

AUTHORITY FOR ADVANCE RULINGS
(Central Excise, Customs and Service Tax)
Hotel Samrat, 4th Floor, Kautilya Marg, Chanakyapuri
New Delhi

Present:

Justice V.S. Sirpurkar (Chairman)
Shri S.S.Rana (Member)
Shri R.S.Shukla (Member)

The 22nd of July, 2016

Ruling No. AAR/CUS/ 25 /2016

Application No. AAR/44/CUS/6/2015

Name & address of the applicant : M/s Prajesh Marketing Limited, Mumbai

Commissioners concerned : Commissioner of Customs (Import),
Air Cargo Complex, Sahar, Andheri (E),
Mumbai-400099

2.Commissioners of Customs (Import)
New Customs House, New IGI Airport,
New Delhi-110037

Present for the applicant : Shri Abhinav Jaganathan, Advocate
Shri S Vasudevan, Advocate

Present for the Department : Shri Govind Krishna Dixit,
Authorised Representative (AR)

RULING

M/S Prajesh Marketing Limited (hereinafter also referred to as applicant) is a public limited company proposing to import aircraft for providing non-scheduled (charter) service. Applicant intends to charter the aircraft imported to related companies, primarily for use by the related company's top executives, directors, investors, promoters and their family members/friends, as revenue flights

2. Applicant submits that the benefit of Notification No. 12/12-Cus (Sr. No. 453) dated 17.03.2012 is subject to the Condition No. 77 prescribed in the Notification. As per Condition No. 77, the benefit of the Notification is available as long as;

a. the aircraft is imported by an operator who has been granted approval by the competent authority in the Ministry of Civil Aviation to import aircraft for providing non-scheduled (passenger) services or non-scheduled (charter) services; and

b. the importer gives an undertaking that the imported aircraft shall be used only for providing non-scheduled (passenger) services or non-scheduled (charter) services. Thus, as long as the importer is a NSOP (Non-Schedule Operator's Permit) holder and the imported aircraft is used for providing non-scheduled (passenger) services or non-scheduled (charter) services, the benefit of Notification No. 12/2012-Cus (Sr. No.453) is available. The purview of non-scheduled (passenger) services or non-scheduled (charter) services and the activities permitted by NSOP holder is specified by the Civil Aviation Requirements, 2010 dated 1.6.2010 ('CAR'). Paragraph 2.5 of the CAR permits a non-scheduled operator to operate revenue charter flights for a company within its group companies, subsidiary companies, sister concern, associated companies, own employees, including chairman and members of the board of directors of the company and their family members, provided it is operated for remuneration, whether such service consists of a single flight or series of flights over any period of time. Thus exemption under Notification No. 12/12-Cus. (Sl. No. 453) is available to the NSOP permit holder as long as the imported aircraft is used for revenue flights, no matter who is travelling by the aircraft and irrespective of for how long the flight is chartered or leased. The only condition to be fulfilled by the NSOP holder is that the flights undertaken should be against payment / remuneration. Therefore, even if the applicant leases/charters the imported aircraft to related companies for use by their board members, employees, investors and their friends and families, the benefit will be available to the applicant as long as the applicant is paid for the use of the flight by the related company. Similarly, even if the applicant's own board members, employees, investors, or their families and friends use the aircraft, the benefit will be available as long as the applicant receives remuneration for the services rendered.

3. Applicant has sought rulings on following questions;

Whether the benefit of the Notification No. 12/2012-Cus is available to NSOP holder for the following categories of revenue flights proposed to be undertaken;

a) *Use by the permit holder's employees/directors/investors and their family/friends, not necessarily for business purposes.*

b) *Charter the aircraft to group companies for use by their employees/directors/investors and their family/friends, not necessarily for business purposes*

c) *Lease the aircraft to group companies for use by their employees/directors/investors and their family/friends, not necessarily for business purposes.*

