

**AUTHORITY FOR ADVANCE RULINGS**  
**(CENTRAL EXCISE, CUSTOMS & SERVICE TAX)**  
**NEW DELHI**

**PRESENT**

**Hon'ble Mr. Justice P. V. Reddi (Chairman)**  
**Mr. A Sinha**                      **Mrs. Chitra Saha**  
**(Member)**                              **(Member)**

**Monday, the 21<sup>st</sup> day of January 2008**

**Ruling No.AAR/02(Cus)/2008**  
**in**  
**Application No.AAR/04(Cus)/2007**

Applicant	M/s One Stop Airline MRO Support Private Limited 202-206, Tolstoy House, Tolstoy Marg New Delhi-110001
Commissioner concerned	Commissioner of Customs (I&G), Delhi
Present for the Applicant	Mr. S. Ganesh, Sr. Counsel, For BMR & Associates - Mr Sujit Ghosh, Mr. D.K. Rana and Mr. Sudipta Bhattacharjee Mr. Stephan Lorenzen, MD, One Stop Airline
Present for the Commissioner concerned	Mr. A.N. Sharma, Jt.CDR CESTAT, New Delhi

**RULING**

**(Hon'ble Mr. Justice P.V. Reddi)**

1. The applicant is a private limited company incorporated in India under the Companies Act, 1956. Its foreign collaborators are stated to be German Companies by name Lufthansa Technik Immobilien – und Verwaltungsgesellschaft mbH (for short "LTIV")

which owns 95% shares in the applicant-company and Lufthansa Technik AG (hereinafter referred to as LHT) which owns 5% shares. At present it is engaged in the business of providing technical, consultancy and logistic services to Airline Companies in India and/or LHT and its group companies. According to the averments in the application, the applicant proposes to start certain other business activities which are classified under four heads as follows :

New Business 1 : Setting up an engine maintenance, repair and overhaul shop (for short 'Engine MRO Shop') in India for servicing the aircraft belonging to Indian airline companies operating scheduled air transport/air cargo services.

New Business 2 : Setting up an Engine MRO Shop in India for servicing the aircraft belonging to foreign airline companies operating scheduled air transport service/air cargo service.

New Business 3 : Importation of aircraft components by the applicant for subsequently providing them to pre-identified airline companies for a fee. This business is broadly described as 'Home Base Services'. Here also, the customer airlines operate the aircraft as scheduled air transport service or air cargo service.

New Business 4 : Importation of aircraft components for setting up a regional pool in India for the purpose of providing the same to the

airline companies operating scheduled air transport/air cargo services, for a fee.

1.1 As far as 3 & 4 businesses are concerned, the service and overhaul of engine is not involved. The applicant supplies the required parts, components and consumables to the concerned airline, which in turn carries out repairs on its own.

1.2 It is stated that the applicant will obtain necessary authorization and certification from the Directorate General of Civil Aviation in due course.

1.3 In respect of all these proposed business activities 1 to 4, the applicant is claiming (i) exemption of basic custom duty as per the Custom Notification No. 21/2002 dated 1.3.2002 and (ii) exemption from additional customs duty (in lieu of excise duty) as per the Central Excise Notification No. 6/2006 dated 1.3.2006. The Department has taken the stand that the applicant is disentitled to invoke the benefit of the said notifications for the reasons stated by the Commissioner in his comments.

1.4 We shall now examine the applicant's claim with reference to each of the new business ventures proposed to be undertaken by the applicant.

### Business No. 1

2. The details of New Business 1 as set out in the application are as follows : Contracts will be entered into with Indian airline companies operating scheduled air transport services and scheduled air cargo services are : (i) related to the maintenance, repair and overhaul of aircraft engine (for short MRO) and (ii) for total technical support of the aircraft including engine MRO. It is clarified by the applicant that the second type of contract may not be entered into in the near future. Hence, no question is framed in this regard.

2.1 The applicant submits that the services relating to engine MRO have to be provided within an agreed “turn-around time”. The applicant is likely to sub-contract part of the activity to LHT or its group Companies outside India. The transactions involve (i) periodical purchase and subsequent import of certain aircraft related materials and consumables necessary for providing the services. (ii) receipt of the aircraft engine from the airline company in India. (iii) Disassembly of the aircraft engine into aircraft engine modules by the applicant at its workshop in India. (iv) Inspection of the aircraft engine modules at the workshop in India and inspection of the modules. (v) Shipping the defective aircraft engine modules to LHT or its group companies, outside India. (vi) Disassembly of the aircraft engine modules into aircraft engine parts by those companies and their inspection. (vii) Repairing or overhauling of the aircraft engine parts and replacement of the parts that are beyond ‘economical repair’.

(viii) Reassembly of aircraft engine parts into aircraft engine modules by LHT or its group companies. (ix) Export of repaired aircraft engine modules by LHT (from outside India) to the applicant in India (x) Reassembly of repaired aircraft engine modules to full aircraft engine by the applicant at its workshop in India. (xi) Undertaking aircraft engine test-run as per the manufacturer's specification and in case the engine does not meet the specific requirements during the final testing, minor repairs will be carried out either by the applicant in India or by LHT outside India (xiii) Delivery of the aircraft engine to the airline company in India by the applicant.

2.2 The charges will be either on a Flat Rate (calculated on Engine Flight Hour basis) or Fixed Price basis or Time and Material basis.

2.3 The applicant refers to the aircraft maintenance manuals to drive home the point that there is an inextricable link between engine maintenance and aircraft maintenance and that aircraft maintenance necessarily involves engine maintenance.

2.4 The applicant seeks advance ruling on the following questions framed by it in respect of the 1<sup>st</sup> business :

1. In relation to the Engine MRO Shop proposed to be set up in India for servicing the engines of aircrafts of Indian airline companies :

- (a) Whether import of all kind of temporary materials and consumables, such as lubricants, oils, greases, and similar goods that are used directly or indirectly in the process of servicing an engine and does not retain its identity or are consumed in the process of servicing an engine would be exempt from payment of Basic Customs duty under Entry No. 348 of Notification No. 21/2002-Cus dated March 1, 2002 (as amended)?
- (b) Whether import of all kind of temporary materials and consumables such as nuts, bolts, rivets, screws, clamps, couplings, joints, angles, and similar goods that are used directly or indirectly in the process of servicing an engine and are incorporated/injected into the goods that are being repaired including those that may be spoilt or wasted during the process of such servicing would be exempt from payment of Additional Customs duty under S,3(1) of Customs Tariff Act read with Entry No. 54B of Notfn. No. 6/2006-CE dated March 1, 2002 (as amended)<sup>ω</sup>? This question and other similar questions have been slightly recast by giving reference to S, 3(1) of Customs Tariff Act.

2. In relation to the same business activity :

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<sup>ω</sup> Notification No. 19/2007-CE dated 7.3.2007

- (a) Whether re-import of engine modules necessary for provision of the services to Indian airline companies would be exempt from payment of Basic Customs duty under Entry 346D of Notification Number 21/2002-Cus dated March 1, 2002 (as amended)?

Alternately

Whether re-import of engine modules necessary for provision of the services to Indian airline companies would be exempt from payment of Basic Customs duty under Entry 348 of the Notification Number 21/2002-Cus dated March 1, 2002 (as amended)?

- (b) Whether re-import of engine modules necessary for provision of the services to Indian airline companies would be exempt from payment of Additional Customs duty under Entry 54B of Notification No. 6/2006-CE dated March 1, 2006 (as amended)?

3. The claim for basic customs duty exemption in respect of the proposed activities is founded on the Notification No. 21/2002-Cus dated 1.3.2002 as amended from time to time. By this notification issued under sub-section (1) of section 25 of Customs Act, the Central Government exempted the imported goods of the description specified in column 3 of the Table and falling within the Chapter, Heading or sub-heading of the First Schedule to Customs Tariff Act as specified in the corresponding entry of the column 2 of the Table

from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column 4 of the said Table, subject to the conditions if any specified in column 6 of the Table. It also exempts additional duty payable under S, 3(1) of Customs Tariff Act in respect of certain goods specified therein, but, the goods in question do not enjoy any exemption under this notification.

3.1 The relevant entries and columns in the Table, as it stands today, are given below:

Sl.No. (1)	Chapter or Heading No. or Sub-heading No. (2)	Description of goods (3)	Standard rate (4)	Addl. Duty rate (5)	Condition No. (6)
"346D.	Any Chapter	Parts (other than rubber tyres and tubes), of aircraft of heading 8802	Nil	-	102"
"347.	Any Chapter	Parts (other than rubber tyres and tubes), of aircraft of heading 8802	3%	-	-"
"347A.	8802 (except 8802 60 00)	All goods	Nil	-	103
347B	8802 (except 8802 60 00)	All goods	Nil	-	104
347C.	Any Chapter	Parts (other than rubber tyres or tubes) of aircraft of heading 8802	Nil	-	105",
348	88 or any Chapter	Raw materials – (i) for manufacture or servicing of aircraft falling under heading 88.02; (ii) for manufacture of parts of aircraft at (i) above.	Nil	-	68

3.2 Chapter 88 deals with "aircraft, spacecraft and parts thereof" and the Heading 8802 mentions other aircraft (for example helicopters, aeroplanes), spacecraft and spacecraft launch vehicles. The Entries (Sl. Numbers) which are relevant for our purpose are 348 and 346D.

