

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

**Present:**  
**Justice V.S. Sirpurkar (Chairman)**  
**Shri S.S.Rana (Member)**

**The 24<sup>th</sup> day of July, 2015**

**Ruling No. AAR/Cus/06/2015**  
**in**  
**Application NoAAR/44/Cus/05/12**

Name & address of the applicant : M/s Inter Globe Aviation Limited  
(Indigo). Level 4, Tower D, Global  
Business Park DLF City, Phase-III,  
Gurgaon-122002, Haryana, India

Commissioners concerned : The Commissioner of Customs (Import),  
Jawahar Lal Nehru Custom House,  
Nhava Sheva, Taluka Uran,  
District, Raigad, Nhava Sheva  
Maharashtra-400 707

The Commissioner of Customs(Import).  
1st Floor, New Custom House, Ballard  
Estate, Mumbai – 400001

The Commissioner of Customs, Central  
Excise and Service Tax, Hyderabad-II  
Commissionerate, Kendriya Shulk  
Bhawan, L.B. Stadium Road, Basheer  
Bagh, Hyderabad-500004

Present for the applicant : Shri Lakshmi Kumaran, Advocate

Present for the Department : Shri G.K.Dixit (AR)

**Ruling**

M/s Inter Globe Aviation Limited (hereinafter also referred to as applicant) is a Public Limited Company. They are inter-alia engaged in providing scheduled air

transport service. Applicant submits that they intend to import seats of aircraft for replacing the existing seats; that existing seats are proposed to be replaced to provide a more comfortable flying experience to the fliers and to improve the fuel efficiency of the aircraft as the seats would be lighter in weight; that in this process, seats requiring repairing due to wear and tear shall also be replaced. Applicant further submits that for such repair and maintenance activity under the aircraft, they had obtained approval from Directorate General of Civil Aviation (DGCA) as required under Civil Aviation Requirements (CAR)-145; that the certificate of approval allows them to carry out minor structural repair; that replacement of seats get covered under such minor structural change; that during the process of replacement, the old seats would be removed from the base by unbolting and new seats would be fitted with nuts and bolts.

2. On the instructions of this Authority, applicant filed written submission to show inter-alia that replacement of seats in the existing fleet of aircrafts of the applicant with new lighter seats has resulted in fuel efficiency in its operations. Applicant submits that at present, they are operating 96 Aircrafts of A-320 family; that Airbus has fixed capacity of 180 seats; that such aircrafts were originally fitted with the Weber Passenger seats, which have been replaced by Dragonfly brand in 52 aircrafts out of its fleet of 96 aircrafts; that weight of Weber seat is 13 kg, as compared to weight of Dragonfly seat, which is 9 Kg; that applicant has been able to reduce to weight of its one Airbus 320 by 700 Kg approximately; that if there is reduction of 1% in weight, 100 kg of fuel is saved for a flight.

3. This Authority vide order dated 10.02.2014 had admitted the application taking into account the order in the matter of Guthy Renker Marketing Pvt. Ltd [2010 (216) ELT (AAR)] with the condition that the applicability of said order shall be considered when the matter is finally heard. Revenue contends that the department came to know that matter is pending with this Authority, only when clarification was sought from the applicant regarding eligibility of exemption of imports of aircraft seats vide Bills of Entry No. 9654917 and 9654931, both dated 23.03.2013. Therefore, application needs to be rejected as per Section 28 E (2) (a) of the Customs Act, 1962.

4. Section 28 I (2) (a) of the Customs Act, 1962 envisages that the Authority shall not allow the application where the question raised is already pending in the applicant's case before any officer of Customs, the Appellate Tribunal or any Court. It is noticed that the applicant filed application before this Authority on 28.06.2012. However, first Bill of Entry was filed on 15.01.2013 i.e. after about 6 months. This Authority in Guthy Renker Marketing Pvt. Ltd., 2010 (261) ELT 737 (AAR) has ruled that eligibility to seek advance ruling should be the date of filing application. Therefore, we observe that activities subsequent to filing of this application, shall not make the applicant ineligible under Section 28 I (2) (a) of the Customs Act, 1962.