4. Revenue inter-alia submits that as per the language of the Notification No. 12/2012-Cus, non-scheduled (passenger) services and non-scheduled (charter) services are two distinct and mutually exclusive categories of services, as is clear from the expressions “only” and “as the case may be” used in the above text; that it is settled law that an exemption notification has to be construed strictly and there has to be strict interpretation of the same by reading it literally; that the use of expression “only” and “as the case may be” in the exemption notification implies that to be eligible for the above Customs exemption notification, an operator having non-scheduled operator permit (passenger) shall provide non-scheduled (passenger) service only and similarly an operator having non-scheduled operator permit (charter) shall provide non-scheduled (charter) service only. Revenue further submits that the benefit of Customs notification can be given only in accordance with the wordings of the notification and the benefit of relevant notification is available for operator having license for non-scheduled passengers who carries out non-scheduled (passenger) services or operating being non-scheduled (charter) services of the aircraft, for revenue; that the paragraph 2.5 and 2.6 of Civil Aviation Requirement (CAR) cannot be cited in this case as the notification is not covering such activity; that the provisions/concessions/facilities provided by the Directorate General of Civil Aviation (DGCA) cannot be invoked for the interpretation of the exemption notification issued under Section 25 (1) of the Customs Act, 1962. Revenue further adds that a provision, especially a fiscal statute providing for an exemption notification has to be interpreted in light of words employed by it and not on any other basis. A person who claims exemption or concession is required to establish clearly that he is covered by the provision concerned and in case of doubt or ambiguity, the benefit of it would go to the State. It is settled law that the words, meanings and conditions of notification have to be strictly construed. Unless the conditions of the notification are fulfilled, the benefit of the notification cannot be derived. In the instant case, the importers have not fulfilled the condition of the notification in *toto*. Therefore, they are not eligible for the benefit of exemption provided by the said notification.

5. Revenue states that in the instant case, M/s Prajesh Marketing Limited intends to use the aircraft for;

- i) Use by the permit holder’s employees/directors/investors and their family/friends not necessarily for business purposes
- ii) Charter the aircraft to group companies for use by their employees/directors/investors and their family/friends, not necessarily for business purposes

- iii) Lease the aircraft to group companies for use by their employees/directors/investors and their family/friends, not necessarily for business purposes
- iv) The use of the aircraft in all the above cases will be against remuneration. No use will take place free of cost.

Further, the above, it can be seen that the intended purpose of this aircraft is in the nature of personal use and not for public use. The aircraft is intended to be used for the personal use of their employees/directors/investors and their family/friends, not necessarily for business purposes. The exemption notification (Sr. No. 453 of Notification No. 12/2012) does not cover these situations to be eligible to claim the benefit of the said notification. The activities for which the aircraft is intended to be used cannot be said to be in the interest of the public. Public interest means 'greatest happiness of greatest number. As the public interest is always a guiding factor in exemption and as the applicant does not fall within the scope of the notification as explained above, the application made by M/s Prajesh Marketing for advance ruling may be rejected.

6. Notification No. 12/2012-Cus dated 17.03.2012 exempts all goods from basic Custom duty and additional duty as in excess of the amount specified as per table below, subject to conditions mentioned in column 6 of the said table.

TABLE

<i>S.No</i>	<i>Chapter or Heading or Sub-heading or tariff item</i>	<i>Description of goods</i>	<i>Standard rate</i>	<i>Additional duty rate</i>	<i>Condition No.</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>
453	8802 (except 8802 60 00)	All goods	2.5%	-	77

Annexure

<i>Condition No.</i>	<i>Conditions</i>
77.	<i>(i) the aircraft are imported by an operator who has been granted approval by the competent authority in the Ministry of Civil Aviation to import aircraft for providing non-scheduled (passenger) services or non-scheduled (charter) services; and</i> <i>(ii) the importer furnishes an undertaking to the Deputy Commissioner of</i>