Condition no. 68 which is relevant to Entry 348 is as follows :

*“If an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Civil Aviation certifies in each case the description and quantity of such raw materials which are required for the manufacture or servicing of the specified aircraft or parts of such aircraft, as the case may be.”*

Condition No. 102 which is relevant to 346D reads follows :

- “If, - (i) imported for servicing, repair or maintenance of aircraft, which is used for operating scheduled air transport service or the scheduled air cargo service, as the case may be; or*
- (ii) the parts are brought into India for servicing, repair or maintenance of an aircraft mentioned in clause (ii) of Condition No. 101.*

*Explanation : - The expressions “scheduled air transport service” and “scheduled air cargo service” shall have the meanings respectively assigned to them in Condition No. 101.”*

3.3 At this juncture, we may extract Condition No. 101 applicable to Entry 346B which speaks of “all goods falling under Chapter 8802 (except 8802 60 00” i.e., spacecraft etc.)

- “If, - (i) imported by an operator or on behalf of the operator, for operating scheduled air transport service or scheduled air cargo service, and such aircraft is used for operating the scheduled air transport service or the scheduled air cargo service, as the case may be; or*
- (ii) the said aircraft is not registered or not intended to be registered in India, and brought into India for the purpose of a flight to or across India, and which is intended to be removed from India within six months from the date of entry.*

*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) “scheduled air transport service” means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public; and*
- (c) “scheduled air cargo service” means air transportation of cargo or mail on a scheduled basis*

*according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, not open to use by passengers.*

3.4 It is in the light of these provisions in the notification that we have to examine the applicant's claim for exemption of basic customs duty in respect of the imported raw materials/consumables and parts utilised in the course of servicing or repairing of the aircraft or its engine.

4. Before we undertake this exercise, it would be apposite to briefly advert to the principles governing the construction of an exemption notification in a taxation statute by referring to some decisions of the Supreme Court.

4.1 In *Hemraj Gordhandas vs. H.H. Dave, Assistant Commissioner of Central Excise & Customs, Surat*<sup>1</sup>, a five Judge Bench of the Supreme Court reiterated what was said in *Innamuru Gopalan's*<sup>2</sup> case in the following terms :

“..It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different but that is not the case here...”

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<sup>1</sup> 1969 (2) S.C.R. 252, 1967 (2) E.L.T. P.350

<sup>2</sup> 1964 (2) S.C.R. P. 888

4.2 In *Union of India vs Wood Paper Ltd.*<sup>3</sup>, the paradigm of construction of an exemption provision was set out thus :

“...In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment state revenue. But once exception or exemption becomes applicable, no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction...”

In that case, the Supreme Court pithily stated the implication of the rule of construction enunciated above, in the following words: “do not extend or widen the ambit at the stage of applicability. But once that hurdle is crossed, construe it liberally.” (vide para 4) It was held therein that the applicant did not satisfy the first requirement and therefore the question of giving liberal construction did not arise. It may be relevant to mention that in that case, the Supreme Court, with a view to clear the ambiguity and to avoid “inequitable results “ was inclined to hold that the expression “any factory” occurring in the notification meant any new factory.

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<sup>3</sup> 1990 (47) E.L.T. P.500

4.3 In *Commissioner of Customs (Imports), Mumbai vs. Tullow India Operations Limited*<sup>4</sup>, the principle was restated as follows :

“Whereas the eligibility clause in relation to the exemption notification is given strict meaning... in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed liberally.” The principle that ordinarily literal interpretation must be given effect to unless it gives rise to an anomaly or absurdity was also reiterated in that case.

4.4 Another principle to be kept in view is what was enunciated by the Supreme Court in *Oblum Electrical Industries Pvt. Ltd. vs. Collector of Customs, Bombay*<sup>5</sup>. It was observed therein that “wordings in the notification have to be construed keeping in view the object and purpose of the exemption”. To the same effect is the observation in *Collector of Central Excise vs. Parle Exports Ltd.*<sup>6</sup>

4.5 On first impression, it may appear that the above principle goes counter to the observation in *Hemraj Gordhandas* wherein Their Lordships observed that “the operation of the notification has to be judged not by the object which the rule making authority had in mind but by the words which it has employed to effectuate the legislation intent”. However, it is really not so. The object and purpose of the exemption provision is one of the guiding factors to be kept in view in construing the words or expressions of doubtful import

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<sup>4</sup> 2005 (189) E.L.T. 401

<sup>5</sup> 1997 (94) E.L.T. 449 at para 11

<sup>6</sup> 1988 (38) E.L.T. 741 at para 13

or those perceived to be ambiguous or in order to avoid an absurdity or anomaly. At the same time, plain and unambiguous language cannot be ignored by reference to the supposed intention, though in a case where an absurdity would result, the said rule of construction may have to be relaxed.

4.6 In *Parle Exports case* (Supra), the Supreme Court observed :

*“The expressions in the Schedule and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them.”*

Now, we shall deal with the Questions formulated serially :

5. Raw Materials [vide Question No. 1(a)]

“Raw material for manufacture or servicing of air-craft” – that is the terminology used in the Notification (21/2002-Cus). Does it include consumables such as lubricants, oils and greases? Obviously, the answer should be in the negative. They are not raw-material even in the widest sense of the expression. Common parlance and dictionary meaning - both negate the interpretation suggested by the applicant’s counsel.

5.1 The meaning of the word ‘raw material’ as given in various dictionaries may be noted:

- (i) Chambers Twentieth Century Dictionary : “Often in the natural state that serves as the starting point of a

manufacturing or technical process and that out of which something is made or madeable or may develop”.

- (ii) The New International Webster’s Dictionary and Thesaurus of the English Language : “Unprocessed material (animal, vegetable, or mineral) needed and used in manufacturing, as contrasted with finished products.
- (iii) The New Oxford American Dictionary : “The basic material from which a product is made.”
- (iv) Words and Phrases (Permanent Edition, Vol. 36) : “The term “raw material” not necessarily meaning crude material in its natural state, but including products made from crude material, which have undergone manufacturing process and been converted into a distinct product, from which an entirely different one may be made by the application of additional scientific processes (City of Henderson vs. George Delker Co., 235 S.W. 732)”.
- (v) Mc Graw-Hill Dictionary of Scientific and Technical Terms: “Crude, unprocessed or partially processed material used as feedback for a processing operation; for example, crude petroleum, raw cotton, or steel scrap, also known as crude material”.
- (vi) Chambers Dictionary of Science & Technology : “Starting point for manufacture of useful materials. Raw materials for polymers include oil, natural gas and liquid petroleum

gas; for cement, coal, lime stone and clay; for steel, iron ore and coking coal, oil or natural gas; for other metals, metal ore and reducing agent; for glass, silica sand and other metal oxides; for ceramics, metal oxides; for semiconductors, silicon plus dopants.”

5.2 In *Advanced Law Lexicon* by P. Ramanatha Aiyar (2005 Edn - by Justice YV Chandrachud), it is stated that “the term raw materials would include materials which physically enter into the composition of the finished product; materials like stores and fuel which assist the manufacturing process but do not physically enter into the composition of the finished product would not be included in raw materials.” (Reference is made to the Statement on the amendments to Schedule-VI to the Companies Act, 1956). In the same book, another meaning given is : “goods purchased for use in manufacturing a product e.g. wood, steel”. An extract from *Business: International accounting* has also been set out therein. It says, “any material purchased for and employed directly in a production process. Raw materials, such as chemicals, metal sheet and timber, are generally at a low level of finish compared to the manufactured product that results from consumption.”

5.3 None of the meanings given above would justify the classification of lubricants and oils used in the course of servicing the aircraft as raw material.

5.4 It is apposite to refer to the decision of the Supreme Court in *Collector of Central Excise v. Ballarpur Industries\**, cited by the applicant's counsel. In that case, the stand of the department was that sodium sulphate which was burnt up in the process of manufacturing and not retained in the finished product i.e paper, cannot be considered to be raw material in the manufacture of paper. It was contended by the Revenue's counsel that the goods to become raw material must, either in their original or altered form endure as a composite element of the end-product. The Revenue's contention was not accepted by the three Judge bench of the Supreme Court. The question was formulated by their Lordships in the following terms:

“The question, in the ultimate analysis, is whether the input of Sodium Sulphate in the manufacture of paper would cease to be a “Raw Material” by reason alone of the fact that in the course of the chemical reactions this ingredient is consumed and burnt-up.”

Then, it was observed that “the expression ‘raw material’ is not a defined term. The meaning to be given to it is the ordinary and well-accepted connotation in the common parlance of those who deal with the matter”.

5.5 The Supreme Court then addressed the question whether the ingredients which were burnt up or consumed in the chemical reactions qualify themselves as raw material for the end-product.

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\* 1989(43) E.L.T. , pg. 804

The following pertinent observations were made to answer the above question:

“One of the valid tests, in our opinion, could be that the ingredient should be so essential for the chemical processes culminating in the emergence of the desired end-product, that having regard to its importance in and indispensability for the process, it could be said that its very consumption on burning up is its quality and value as raw material. In such a case, the relevant test is not its presence in the end-product, but the dependence of the end-product for its essential presence at the delivery end of the process. The ingredient goes into the making of the end-product in the sense that without its absence the presence of the end-product, as such, is rendered impossible. This quality should coalesce with the requirement that its utilization is in the manufacturing process as distinct from the manufacturing apparatus.”  
(emphasis supplied)

5.6 The Supreme Court held that the Tribunal was right in its conclusion that Sodium Sulphate was used in the manufacture of paper as ‘raw- material’ within the meaning of the notification No.105/82-CE. In paragraph 6 of the Judgement, it was observed that for something to qualify itself as raw material, it need not necessarily and in all cases go into and be found in the end-product.