5. Further, it has been alleged by the Revenue that they came to know about application filed by the applicant and pending with this Authority, only when they sought clarification in respect of Bills of Entry filed. Applicant submits that vide letter dated 01.01.2013, they informed Assistant Commissioner of Customs (Import), Hyderabad i.e. concerned officer, about the same, whereas imports were made from 15.01.2013. This point has not been countered by the Revenue. Therefore, we are convinced that the applicant had informed the Revenue before affecting said imports. In view of above, we hold that activity of import of parts of aircraft for the purpose of servicing, repair or maintenance is a proposed activity.

6. The question on which advance ruling sought is as follows:-

*Whether the new seats that are being imported for replacing the existing seats in aircraft be said to be for servicing, repair or maintenance of the aircraft under condition no. 21 of the Notification No. 12/2012-Cus?*

7. Notification No. 12/2012-Cus. dated 17.3.2012, exempts parts of aircraft falling under any chapter from whole of basic customs duty subject to fulfillment of condition no. 21 provided therein. The relevant part of condition no. 21 reads as follows:-

*If 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;*

8. Applicant has mentioned that the terms “servicing”, “repair” and “maintenance” have not been defined under Notification No. 12/2012-Cus. As the benefit is being extended to the aviation industry, these terms must be understood in terms of their usage and practice. Therefore, in order to understand its true meaning under the said Notification, reference must be made to the Aircraft Rules, 1937 and Civil Aviation Requirements (CAR) issued by DGCA. The term ‘maintenance’ is defined under the Aircraft Rules as follows.

*Aircraft Rules, 1937-*

*Rule 3 (33C)- “Maintenance” means the performance of tasks required to ensure the continuing airworthiness of an aircraft, including any one or combination of overhaul, inspection, replacement, defect rectification and the embodiment of a modification or repair or test:*

*Rule 60 - Maintenance standards and certification- (1) In this rule, ‘maintenance’ refer to performance of all work necessary for the purpose of ensuring that the aircraft is airworthy and safe including servicing of the aircraft and all modifications, repairs, replacements, overhauls, processes, treatment, tests, operations and inspection of the aircraft, aircraft components and items of equipment required for that purpose.*

9. According to the applicant, the aforesaid provisions of the Aircraft Rules show that the scope of the word ‘maintenance’ in relation to aircraft is very wide and it covers all kinds of modifications, replacements, repair and servicing.

10. Further, applicant has submitted that Maintenance of the aircraft is also governed under CAR 145 issued under Rule 133 B of the Aircraft Rules. The CAR 145 enumerates a list of activities which are permitted to be undertaken by such approved organizations. As part of the ‘minor scheduled line maintenance’, it allows such approved organizations to undertake replacement of passenger and cabin crew seats.

11. Applicant relied on the decision of New Holland Tractors (India) Pvt. Ltd. Vs CCE, Noida, [2010(253) ELT 249 (Tri.-Del.)], in support of their contention. Further, applicant submitted that Deputy Director of Airworthiness from Department of Civil Aviation has clarified vide letter dated 29.4.2013 that the seat would form part of the aircraft.

12. In response, Revenue submits that there is no doubt about the classification of 'Aircraft seats' under CTH 9401 10 00. Even the applicant has not disputed the same. The classification of 'Aircraft seats' under CTH 9401 10.00 is confirmed by the Hon'ble CEGAT, Special Bench 'D', New Delhi in the case of Indian Airlines vs. Collector of Customs [1988 (37) E.L.T. 420 (Tribunal)]. As such, 'Aircraft seats' cannot be considered as 'Spares / Parts' Aircrafts. Further, Revenue submits that the new seats are not meant for replacing damaged or unworkable seats but for up-gradation of the aircraft in order to make it more comfortable as an activity of servicing, repairing or maintenance. Therefore, the benefit of exemption notifications cannot be extended to aircraft seats as they do not qualify as parts of aircraft.

13. It is observed that Notification No. 12/2012-Cus dated 17.03.2012 exempts the goods of the description specified in column (3) and falling within the chapter, heading, sub-heading or tariff item of First Schedule to the Customs Tariff Act as are specified in the corresponding entry in column (2) of the Table, when imported into India;

- a) 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 standard rate specified in the corresponding entry in column (4) of the said Table;
- b) from so much of the additional duty leviable thereon under sub-section (i) of Section 3 of the Customs Tariff Act, 1975 as is in excess of the additional duty rate specified in the corresponding entry in column 5 of the said Table, subject to any of the conditions, specified in the Annexure to the notification, the condition number of which is mentioned in the corresponding entry in column (6) of said Table.