	<p><i>Customs or Assistant Commissioner of Customs, as the case may be, at the time of importation that;</i></p> <ol style="list-style-type: none"> <i>a. the said aircraft shall be used only for providing non-scheduled(passenger) services or non-scheduled(charter) services, as the case may be; and</i> <i>b. he shall pay on demand, in the event of his failure to use the imported aircraft for the specified purpose, an amount equal to the duty payable on the said aircraft but for the exemption under this notification.</i> <p style="text-align: center;"><i>Explanation.-</i></p> <ol style="list-style-type: none"> <i>1. For the purposes of this entry,-</i> <ol style="list-style-type: none"> <i>(a) 'operator' means a person, organization, or enterprise engaged or in offering to engage in aircraft operation;</i> <i>(b) 'non-scheduled (passenger) services' means air transport services other than Scheduled (passenger) air transport services as defined in rule 3 of the Aircraft Rules 1937</i> <i>(c) 'non-scheduled (charter) services' mean services provided by a 'non-scheduled (charter) air transport operator', for charter or hire of an aircraft to any person, with published tariff, and who is registered with and approved by Directorate General of Civil Aviation for such purposes, and who conforms to the civil aviation requirement under the provision of rule 133A of the Aircraft Rules 1937:</i> <i>2. For the purpose of this exemption, use of such imported aircraft by a non-scheduled (passenger) operator for non-scheduled (charter) services or by a non-scheduled (charter) operator for non-scheduled (passenger) services, shall not be construed to be a violation of the conditions of import at concessional rate of duty.</i>
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7. Para 2.5 of Civil Aviation Requirements (CAR) is reproduced as under:

2.5 A non-Scheduled Operator is also allowed to operate revenue charter flights for a company within its group companies, subsidiary companies, sister concern, associated companies, own employees, including Chairman and members of the Board of Directors of the company and their family members, provided it is operated for remuneration, whether such service consists of a single flight or series of flights over any period of time.

8. The issue raised by the Revenue is in respect of Condition No. 77 annexed to the Notification No. 12/2012-Cus. Condition No. 1 inter-alia prescribes that aircraft would

be imported by the importer, who has been given approval by the Ministry of Civil Aviation for providing non-scheduled (passenger) services or non-scheduled (charter) services. Condition No. (ii) is regarding importer furnishing undertaking to the Customs authorities inter-alia to the effect that said aircraft shall be used only for providing non-scheduled (passenger) services or non-scheduled (charter) services, as the case may be. Therefore, both these conditions make it clear that approval of competent authority is required for import of aircraft for providing non-scheduled (passenger) services or non-scheduled (charter) services and importer is required to furnish undertaking to the Deputy/assistant Commissioner of Customs at the time of import to the effect that the aircraft shall be used only for providing non-scheduled (passenger) services or non-scheduled (charter) services, as the case may be. However, both these conditions have to be read in conjunction with Explanation 2 to the notification, which clarifies that the use of such imported aircraft by a non-scheduled (passenger) operator for non-scheduled (charter) services or by a non-scheduled (charter) operator for non-scheduled (passenger) services, shall not be construed to be a violation of the conditions of import at concessional rate of duty. It is noticed from the application filed by the applicant at Annexure I that the applicant is proposing to import aircraft for providing non-scheduled (charter) services. In view of Explanation 2 to said notification, applicant may use the aircraft imported for providing non-scheduled (passenger) services or non-scheduled (charter) services.

9. Second issue raised by the Revenue is that an exemption notification has to be interpreted in light of words employed in the said notification and provision of CAR, especially paragraph 2.5 and 2.6 cannot be invoked to extend the provisions/concessions/facilities provided by the DGCA. Explanation 1(c) to Notification No.12/2012-Cus while explaining “non-scheduled (charter) services” mean services, where all below mentioned ingredients are satisfied;

- I) Provided by a non-scheduled (charter) air transport operator;
- II) There should be charter or hire of an aircraft to any person;
- III) There should be published tariff;
- IV) Operator should be registered with and approved by DGCA for said purpose; and
- V) Operator should conform to the CAR under the provisions of Rule133A of the Aircraft Rules, 1937.