5.7 Thus, it is only the basic material that is associated with the manufacturing process or that which goes into the making of end-product that constitutes the ‘raw material’. *Ballarpur Industries* case, while clarifying the position that the visible or identifiable presence of the ingredient in the end-product is not necessary to be reckoned as raw material, made it clear that the ingredient (raw-material) should

be an indispensable constituent of manufacturing process. It should be integral to the manufacturing process, but not merely incidental to the process (as in the case of lubricants, oils and greases). Again, as observed by the Supreme Court in the above case, the utilization of raw materials should be in the manufacturing process but not manufacturing apparatus. Thus, the ratio of the decision in *Ballarpur Industries* case, far from supporting the applicant's contention, would go against it.

5.8 In *CST vs. Rewa Coalfields*<sup>α</sup>, the Supreme Court observed at paragraph 5 that timber, kerosene oil, hewing implements, torches, electrical bulbs, cement and lime are not articles "consumed in the process of manufacture" and therefore not 'raw material'. "They may be used for purposes incidental to mining, but are not integral thereto".

5.9 While not disputing the fact that the lubricants and oils used in the course of servicing or overhauling the engine, etc. are not raw materials in the ordinary or commercial sense, the learned Sr. Counsel for the applicant stressed that the expression 'raw material' read in conjunction with the immediately following phrase "for servicing" would comprehend even the consumable items mentioned above. The learned counsel submits that having regard to the context in which the expression 'raw materials' occurs, it must be

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<sup>α</sup> 1999 (5) S.C.C. 715

understood in a very wide sense, notwithstanding its ordinary and plain meaning; otherwise it is difficult to think of any raw material used in the course of servicing. Reliance is placed on the following observation of the Supreme Court in TELCO vs. State of Bihar<sup>♦</sup>

“The ordinary common sense understanding is that it (raw-material) is something from which another new or distinct commodity can be produced. When it is used in a taxing statute, it may have related meaning depending on the context in which it has been used.”

5.10 We find it difficult to accept the contention of the applicant. No doubt, wide meaning can be given to the expression ‘raw material’, wherever the context so requires, even deviating from its ordinary sense, as has been done in the two cases referred to by the learned counsel. But, in the guise of giving wide or contextual meaning, it is impermissible to distort its meaning. Unless a particular word is capable of yielding the meaning which is sought to be given by the applicant, it is not possible to create or devise a meaning which does not exist. The basic nature and intrinsic character of raw material cannot be ignored. Consumables such as lubricants, oils and greases cannot be characterized as raw material in one’s anxiety to give some meaning to the phrase “raw-material for servicing”. It is not easy to visualize what the exempting authority had in mind in using the expression ‘raw material for servicing’ of aircraft. It may be that in due course of time and in rare circumstances, some items

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<sup>♦</sup> 1994 (6) S.C.C. Page 479 at 483

which can broadly fall within the description of raw material for servicing may be identified. But as far as lubricants and oils are concerned, they cannot be understood as raw materials at all and cannot, therefore, be brought within the four corners of the exemption, whatever may be the reason behind using such expression. In fact, we are informed that the aircraft operators are presently paying duty on the imported lubricants and oils.

5.11 In the light of the above discussion, the answer to Question No.1(a) should be in the negative and against the applicant.

Question 1(b) :

6. Then remains the second part of Question No. 1 which is about the availability of additional duty exemption for the articles such as nuts, bolts, rivets, screws, clamps, couplings and angles that are used directly or indirectly in the process of servicing and repairing the aircraft engine.

6.1 Section 3 (1) of Customs Tariff Act provides for levy of additional customs duty of any article imported into India "equal to the excise duty for the time being leviable on like article if produced or manufactured in India". It is the contention of the applicant that by virtue of Notification No. 6/2006-CE dated 1.3.2006 issued under Section 5A of the Central Excise Act, the excise duty on the above articles is nil and therefore the additional duty of customs is also nil. Under Sl. No. 54B of that notification, parts of aircraft of Heading

8802 are subjected to nil rate of duty subject to fulfillment of Condition No. 22 of the same notification. Condition No. 22 reads as follows :

*“If –*

- (i) intended for servicing, repair or maintenance of aircraft owned by Government of India, State Governments, Public Sector Undertakings of the Central Government or the State Governments; or*
- (ii) intended for servicing, repair or maintenance of aircraft, which is used for operating scheduled air transport service or scheduled air cargo service, as the case may be.*

*Explanation – The expressions “operator”, “scheduled air transport service” and “scheduled air cargo service” shall have the meanings respectively assigned to them in condition 21 above.*

6.2 The expression ‘operator’ is not used in Condition No. 22.

Obviously, an inadvertent slip has surfaced in the Explanation.

6.3 Condition No. 21 defines the above two expressions as follows:

*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) “scheduled air transport service” means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public; and*
- (c) “scheduled air cargo service” means air transportation of cargo or mail on a scheduled basis according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, not open to use by passengers.”*

6.4 The Entry/S.No. 54-B of Central Excise Notfn. No. 6/2006 reads as follows :

S.No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
54B	Any Chapter	Parts of aircraft of heading 8802	Nil	22

6.5 It may be noted that in column No. 3, instead of Tariff Item 8803 (of Chapter 88), a comprehensive expression, “any Chapter” was substituted with effect from 7.3.2007. Therefore the articles specified in column 3 of S.No. 54-B need not necessarily find place in Chapter 88 which deals with “Aircraft, space aircraft and parts thereof”. Nuts, bolts, rivets, cotters, washers and similar articles of iron or steel are covered in Chapter 73 of the First Schedule to Central Excise Tariff Act, which is a Chapter unrelated to aircrafts. Still, if they answer the description of “parts of aircraft” (of Heading 8802), they are exempt by virtue of Entry 54-B of Central Excise Notfn. No. 6/2006, provided, of course, the requisites of Condition No. 22 are fulfilled. The question therefore is whether nuts, bolts, rivets, screws, couplings, etc qualify for exemption under the said notification and Entry. The dictionary meaning of the word “part” is “a piece or segment of something which combined with others makes up the whole (vide The Concise Oxford English Dictionary). Part is also defined to mean as ‘constituent’ in many dictionaries. In the New Oxford American Dictionary one of the meanings given is : ”an element or constituent that belongs to something and is essential

to its nature". A part can be component or accessory depending on the context in which the word is used. It is pointed out by the applicant that these items constitute an integral part of engine without which the engine would disintegrate and therefore they are parts.

6.6 The real test that has to be applied is whether such items are regarded or known as parts of aircraft in common or commercial parlance or whether the persons in the aviation field consider them as such. Referring to the earlier decisions, it was reiterated by the Supreme Court in *G.S. Auto International Ltd. vs. Collector of Central Excise, Chandigarh*<sup>≈</sup>, that "the true test for classification is the test of commercial identity and not the functional test. It needs to be ascertained as to how the goods in question are referred to in the market by those who deal with them, be it for the purposes of selling, purchasing or otherwise". In that case the question arose whether the nuts, bolts and washers of various descriptions were to be regarded as parts of automobile in which case they would fall under the residuary Tariff Item No. 68 of the Central Excise Act (as it then stood) or they should be classified under Tariff Item No. 52 which refers to nuts, bolts, threaded or tapped and screws of base metal or alloys thereof....." The Supreme Court referred to the finding of the Tribunal that no one uses these goods for general purposes and that these items were manufactured to cater to the requirements of automobile manufacturers. The Tribunal's observation that there was

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<sup>≈</sup> 1993 (152) E.L.T. Page 3

no evidence to the effect that they were in use as bolts and nuts as understood in ordinary or common parlance was also referred to. Then, the Supreme Court while reaffirming the test of commercial identity of goods, held that the goods in question did not fall under Entry 52. The Supreme Court referred to and analyzed the decision in *Jaishri Engineering Co. vs. Collector of Central Excise*<sup>Y</sup>, at paragraph 16 of the judgement in the following words :

“This Court considered the question whether High Pressure Connectors meant for lubricating purposes were classifiable under Tariff Item 52 of the Central Excise Tariff as ‘nuts’ or under Tariff Item 68 as ‘integral part of diesel engine pipes’. It was found that the said goods were not manufactured according to any special specifications as integral parts of machinery, rather some of these nuts were also purchased from the market while those being manufactured by the assessee were also sold to outside buyers as nuts; further, those goods were commercially known and bought and sold as nuts. On that finding, it was held that they were classifiable under Tariff Item 52”.

Thus, the ratio of *Jaishri Engineering & Co.* was explained.

