K.A. Jathin

Final Decision : Allowed

Judgement

R. Bhagya Devi, Member (T)

1. The appellant, M/s. Jet Lite (India) Ltd. operates daily flights from Tiruvananthapuram International Airport to Male and back to International Sector and thereafter, operated in the domestic sector as a continuation of the international run after landing at Tiruvananthapuram. The left-out Aviation Turbine Fuel (ATF) in the fuel tank onboard the Aircraft on returning to India after termination of international voyage is considered as imported fuel (duty-free) classifiable under Chapter Heading 2710 1920 under the Customs Tariff and availed the benefit of Notification No.151/1994-Cus. dated 13.07.1997 under Section 74 of the Customs Act, 1962. During the period 10.03.2007 to 20.05.2007, the appellant imported 373.55 kl of Aviation Turbine Fuel. Since, they did not satisfy the conditions of the above exemption Notification, they paid duty of Rs.3,16,649/- on self-assessment. However, the Department reassessed the goods and redetermined the duty at Rs.23,16,860/- by adding 20% of the Freight on Board (FOB) value as freight 1.125% as insurance and 1% as Cost, Insurance and Freight (CIF) value as landing charges.

2. The Commissioner in the impugned order denied the benefit of the Notification in view of the Tribunal's decision in the case of M/s. Indian Air Lines Ltd.: 2005 (180) ELT 502 (Tri.-Bang.). The Commissioner also held that the transaction value includes cost of transport, insurance and landing charges as per Rule 4 read with Rule 9(2) of the Customs Valuations (Determination of price of imported goods) Rules, 1988. When these additional elements of freight, insurance and landing charges are not ascertainable, the accepted norm is to add 20% of the FOB value of the for freight, 1.125% of FOB value as insurance and 1% of CIF value as landing charges. Accordingly, the differential duty to be paid was determined as Rs.19,55,211/-.

3. None appeared for the appellant. The Authorized Representative (AR) on behalf of the Revenue fairly concedes that the issue is no longer res integra in view of the larger bench decision in the case of Jet Airways (India) Ltd. Vs. Commissioner of Customs (Airport), Mumbai: 2021(377) ELT-83(Tri-LB) and followed by this bench in the case of Air India Express Ltd. Vs. Commissioner of Central Excise, Customs and Service Tax vide Final Order No.21107/2023 dated 13.10.2023.

4. As discussed above, the Larger Bench in the case of Jet Airways (India) Ltd. (supra) clearly held that no amount towards alleged transportation cost is required to be included in the value of remnant ATF under Rule 10(2) of the 2007 Rules while determining the transaction value under Section 14(1) of the Customs Act 1962. The Tribunal had clearly observed that the above causes are irrelevant and extraneous and accordingly, held that the transaction value excludes the scope for addition of freight, insurance and landing charges to the cost of the fuel. This decision was followed by this Bench in the case of Air India Express Ltd. (supra).

5. By following the ratio of the above decisions, the impugned order is set aside and the appeal is allowed, with consequential relief, if any, as per law.