It is quite clear that Explanation I above is part of subject Notification No. 12/2012-Cus. Non-scheduled (charter) services are explained under Explanation 1 and one of the ingredients of non-scheduled (charter) services is that it should conform to CAR, which is issued under Rule 133A of the Aircraft Rules, 1937. Rule 133A of the Aircraft Rules, 1937 authorizes the Director General to issue special directions through notices etc including CAR relating to operation, use, possession, maintenance or navigation of

aircraft flying over India or aircraft registered in India. Paragraph 2.5 of CAR inter-alia also allows non-scheduled operator to operate revenue charter flights for a company within its group companies, subsidiary companies, sister concern, associated companies, own employees, including Chairman and members of the Board of Directors of the company and their family members, provided it is operated for remuneration. It is to be observed that CAR does not extend this facility to investors and friends. In view of the above, paragraph 2.5 of CAR issued in pursuance of Rule 133A of the Aircraft Rules, 1937 is regarding operation and use of aircraft and same is part of Explanation I (c) to Notification No. 12/2012-Cus. Therefore, the contention of Revenue that provisions of CAR 2.5 and 2.6 cannot be invoked to avail concessions/facility/ provisions, are not correct. It also noticed that the subject notification as well as contents of CAR does not debar the use of said aircraft for other than business purposes. In the absence of any such restriction, aircraft can be used for other than business purposes.

10. Final contention of Revenue is that the intended purpose of the aircraft to be imported is in the nature of personal use and not for public use; that exemption notification does not cover such conditions; that public interest is always a guiding factor in exemption notification and applicant does not fall within the scope of the notification.

11. It is observed that the Central Govt. has power to grant exemption from duty of Customs under Section 25 (1) of the Customs Act, 1962, if satisfied that it is necessary in public interest to do so. It is noticed that subject Notification No. 12/2012-Cus has been issued by the Central Govt. in public interest. As discussed in earlier paragraphs, benefit of exemption notification has been extended to operators subject to fulfillment of conditions mentioned therein. Therefore, it is not correct on the part of the Revenue to state that the applicant does not fall within the scope of the notification.

12. It is to be observed that during the hearing before this Authority, following judgements on the Tribunal were mentioned before us;

- a) CC, New Delhi vs. Sameer Gehlot 2011(263) ELT 129 (Tri.-Del.)
- b) King Rotors & Air Charter (P) ltd vs. CC, Mumbai 2011 (269) ELT 343 (Tri-Mum)
- (c) Dove Airlines (P) Ltd. vs. CC (P), New Delhi, 2014 (313) ELT 292(Tri.-Del.)

It is to be observed that these cases are related to exemption Notification No. 21/2002-Cus and not Notification No. 12/2012-Cus, which is the subject matter before us. Explanation 2 was included in Notification No. 12/2012-Cus. subsequently. Further, applicant has brought to our notice Tribunal's Order No. 72-88/2014 dated 28.10.2014 issued in the case of VRL Logistics vs. C.C., Ahmedabad, wherein it was observed that

Tribunal in CC, New Delhi vs. Sameer Gehlot and King Rotors & Air Charter (P) Ltd. vs. CC, Mumbai have taken contradictory views to each other and referred the matter to the President of CESTAT for constitution of Larger Bench to decide the correct view. Therefore, these orders of Tribunal have not attained finality and cannot be relied upon. In view of above, above referred judgments of the Tribunal are not applicable to the case before us.

13. In view of above, we rule as under,

The benefit of the Notification No. 12/2012-Cus is available to NSOP (Non Schedule Operator's Permit) holder for the following categories of revenue flights(with published tariff) proposed to be undertaken;

- a) Use by the permit holder's employees/directors and their family, not necessarily for business purposes.*
- b) Charter the aircraft to group companies for use by their employees/directors and their family, not necessarily for business purposes*
- c) Lease the aircraft to group companies for use by their employees/directors and their family, not necessarily for business purposes.*

(S.S. Rana)
Member(R)

(V.S. Sirpurkar)
Chairman

(R.S.Shukla)
Member (L)