6.7 Going by the above approach, the items in question which are imported for the specific purpose of utilization in the service/repair of aircraft engine can be legitimately treated as parts of aircraft. Any doubt in this regard is dispelled by the communication of the Directorate General of Civil Aviation dated 11.9.2007 which has been placed before us by the Departmental Representative. It is stated in the said letter addressed to the Commissioner of Customs (Import

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<sup>Y</sup> 1989 (49) E.L.T. page 214

and General), New Delhi : “in this context, it is stated that as per the existing practice, airlines are able to import aircraft parts free of customs duty. This includes all parts and components listed in “Illustrated Parts Catalogue” (IPC) for the specific type of aircraft. Nuts, bolts, rivets, screws, clamps, couplings, joints etc. are also aircraft parts with specified part numbers and are included in the IPC”. Though superficially it appears that the articles covered by Question 1(b) are used for general purposes and are items of common usage, it is clear from the above letter by an authority intimately connected with civil aviation, the articles sought to be imported ought to be classified as parts of aircraft. These parts are specifically shown in the catalogue of aircraft parts and are understood as such in aviation circles. In fact, recognizing this position the learned Departmental Representative has fairly stated at page-I of the written submissions that the nuts, bolts, rivets, clamps, couplings, etc. referred to at page 129 of the application are not raw material but they can be regarded as parts.

6.8 However, the claim for exemption under Sr. No. 54B of the Notification No. 6 of 2006-CE is sought to be resisted by the department on the ground that condition No. 22 thereof disentitles the applicant to avail of the *nil* duty relief provided in respect of parts of aircraft. According to the Revenue, it is only the Government of India, State Governments and Public Sector Undertakings specified in clause (i) and the operators of scheduled air transport or air cargo

services mentioned in clause (ii) that can invoke the benefit but not a third party importer like the applicant. We find it difficult to accept the contention of the Revenue. It is fairly clear that the exemption contemplated by Sr. No. 54 B read with Condition No. 22 is with reference to the end use of the parts of aircraft. If the argument of the Commissioner and the departmental representative has to be accepted, we have to virtually ignore the opening part of the two clauses, i.e., "intended for servicing, repair or maintenance of aircraft". There is no language in Condition No. 22 which imports a requirement that the use for the said purposes should be by the operator of aircraft and none else. Even if the manufactured parts are to be used for those purposes by a service provider like the applicant as a part of the repairing job it has undertaken, Condition No. 22 is still satisfied. It is enough if the parts manufactured are 'intended' for servicing, repairing and maintenance of the category of aircraft mentioned in Condition No. 22. The manufactured goods should of course be earmarked for use for the purposes mentioned in clause (i). The fact that the scheduled air transport operator is not directly concerned with the importation does not negate the application of exemption. The word "intended for" is significant and due meaning should be given to that expression. The only test is whether the parts manufactured and cleared from factory are intended or meant for use in the course of servicing, repairing or maintenance of such aircraft irrespective of the fact that the parts are

imbedded into the aircraft/aircraft engine by a person with whom the operator had entered into a contract for carrying out the aforementioned jobs. In respect of such goods, the manufacturer will be able to claim exemption at the time of clearance. We are not concerned with the modalities of claiming exemption by the manufacturer and therefore, that aspect need not detain us.

6.9 For these reasons, and in light of the further consideration that will follow while meeting a similar point in respect of Customs Notfn. No. 21/2002, we reject the argument of Revenue and accept the applicant's interpretation that nuts, bolts, screws, rivets, etc specified in S.No. B at P, 129 of the application fall under Entry 54-B of Central Excise Notfn No. 6/2006 provided they are specially meant for use in aircraft engines.

6.10 Before we take up the next question, we have to advert to one more aspect arising out of the same business activity. In page 59 of the application, basic duty exemption is also claimed in respect of "all kinds of temporary materials and consumables such as nuts, bolts, rivets, screws, clamps, couplings, joints, angles, and similar goods that are used directly or indirectly in the process of servicing an engine and are incorporated/injected into the goods that are being repaired including those that may be spoilt or wasted during the process of servicing an engine or in the course of repairing the aircraft engine" on the footing that they are parts of aircraft.

However, no specific question is framed in this regard. The next question i.e. Question No. 1(b) relates to additional duty and the notifications relevant to basic and additional duty being almost similar, whatever conclusion is reached vis a vis Question No. 1(b), it would be equally applicable to basic duty on the articles covered by Question 1(b).

### Question 2(a)

7. This question relates to re-import of engine module which is in the nature of sub-assembly of engine for the purpose of offering repair and maintenance services to the Indian airline companies operating scheduled air transport/air cargo services. The applicant's claim for exemption (nil duty rate) is based on Sl. No./Entry No. 346-D of Notification No. 21/2002-Cus. The claim is sought to be denied by the Department on two grounds. Firstly, it is the contention of the Department that the basic customs duty exemption on aircraft parts is available under the said notification only to the specified categories of importers. The applicant, it is pointed out, is not one of such importers. In other words, it is submitted that the notification does not contemplate that the third party import has to be exempted from duty. This argument is sought to be developed by the Revenue on the following grounds :

- (a) If the intention had been to exempt third party import also, specific mention should have been made in the notification itself such as in the case of Notification 51/96, according to

which the goods imported by or for delivery to public funded research institutions or institutions of scientific and industrial research, are exempted from duty. Another example pointed out is Sl. No. 346-B of the Notification 21/2002.

- (b) If third party import was intended to be covered by the notification, specific conditions such as an undertaking/end use certificate would have been stipulated in order to ensure proper utilization of goods for the specific purpose.

7.1 Secondly the claim is countered by pressing into service Notification No. 94/96. It is contended that the re-import of goods after repair is exclusively covered by that notification and Notification No. 21/2002 does not come into play in such a case. The relevant portion of the said notification is as follows :

Sl. No.	Description of goods	Amount of duty
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2.	Goods, other than those falling under Sl. No. 1, exported for repairs abroad	Duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways.
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7.2 Neither of the grounds put forward by the Revenue appeals to us. We are of the view that the applicant's claim should be sustained in the light of the plain language of Sl. No. 346-D read with condition No. 102. On the facts stated by the applicant which are set out supra, the applicant's imports satisfy all the requirements laid down in the exemption Notification No. 21/2002. There is no dispute that engine modules are parts of aircraft falling under Heading No. 8802.

The import is for the specific purpose of repairing and delivering the aircraft engine to be attached to the aircraft belonging to the Indian airline company and that aircraft is used for operating scheduled air transport/cargo service. The applicant imports the said engine parts pursuant to and in the course of fulfillment of contracts entered into with the operators of s.a.t.s. and s.a.c.s. Instead of the aircraft operator himself attending to the repair and servicing of engine, the operator enters into a contract under which the applicant accomplishes that job. It is needless to say the obvious that the engine repair and overhaul is essential for the maintenance of aircraft. It directly contributes to the repair and maintenance of aircraft. It follows, therefore, that the applicant by undertaking the engine repairs at the instance of the aircraft operator, can be said to have imported the parts (engine modules) for the purpose of repair/maintenance of aircraft. In these circumstances there is no reason why the import made by the applicant should not fall within the scope of Condition No. 102. Condition No. 102 which is integral to the exemption provision neither expressly nor by necessary implication limits the exemption only to the imports directly made by the aircraft operators. Those importers who directly cater to the maintenance needs of the aircraft, can also claim the same relief. The interpretation sought to be placed by the Revenue would amount putting a gloss on the wording of Condition No. 102. The whole argument of Revenue on this aspect is built up on an unwarranted

assumption that the relevant Condition itself specifies the eligible category of importers.

7.3 The above interpretation placed by us while rejecting the Revenue's contention, will be consistent with the object and purpose of the notification which it is not impermissible to take into account (vide *Oblum Electrical Industries vs. Collector of Customs*<sup>69</sup>). The notification seems to be a step in the direction of providing appropriate relief for the imports connected with the maintenance needs of the air service sector in India which has recorded a phenomenal growth in the recent times.

7.4 The analogy sought to be drawn from another notification, viz. 51/96 is of no avail to the Department. The language in which an exemption notification is couched need not follow an uniform pattern. The expression "or for delivery" occurring in Sl. No. 1 of Notfn No. 51/96 should be confined to its context. If the Central Government wanted to restrict the exemption only to those operating the scheduled air transport/cargo services, it should have used clear and appropriate language to that effect much in the same way as Sl. No. 4 of the very same Notification 51/96. It specifically mentions the name of the actual importer i.e. Regional Cancer Centre which is eligible to get exemption. The Commissioner then refers to Sl. No. 346-B. Condition No. 101 applies to that Entry. The language

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<sup>69</sup> 1988 (38) E.L.T. 7

therein - "if imported by an operator or on behalf of the operator", far from supporting the Department's contention, militates against it. It indicates that wherever the exemption was intended to be confined only to the operator or his agent who imports, it was stated so expressly. So also, as per Condition No. 103 governing Sl. No.347-A of Notification No. 21/2002, exemption is specifically restricted to the import of aircraft by the Aero Club of India, New Delhi or an approved flight Training Institute.

7.5 The Revenue's contention that if the notification permitted third party import, an undertaking or certificate of proper utilization of imported goods must have been stipulated, does not appeal to us. We have not been told that wherever third party import is exempted, such requirements are invariably laid down. True, it may have been prescribed in some cases such as Entry 347-C (as introduced in 2007) which lays down a condition as to furnishing of undertaking. But, it is not an invariable rule. In fact, the undertaking is required to be furnished under the said Entry even if the importer himself is the user of aircraft. We may however clarify that even without a specific provision for furnishing such a certificate or declaration, the Department is not powerless to take such measures or precautions as may be considered necessary to ensure that the goods imported are not diverted for a different purpose. Such a power is implicit or incidental to the grant of duty exemption at the time of permitting importation. Express provision or no provision, it is legitimately open

to the Department to exercise incidental powers to ensure that imported goods are properly utilized in accordance with the exemption notification. Such powers may include insistence on a declaration at the time of import, inspecting the records of the importer and if necessary, even to call for periodical reports of utilization and stock balance. A Customs officer vested with specific powers under Sections 107, 108 etc. to ensure compliance of the provisions of the Act.

7.6 The learned Departmental Representative then submits that the word 'operating' occurring in clause (i) of Condition No. 102 should be construed in the light of the definition of 'operator' contained in the preceding Condition No. 101. 'Operator', according to the said definition, means "a person, organization or enterprise engaged in or offering to engage in aircraft operation". Thus, an operator cannot be equated to a third party importer like the applicant, the Departmental Representative contends. We find no substance in this contention. The context in which the definition of 'operator' finds place in the Explanation to Condition No. 101 should be taken into account. Sl. No. 346-B read with Condition No. 101 allows exemption of duty for the goods under Tariff Item 8802, if they are imported by an operator or on behalf of the operator for the purpose mentioned therein. It is in that connection that the definition of 'operator' is given in clause (a) of the Explanation to Condition No. 101. It has no relevance in construing clause (i) of Condition No. 102

with which we are concerned. In fact, the difference in language between Condition No. 101(i) and Condition No. 102(ii) is suggestive of the inference that the benefit of import duty exemption under Entry 346-D read with Condition No. 102 is not confined only to the operator of aircraft or his agent, as is the case with clause (i) of Condition No. 101.

8. Alternative Question (re : exemption claim under Sl. No. 348) need not be answered in view of the answer to Question No. 2(a) in favour of the applicant. We may however mention that a similar alternative question is discussed after Question No. 3(a) and the applicant's contention in this regard has been negated.

9. **New Business No. 2 : Setting up an engine MRO Shop in India for servicing the aircraft belonging to foreign airline companies:**

**Question No.3 (a) : Whether re-import of engine modules necessary for provision of the services to Foreign airline companies would be exempt from payment of Basic Customs duty under Entry 346D of Notification Number 21/2002-Cus dated March 1, 2002 (as amended)?**

9.1 The question extracted above is formulated in the same manner as question No. 2(a). However under the proposed business no. 2 the import of engine modules is for the purpose of repairing the

aircraft engines belonging to foreign airline companies. According to the applicant, the benefit of exemption under Notfn. 21/2002 is equally available to the import of parts made for repairing/servicing of the engines to be fitted into the aircrafts of foreign airline enterprises.

9.2 In this business, the nature of activities carried out at the workshop are substantially the same as in the first business. However, this category of business involves the importation of the defective engines sent by the foreign airlines to the applicant. Another noteworthy difference is that unlike in New Business 1, where the airline company in India enters into a contract for engine maintenance or a contract for total technical support with the applicant, under the new business 2, such contracts are entered into between \*LHT/LHT group companies outside India and foreign airline companies. LHT would be using the services of the applicant as a sub-contractor for carrying out the engine repair and testing in India. It is stated in the course of arguments that the transactions between the applicant and LHT are on principal-to-principal basis. Under this business, the applicant would receive its fees from LHT and not from the foreign airline.

9.3 A summary of various work-steps involved in this type of business activity is given by the applicant as under:

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\* Lufthansa Technik – the term LHT wherever occurs will cover LHT group companies also.

- i. Purchase and subsequent import into India of certain aircraft related materials and consumables.
- ii. Dispatch of the aircraft engine by the foreign airline (as per the instructions issued by LHT to such airline) and consequent import of the same into India by the applicant.
- iii. Disassembly of the aircraft engine into aircraft engine modules, inspection and identification of defective modules.
- iv. Export of the defective aircraft engine modules to LHT outside India.
- v. Disassembly of the aircraft engine modules into engine parts by LHT outside India.
- vi. Cleaning and inspection of the engine parts including crack detection by LHT.
- vii. Repair of engine parts and accessories and replacement of engine parts that are beyond economical repair by LHT.
- viii. Reassembly of engine parts to aircraft engine modules by LHT.
- ix. Export of repaired aircraft engine module by LHT to the applicant and consequential importation of these repaired modules by the applicant into India.
- x. Reassembly of the aircraft engine modules to full aircraft engine by the applicant.
- xi. Aircraft engine test-run according to manufacturer's specifications by the applicant and in case the engine does not meet the specific requirements during the final testing, minor repairs are carried out by the applicant or if necessary, the engine will be disassembled again and the specific faulty module/part would be sent back to

LHT, Germany for repairs and it would be resent to India by LHT.

- xii. Export of the repaired aircraft engine to the customer by the applicant from India as per the instructions from LHT.

9.4 The factual scenario is this : LHT is in charge of maintenance and repair of aircraft belonging to foreign airlines located outside India, it having entered into a contract with those airline companies for that purpose. In the course of executing such services as per the contract, LHT finds defects in the engine. The engine is removed and dispatched to the applicant in India. After disassembly, the applicant exports the defective engine 'modules' to LHT. LHT repairs or replaces the damaged engine parts and accessories. The rectified engine modules are then dispatched by LHT to the applicant in India. The applicant reassembles the engine modules so as to restore the complete engine and subjects the engine to tests. If found in order, the applicant exports the aircraft engine to the foreign airline owner, again, as per the instructions of LHT.

9.5 On these facts, can it be said that the applicant will be importing/reimporting the repaired engine modules for servicing, repair or maintenance of aircraft (of a particular description) within the meaning of Condition No. 102 of Notfn No. 21/2002-Cus?. After giving our anxious consideration, we find the answer in the negative and the applicant's claim for exemption should fail.

9.6 We find it difficult to hold that the applicant imports the parts viz. repaired engine modules sent by LHT for servicing, repairing or maintenance of the aircraft belonging to the foreign airline company. The applicant has no privity of contract with the foreign airline enterprise which owns the aircraft. The applicant's contract is with LHT. The applicant acts on the instructions of LHT from the beginning to the end. The applicant has made it clear that it will be acting as a sub-contractor to LHT. Even the fees for the work done is received from LHT, not from the foreign airline Company. It is the applicant's principal viz. LHT which undertakes the job of servicing and maintenance of aircraft engines. LHT sends the damaged engine to the applicant and gets back the engine in working condition from the applicant. The import and export takes place at the behest and on the instructions of LHT. No doubt, the engine repaired by the applicant is an essential component of the aircraft. As held under Business No. 1, the repair of aircraft engine falls within the domain of maintenance of aircraft as there is an integral connection between the two, taking a holistic view. In that sense, the applicant's principal – LHT will be catering to the effective maintenance of aircraft based in a foreign country. It does not however follow as an inevitable corollary that the applicant imports engine parts for maintenance of aircraft. The applicant has no tie up with the aircraft operator based abroad. The maintenance of aircraft or the essential component of it is not his look out. That is an obligation undertaken by its principal

LHT who enters into a contracts with foreign airlines for that purpose. The applicant's limited job and duty is to insert the repaired engine modules sent by LHT into the engine, check the running condition of the engine and then dispatch it to the concerned foreign airline, as per the instructions of LHT. In this fact situation, it is not reasonable to hold that the applicant will be importing the aircraft parts (engine modules) for the purpose of servicing, repairing or maintenance of aircraft. We will have to strain the language to say so.

9.7 LHT undertakes a series of activities in connection with the maintenance and repairs of the aircrafts belonging to foreign airline enterprises. For effectively discharging its obligations, it entrusts different jobs to different persons. The applicant is one such who undertakes at the instance of LHT an important job connected with the engine repair/reassembly. That does not mean that the applicant imports the engine modules for servicing, repairing or maintaining the aircraft. It is only the applicant's principal – LHT that has assumed the responsibility for the repair and maintenance of engine which in its turn directly contributes to the maintenance of aircraft itself. But, the role of applicant is different. An importer who merely undertakes the repair of defective engine or some other component of aircraft at the instance of actual repairer of aircraft and sends it back to him cannot be said to have imported the goods for repairing or maintaining the aircraft, though the act of repairing the engine facilitates the maintenance of aircraft by the person incharge of such

repair and maintenance outside India. We are of the view that the language of the crucial phrase in Condition No. 102 and collocation of the words employed therein would keep the applicant's import out of the ambit of Sl.No. 346-D read with Condition No.102(i). It is axiomatic that an exemption notification in a taxation statute should be strictly construed and the person who seeks the benefit of exemption should squarely fall within the four corners of the exemption provision. He must be able to demonstrate beyond doubt that he satisfies the eligibility conditions for claiming exemption. Even if two views are possible, the view in favour of the assessee cannot take precedence over the view against him, while construing a pre-condition in a fiscal exemption notification.

9.8 It is the contention of the applicant that the entire thrust of the notification is the ultimate end use of imported parts, it is not person specific at all and the importer may be anybody – he could be the operator of aircraft, repairer or service provider or stockist. It is enough that the imported parts are earmarked for utilization by whosoever it is in the aircraft operating as s.a.t.s/s.a.c.s. Whether or not the imported part is meant for use or deployment in such aircraft is the only test, according to the applicant's counsel. At best, the applicant's counsel says that there could be an inquiry as to the actual user of parts imported. We are not inclined to accept this contention. We do agree with the learned counsel that the end use is certainly an important aspect and an objective behind the notification.

But, it is equally important that the importer should be eligible to claim the relief on the plain terms of the notification. The words “imported for servicing, repair or maintenance of aircraft” necessarily imply that the person importing has inextricable link with the repair or maintenance of aircraft which is operated as s.a.t.s./s.a.c.s. In this sense either the operator himself or the service provider is obligated to repair or maintain the aircraft that can get the benefit under the notification. If the exemption has to be strictly construed as it ought to be, any or every importer of parts which are generally used in scheduled air transport service cannot get the benefit of exemption. The intervention of a third party service provider like LHT who, in fact, undertakes the activities envisaged by clause (i) of Condition No. 102 will disable the applicant from seeking the benefit of exemption under the said Entry.

9.9 There is another hurdle which the applicant has to cross to get into the ambit of exemption. The aircraft contemplated by clause (i) of Condition No. 102 to Sl. No. 346-D, must be one operated as ‘scheduled air transport service’ or ‘scheduled air cargo service’, as defined in the Explanation to Condition No. 101. The said definitions have already been noticed Supra (vide para 3.3). The crucial question then arises : Does the expression ‘scheduled air transport service’ comprehend an air transport service registered and operating anywhere in the world according to a published time-table? The same question arises in relation to scheduled air cargo service

as well. The argument of the applicant's counsel is that there are no words of limitation and therefore any commercial aircraft belonging to any airlines enterprise – Indian or foreign and regularly operating between two or more places anywhere in the world would be scheduled air transport service as defined in the Explanation to Condition No. 101. It need not have Indian base or Indian operations at all, argues the counsel. We are unable to accept this contention.

9.10 Before discussing this point, we consider it appropriate to advert to the genesis of the expressions scheduled air transport and cargo services and the legislation governing the aircrafts in India.

9.11 The definitions contained in the two notifications, viz, 21/2002-Cus. and 6/2006-CE are practically borrowed from the Indian Aircraft Rules. The notifications in question were issued in consultation with the Civil Aviation Department of Government of India which administers the Aircraft Act & Rules.

9.12 'Scheduled Air Transport Service' is defined in Rule 2(49) of Aircraft Rules as follows :

*"Scheduled air transport service" means an air transport service undertaken between the same two or more places and operated according to published time table or with flights so regular or frequent that they constitute a recognisably systematic series, each flight being open to use by members of the public;"*

9.13 The definition in the said Notifications is verbatim the same, excepting that it bifurcates the phrase into two categories – passenger service and cargo service. Rule 134 (1) mandates that : “no person shall operate any scheduled air transport service from, to, in, or across India, except with permission of the Central Government, granted under and in accordance with the subject to the provisions contained in Schedule XI.”

9.14 Schedule XI lays down the procedure for grant of permission to operate s.a.t.s. Permission to operate s.a.t.s. in pursuance of sub-rule (1)(1A) of Rule 134 can be granted either to:

- (a) (i) a citizen of India or (ii) a company or body corporate provided that (a) it is registered in India or having its principle place of business within India, (b) the chairman and at least 2/3rd of its directors are citizen of India, and (c) substantial ownership and effective control is vested in Indian nationals.

9.15 Obviously, in the case of foreign aircraft mentioned by the applicant with reference to Business No. 2, these conditions of eligibility are not satisfied. It is only the aircrafts that are granted permission under Rule 134(1) read with Schedule XI that are recognized as ‘scheduled air transport service’ under the Aircraft Rules.

9.16 The procedure and eligibility conditions governing registration of aircraft is laid down in Rule 30 and other rules in part-IV.

9.17 The question is whether 'scheduled air transport/air cargo service' has to be understood in a wider sense, as the applicant contends or in a restricted sense in which it is ordinarily understood in India in the light of the legislation governing the operation of airlines. The expression "aircraft used for operating scheduled air transport/air cargo service" occurring in Condition No. 102 can mean aircraft operating anywhere in the world or it can mean aircraft operated from and within India.

9.18 In our view, 'the scheduled air transport service' contemplated by the Explanation to Condition No. 101 cannot be given such an extended meaning as to comprehend the scheduled flights operating anywhere in the world. That is not at all the purpose of the exemption nor can it be said that its language is so compulsive as to accord such a wide meaning. The absence of restrictive words, by itself, is not a clinching factor. 'Scheduled air transport service' (for short s.a.t.s.) has acquired a definite connotation in our country having regard to the provisions of Air Craft Rules. The Aircraft Rules furnish the key to understand the width and amplitude of that expression occurring in the relevant Condition of the notification. It is reasonable to think that the 'scheduled air transport service' referred to in the notification is no different from what is contemplated by

Aircraft Rules. The tenor of clause (i) and the collocation of the words employed therein also leads us to the interpretation that the parts must have been imported to service or repair an aircraft in India. The words “imported for servicing etc. of aircraft” indicate that the aircraft in respect of which servicing and repairs have to be carried out is in the country of import. Parts imported for repairing the engine sent by foreign airlines to the applicant in India cannot in our view get the benefit of exemption.

9.19 As far as foreign aircrafts are concerned, limited benefit is given under the second part of Condition No. 102 attached to Sl. No. 346-D of the notification. The parts brought into India for repairing or maintenance of an aircraft not registered in India and brought into India for the purpose of flight to or across India will qualify for duty exemption if such aircraft is intended to be removed from India within six months from the date of entry. Apparently, the chartered aircrafts of foreign origin fall within clause (ii) of Condition No. 102.

9.20 There is another relevant reason why restricted interpretation should be preferred. If the exemption is available for the parts imported for the purpose of repair of engines relating to the aircrafts based outside India in some part of the world, it would be difficult if not impossible to verify the fulfillment of the end-use condition prescribed especially having regard to the fact that no procedure for such verification is laid down.

9.21 We have, therefore, come to the conclusion that in relation to New Business No. 2, the applicant does not fulfil the requirement of Condition No. 102 and therefore, cannot claim the benefit of exemption under Sr. No. 346-D of Notfn. No. 21/2002-Cus. Accordingly, the answer to Question 3(a) should be in the negative.

#### Alternate Question

10. The alternative contention of the applicant is based on Entry/SI. No. 348 of the Notification No. 21/2002, extracted supra. It is claimed that the engine modules can be regarded as raw material for servicing the aircraft. It is pointed out that raw material need not necessarily be something which is completely consumed in the manufacturing process and that its identity can still be retained vis-à-vis, the finished product. It is stressed that “raw materials for servicing” should be given wider meaning having regard to the context. This argument apparently derives its inspiration from the decision of the Supreme Court in TELCO v. State of Bihar<sup>\*\*</sup>. In that case, their Lordships were considering the notification issued under section 13(1)(b) of the Bihar Finance Act, 1981. It provided for concessional rate of tax for industrial raw materials (**inputs**), [emphasis supplied]. The question that arose for consideration was whether items such as tyres, batteries purchased by the dealer for use in the manufacture of vehicles could avail of the concessional rate. After

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<sup>\*\*</sup> 1994 6 S.C.C. pg. 479  
1994 (74)E.L.T. 193 (S.C.)

stating that “ordinary sense of understanding of raw materials is that it is something from which another new and distinct commodity can be produced”, the Court observed:

“When it is used in a taxing statute, it may have related meaning depending on the context in which it has been used.

Then, the Court having observed that the word “raw materials, has no fixed meaning and may vary with the use to which it is put,” stated thus :

“For instance, batteries, tyre and tubes or by themselves finished products. They on their own cannot be considered to be raw material. But, when it is used for manufacture of a vehicle, then it becomes raw material for it as it is essential and necessary for producing the good in which it has been used ..... They retain their identity in the end- product. But that could not exclude it from being treated as raw-material”. The ratio of the decision in *Ballarpur Industries* was clarified thus:

“It was held that an item to satisfy the test of raw-material must be such as should coalesce with the requirement that its utilization is in the manufacturing process.”

“an ingredient which retain its identity as end-product was as much raw material as that which was consumed in manufacture.”

10.1 Much reliance was placed in that case on the bracketed expression “inputs” which, it was pointed out, was deliberately used in order to broaden the meaning of ‘raw material’.

10.2 We do not think that this decision is of any assistance to the applicant. There are two distinct entries with different wording in Notfn. No. 21/2002. One relates to parts of aircraft and the other speaks of raw- materials. One cannot be equated to the other. In the face of distinction maintained between the two expressions, they have to be understood differently. If such different terminology were there, tyres or battery of the car could have been appropriately classified as parts rather than raw material. In TELCO case, there was only a single expression used in the notification i.e. 'raw-material' followed by bracketed word 'inputs'. There was no reference to parts or components. Hence wider meaning was given to the word 'raw-material' so as to comprehend even those items which are otherwise classifiable as parts. Such wider sense was attributed to raw material especially for the reason that its meaning is clarified, nay amplified, by the bracketed words 'inputs'. The Supreme Court observed that the purpose of using the expression 'inputs' (within brackets) was for broadening the meaning of raw-material by including in it even those items which could be placed in the vehicle, to make it marketable.

10.3 It may be further seen that in both the cases decided by Supreme Court i.e., *Ballarpur Industries and TELCO*, the items regarded as raw-material were integral and essential to the manufacture of finished product. In the present case, the so-called

raw materials are not for manufacture. The applicant is therefore driven to contend that the imported engine parts are raw materials for 'servicing' the aircraft. We cannot accept this extreme contention. The activity involved here is the repair of aircraft engine which would fall more appropriately within the ambit of expressions - repair and maintenance. It would be doing violence to common sense, ordinary understanding and commercial parlance to regard engine parts as raw materials used for servicing the aircraft. We have therefore no hesitation in rejecting the applicant's claim reflected in the alternate question.

11. Question No.3 (b) : Whether re-import of engine modules necessary for provision of the services to Foreign airline companies would be exempt from payment of Additional Customs duty under Entry 54B of Notification Number 6/2006-CE dated March 1, 2006 (as amended)?

The reasons given with reference to Question 3(a) will equally hold good for negating the applicant's claim for exemption from additional Customs Duty in the light of the Central Excise Notfn. No. 6/2006. The language of the relevant Entry and Condition in this notification is identical to the Customs Notfn. No. 21/2002, the only difference being the phrase "imported for" is used in Condition No. 102 of Customs Notification whereas the phrase "intended for" is used in Condition No. 22 of Central Excise Notification. This

difference does not in any way advance the case of the applicant as substantially both convey the same idea of purpose of import and the intended end-use of the imported/manufactured parts of aircraft. It is relevant to mention here that in the case of *State of Haryana vs. Dalmia Dadri Cement Ltd.\**, the expression “for use” was construed to mean “intended for use”.

## 12. New Business No.3 - Question No.4 (a) & (b)

Importation of aircraft components for subsequent provision of these to aircrafts of pre-identified airlines in India (known as ‘Home Base’ services) operating scheduled air transport and air cargo services

12.1 The applicant states that the key objective of this service offering is to make available the components required by customer airlines in India whenever they need them for replacing the unserviceable components. A summary of the activities under this transaction is set out by the applicant as follows :-

- (i) The applicant would enter into a contract for provision of ‘Home Base services’ with the customer airlines in India who operate scheduled air transport /cargo services.
- (ii) Pursuant to this contract, the applicant would import aircraft components into India (acting as the importer on record) and provide these to the customer airlines on a long term domestic lease

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\* 2004 (178) E.L.T. 13

basis. Upon the applicant providing the customer airline the right to use the Home Base components, the airline will assume full control, custody and possession thereof for a defined period of time.

- (iii) Soon after the expiry of the term or termination of the Home Base agreement, the customer airline will hand over possession of the Home Base components or similar serviceable components to the applicant.

12.2 The applicant submits that a 'Home Base' stock facilitates the airline to immediately replace an unserviceable component to ensure the airworthiness of the aircraft. It is pointed out that the access to and provision of such serviceable components is an integral aspect of maintenance of aircraft. It is stated that the 'Home Base' stock mainly consists of spare parts recommended by the aircraft manufacturer. Even according to the Civil Aviation requirements, a preparation of list of equipments which may remain unserviceable is mandatory. The applicant refers to a technical document titled "Component operating and storage limits" prepared by Lufthansa Technik which prescribes the need to remove certain components from the aircraft after a defined number of operating flight hours. The applicant states that it proposes to charge a monthly lease fee based

on the manufacturer list price “for the specific parts given to the airline”.

12.3 The following questions are raised by the applicant :-

4.(a) Whether Importation of the components by the Applicant for subsequent provision of the same to the pre-identified airlines in India would be exempt from payment of basic Customs duty under Entry 346D of Notification Number 21/2002-Cus dated March 1, 2002 (as amended)?

(b) Whether Importation of the components by the applicant for the said purpose would be exempt from payment of additional Customs duty under Entry 54B of Notification No.6/2006-CE dated March 1, 2006 as amended?

13. Question No. 4 (a) :

It seems to us that the applicant will not forgo the eligibility for exemption under Condition No. 102 of Entry 346-D, notwithstanding the view taken by us with reference to New Business No. 2. Though on the first impression, the reasons given for denying the benefit of exemption for New Business No. 2 might hold good for New Business No. 3 also, we would like to point out that there is a subtle but real distinction between the two. In our considered view, as regards Business No. 3, the applicant satisfies the relevant

conditions prescribed for earning the exemption under Notfn No. 21/2002.

13.1 The applicant enters into contracts with the airline customers in India who operate s.a.t.s./s.a.c.s. for creating a 'home base' facility by which an access is provided to the airline operator for drawing the spare parts stocked therein and installing them into the aircraft in lieu of unserviceable or defective parts. These spare parts/components are integrally connected with the maintenance of aircraft. It is needless to emphasise that the timely availability of such spares would ensure that the aircraft need not have to be grounded for long and it is made airworthy within shortest possible time. The ready availability of requisite components for replacement purpose is undoubtedly conducive to efficient airline operations. However, the applicant has not undertaken to service or repair the aircraft or its engine, as in the case of Business No.1. The identification and replacement of unserviceable parts is done by the airline operator with the help of its own engineering staff. But, the fact remains that by virtue of the contract entered into by the applicant with the airline customer and the creation of 'home base' facility which caters to the immediate needs of the aircraft, the applicant would become an associate or collaborator with the airline operator in the maintenance of aircraft. Both would be joining together in the pursuit of common goal of coping up with the maintenance needs of aircraft. It is not a case of mere stock and sale activity. Unlike in Business No.2, the

applicant involves itself proximately in the activity connected with the due maintenance of aircraft. The applicant, it can be reasonably said, would be importing the parts to be kept in 'home base' for the maintenance of aircrafts, may be in conjunction with the principal players i.e., the airlines operators in India. That is enough to satisfy the condition prescribed in Notification No.21/2002. The fact that the airlines itself installs the equipment does not detract from the role of the applicant being inextricably linked with the aircraft maintenance. We therefore see no reason to deny the benefit of exemption to the applicant.

13.2 Before parting with discussion on this question, we may advert to one contingency that might occur. There may be parts which remain unutilized by the date of expiry of Contract or which may become useless in course of time. If such parts are sold in open market, would the importer like the applicant forfeit the duty exemption already availed of? Should they be subjected to duty in such an event? These questions may arise, but we are not called upon to answer these debatable questions. However, it is desirable that a specific provision is made in the notification to cover such situations, to obviate unnecessary controversies in future.

14. New Business 4 – Question Nos. 5(a) to (f) and 6 (a) & (b) : Setting up a regional pool in India for providing aircraft components to Airlines (known as 'Regional Pool', in commercial parlance).

14.1 This new business involves building up a regional pool of aircraft components in India and entering into arrangements with various airline companies for provision of access to such components from the pool to the airlines which operate the aircraft for use in scheduled air transport service/air cargo service. The applicant states that the concept of pool access is being internationally followed by airlines as a cost effective means to maintain the aircrafts. The applicant submits that the key objective of this facility is to import serviceable components and make them available to the airlines without loss of time so that the airline can use such components for repair/maintenance of aircraft. The entire purpose of the import, the applicant submits, is geared towards the maintenance of aircraft although the actual installation of the components into the aircraft is undertaken by the airline concerned. The applicant also states that the relevant aircraft manufacturer recommends a list of spare-parts which every airline should keep in stock and the parts kept in the regional pool are based on such list.

14.2 A summary of the activities relating to this business as given by the applicant is as follows :

- (i) The applicant would enter into a Regional Pooling contract with various airlines.
- (ii) Pursuant to the above contract, the Applicant would import the pooling components (which could be new

or reconditioned) into India for creating the pooling stock.

- (iii) As soon as the components sought by the customer airline under the Regional Pool contract are imported into India by the Applicant, the airlines have a right of access over them immediately and at all times during the period of the contract.
- (iv) However, a given component from the said pool would be despatched to the airline from the pool only when the airline requisitions for the same for the purpose of replacement.
- (v) The customer airline thereafter would send the unserviceable components to its MRO service provider outside of India, who would undertake to maintain, repair and overhaul the components for a fee. However, there could be a possibility that the unserviceable components may be got serviced by the airline directly from an Indian MRO service provider or the Applicant itself might repair the said unserviceable components under a separate MRO contract entered into by the Applicant with the customer airlines. In such a case, the components would not be exported out of India for repair.

- (vi) Once the unserviceable component is repaired, the airline would instruct the MRO service provider to consign the repaired component (or a similar component) to the Regional Pool provider for the purposes of replenishing the pool which was depleted by reason of what is stated in para (iv) above. Accordingly, where the MRO service provider is located outside India, the airline would instruct the said MRO service provider to export the serviceable component to the Applicant. Consequently, the importation of the serviceable component from the offshore MRO service provider would be effected by the Applicant.
- (vii) In case the unserviceable component is repaired in India by the Applicant himself, or is got repaired by an Indian MRO service provider, then the repaired component would be shipped to the Regional Pool by the Applicant/Indian MRO Service Provider as per specific direction of the airline company.
- (viii) In addition and in exceptional situation, serviceable components from the Regional Pool may also be sold to an airline, based upon a requisition from such airline. In such an event, parts sold from the regional pool would not be replenished.

- (ix) In consideration of the applicant providing its customer with the right to use the Regional Pool components, the Applicant would charge the customer at a Flat Rate on a continuous basis as per aircraft per flight hour. This flat rate is in the nature of an access fee and will stay unchanged regardless of the number of components the customer may request for from the Regional Pool during the period of the contract.

14.3 In connection with this New Business No. 4, the applicant has framed as many as six questions in para 5 (at page 141 of the Application volume) and two questions in para 6 (at P, 143) which are as follows :

“5. In relation to Importation of aircraft components by the Applicant for Setting up a Regional Pool in India for providing aircraft components to Airlines.

- (a) Whether importation of the components by the applicant for subsequent provision of the same to the airline (Initial Stocking in the Regional Pool) would be exempt from payment of Basic Customs duty under Entry 346D of Notification Number 21/2002-Cus dated March 1, 2002 (as amended)?

- (b) Whether importation of the components by the Applicant for subsequent provision of the same to the airline (initial stocking in the Regional Pool) would be exempt from payment of Additional Customs Duty under Entry 54B of Notification Number 6/2006-CE dated March 1, 2006 (as amended)?
- (c) Whether importation of the component by the Applicant for subsequent lease to a foreign airline in India (drawn from the Regional Pool) during AOG (aircraft on ground) situation and in emergency exceptional situation, for replacement of unserviceable part by the airline would be exempt from payment of Basic Customs Duty under Entry 346D of Notification Number 21/2002-Cus dated March 1, 2002 (as amended)?
- (d) Whether importation of the component by the Applicant for subsequent lease to a foreign airline in India (drawn from the Regional Pool) during AOG situation and in emergency exceptional situation, for replacement of unserviceable part by the airline would be exempt from payment of Additional Customs duty under Entry 54B of Notification

Number 6/2006-CE dated March 1, 2006 (as amended)?

(e) Whether importation of the component by the Applicant for subsequent sale on an exceptional basis (drawn from the Regional Pool) to an airline in India for replacement of unserviceable part by the airline would be exempt from payment of Basic Customs duty under Entry 346D of Notification Number 21/2002-Cus dated March 1, 2002 (as amended)?

(f) Whether importation of the component by the Applicant for subsequent sale on an exceptional basis (drawn from the Regional Pool) to an airline in India for replacement of unserviceable part by the airline would be exempt from payment of Additional Customs duty under Entry 54B of Notification Number 6/2006-CE dated March 1, 2006 (as amended)?

14.4 6. In relation to re-import of repaired components by the Applicant for subsequent provision of these to airlines as Regional Pool :

(a) Whether re-importation of the repaired components by the Applicant for subsequent provision of the same to the airline via release to the Regional Pool would be

exempt from payment of Basic Customs duty under Entry 346D of Notification Number 21/2002-Cus dated March 1, 2002 (as amended)?

- (b) Whether re-importation of the repaired components by the Applicant for subsequent provision of the same to the airline via release to the Regional Pool would be exempt from payment of Additional Customs duty under Entry 54B of Notification Number 6/2006-CE dated March 1, 2006 (as amended)?”

15. Re : Question Nos. 5 (a) & (b)

The importation of aircraft components/spare parts for storing the same in a ‘regional pool’ pursuant to the contracts entered into with the airline companies in India which operate scheduled air transport/cargo services are, in our view, exempt from basic and additional Customs duty. Building up ‘regional pool’ to cater to the immediate requirements of the airlines from time to time with whom the applicant would be entering into contracts is substantially similar to the activity of providing Home-base facility to the airlines. From the facts stated, it is seen that the defective component will be repaired/reconditioned and kept in the regional pool in lieu of the component supplied to the airlines from out of the regional pool. Such replenishment of stocks in the regional pool is an indicator that open market trading in parts is not intended.

15.1 However, it is not clear from the statement of facts and the questions set out whether the contracts are entered into only with the operators of scheduled air transport/cargo services in India or with the foreign airlines as well. We would like to make it clear that the exemption will not be available if the import is resorted to in pursuance of regional pool arrangement entered into with the foreign airline operators.

15.2 We would also reiterate our observation made in the concluding para related to Questions 4(a) and (b).

16. Question Nos. 5 (e) & (f)

From the statement of facts, it appears that the applicant will be selling the components or parts to an airline operator in India with whom the applicant has not entered into a regional pool contract by way of diverting the same from the regional pool. The question as framed conveys the idea that the applicant imports the part for the purpose of sale; but, the bracketed words “drawn from regional pool” indicate that the importation is not made with the specific purpose of sale, but only for equipping the regional pool and later on the applicant takes it out of regional pool to make an outright sale to the airline which needs the part for replacement purpose immediately. We are of the view that such business of sale of parts does not qualify for exemption under relevant notifications, namely, Notfn. No. 21/2002-Cus. and Notfn. No. 6/2006-C.E. The factum of sale of the

imported aircraft part to an airline operator, may be to fulfill its immediate needs, takes the import out of the eligibility category. As discussed supra in the context of new Business No. 3, there must be a proximate and inseparable link between the import by the applicant and the service, repair or maintenance of aircraft. Such link must be there from the beginning and throughout. The sales of aircraft parts imported for a different purpose can never be brought under the scope of exemption. It is not the object of the exemption to facilitate duty free imports of aircraft parts for an eventual sale.

16.1 Hence, questions 5(e) and (f) have to be answered against the applicant.

17. Question Nos. 5 (c) & (d)

The exemption of basic Customs duty or additional Customs duty is not available if the parts imported are meant to be leased out to the foreign airlines. First of all, the foreign airline to which the party leases out does not run a 'scheduled air transport service' in the sense in which we have interpreted. Further, as pointed out supra while discussing Question Nos. 5 (e) & (f), the parts imported for the purpose of building up a regional pool to cater to the maintenance requirements of the airlines in India cannot be allowed to be diverted for the purpose of selling or leasing out the same to some other airline with whom the applicant has not entered into a regional pool contract.

17.1 Hence the claim of the applicant is negatived.

18. Question Nos. 6 (a) & (b) : Reimport of repaired components for replenishing the regional pool.

18.1 In our view, the exemption should be extended to this category of imports. The reasons which we have given with reference to Question Nos. 5 (a) & (b) will substantially hold good for upholding the applicant's claim for exemption under this head.

19. Summary of conclusions

New Business I : Setting up engine MRO Shop for servicing the aircrafts of Indian airlines operating scheduled air transport service/air cargo service.

Question 1(a) : Import of consumables such as lubricants, oils, etc. are not exempt under Entry 348 of Notfn. No. 21/2002-Cus. because they are not raw material.

Question 1(b) : Nuts, bolts, rivets, screws, washers, couplings etc. used in the process of servicing/repairing an aircraft engine can be treated as parts of aircraft provided they are specially meant for use therein. They are therefore exempt from additional Customs duty payable under S, 3(1) of Customs Tariff Act in view of Entry No. 54-B of Notfn. No. 6/2006-C.E.

Such parts are also exempt from basic Customs duty against Entry 346-D of Notfn. No. 21/2002-Cus. (specific question not framed in this regard, however, the contention is raised).

Question No.2 (a). Reimport of engine modules necessary for undertaking repairs of aircraft engines relating to airline companies in India : Basic Customs duty exemption under Entry 346-D of Notfn No. 21/2002-Cus is available as engine repair directly contributes to the upkeep and maintenance of aircraft. The contention that none other than the aircraft operators can get the benefit of exemption is negatived.

Question 2(b) : Additional Customs duty is exempt for the same reasons given while discussing question 1(b) & 2(a).

New Business No. 2 : Setting up an engine MRO shop in India for servicing the aircraft belonging to foreign airline companies operating scheduled air transport services and scheduled air cargo services outside India.

Question 3(a) : Reimport of engine modules not exempt under Entry 346-D of Notfn No. 21/2002-Cus for the reason that the applicant does not satisfy the requirements of Condition No. 102, firstly because the applicant is not directly concerned with the maintenance/repair of aircraft or its engine but it is undertaken by LHT – a foreign based company and secondly because a foreign

airline does not come within the ambit of the expression 'scheduled air transport service' or 'scheduled air cargo service.'

Alternative Question : The claim for exemption under Entry 348 (raw material) is untenable as engine modules cannot be considered to be raw materials. TELCO case relied upon by the applicant is distinguishable.

Question 3(b) : For the same reasons, the claim for additional Customs duty exemption is negated.

New Business No. 3 : Import of aircraft components for providing a 'home-base service' to pre-identified airlines in India operating scheduled air transport service or scheduled air cargo service.

Question 4 (a) : Customs duty exemption is available for the reason that the activity of the applicant is in the nature of joint enterprise directly aimed at proper maintenance of aircraft, although the applicant itself does not undertake the job of fixing up/inserting the parts, which is done by the airlines themselves.

Question 4(b) : Additional Customs duty exemption is also available for the same reason.

New Business No. 4: Setting up a 'regional pool' in India for providing aircraft components to airlines.

Questions 5 (a) & (b) : As this activity is almost similar to Business No. 3, the exemption of basic and additional customs duty is available in respect of India airlines operating scheduled air transport service or scheduled air cargo service. The same is also the answer to Questions 6(a) and (b).

The answers to remaining Questions framed with reference to this business are against the applicant.

Result :

20. In the result, Questions 1(b), 2(a) & (b), 4(a) & (b), 5(a) & (b) and 6(a) & (b) are answered in favour of the applicant and the remaining Questions against the applicant, as summarized above.

Accordingly, the Ruling is given.

Pronounced in the open court of the Authority on this 21<sup>st</sup> day of January, 2008

Sd/-  
(A. Sinha)  
Member

Sd/-  
(P.V. Reddi)  
Chairman

Sd/-  
(Chitra Saha)  
Member