14. S. No. 454 of above notification (relevant entry of the Table) is reproduced as under;

<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>
454.	Any Chapter	Parts (other than	Nil	-	21

		<i>rubber tubes), of aircraft of heading 8802</i>			
21.	<i>If, -</i>	<p><i>(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</i></p> <p><i>(ii) The parts are brought into India for servicing, repair or maintenance of an aircraft mentioned in clause (ii) of Condition No.(75)</i></p> <p><i>Explanation.- The expression “scheduled air transport service” and “scheduled air cargo service” shall have the meanings respectively assigned to them in Condition No. 75.</i></p>			

15. Condition No. 75 of the Notification No. 12/2012 dated 17.03.2012 read with Notification No. 334/2012- TRU dated 23.03.2012, is reproduced as under;

75	<p><i>If, -</i></p> <p><i>(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</i></p> <p><i>(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, which is intended to be removed from India within fifteen days, or as extended by the competent authority in Ministry of Civil aviation, not exceeding sixty days, from the date of entry.</i></p> <p><i>Explanation.- For the purposes of this entry,</i></p> <p><i>(a) “operator” means a person, organization or enterprise engaged in or offering to engage in aircraft operation;</i></p> <p><i>(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</i></p> <p><i>(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.</i></p>
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16. Revenue has contended that as per subject notification, exemption has been granted to parts (other than rubber tubes), of aircraft of heading 8802. Since aircraft seats are to be classified under CTH 94011000 and not under Heading 8803, benefit of Notification No. 12/2012-Cus is not available to import of aircraft seats. Further, Revenue relied on the judgment in Indian Airlines Vs Collector of Customs [1988 (37) ELT 420 (T)], wherein it was held that benefit of exemption notification no. 145/77-Cus dated 1977 is not to be extended to aircraft seats imported by Indian Airlines, as Heading 94.01/04 and not Heading 88, specifically covers seats of a kind used for aircraft. Notification No. 145/77-Cus dated 9.09.1977 exempted Customs duty leviable, which was specified in First Schedule to the Customs Tariff Act, 1975, as was in excess of 3% ad valorem on following goods;

- a) aeroplane
- b) aeroplane parts
- c) aeroplane engines
- d) aeroplane engine parts, and
- e) rubber tyres and tubes used exclusively for aeroplanes.

17. Larger Bench of Tribunal in Indian Airlines, Calcutta Vs Collector of Customs [1988 (38) ELT 679 (38) ELT 679(T)] examined 2 Notification Nos. 145/77-Cus dated 9-7-1977 and 99/81-Cus dated 1.4.1981 to ascertain whether imported aeroplane tyres can be exempted from custom duty as aeroplane parts. It was held that neither of the two Notifications places the goods covered by it under any specific head of the Customs Tariff and it appeared that the law makers were conscious of the fact that the goods they are listing for exemption fell under different headings or chapters of the Customs Tariff. For example, of the articles mentioned in Notification No. 145/77-Cus., while rubber tyres and tubes for aeroplanes must fall under Chapter 40, other parts like engines, engine parts and so on would appropriately fall in Chapter 88 or even in Chapter 84. Similarly Notification No. 99/81-Cus., lists only aeroplanes spare parts, and there are hundreds of thousands of different aeroplane parts, some made of rubber, which would have to go under the rubber headings, electrical parts which would go

under the electrical heading and others which would go under the machinery heading, and so on and so forth. By not writing the chapter head into the notifications, the exemption become possible for all kinds of aeroplane parts described under these notifications. This Larger Bench judgment also negates the decision rendered by the Tribunal, on similar issue and relied upon by the Revenue.

18. Hon'ble Supreme Court in case of Collector of Customs, Bangalore vs. Maestro Motors Ltd. [2004 (174) ELT 289 (SC)] while deciding whether M/s Maruti Udyog Ltd is entitled to benefit of Notification No. 29/83 held that if according to language of notification, an item is specifically exempted then exemption would be available even though for the purposes of classification it may be considered to be something else, as is the case of the applicant. Relevant portion of said judgment is reproduced as under;

*It is settled law that to avail the benefit of a notification a party must comply with all the conditions of the Notification. Further, a Notification has to be interpreted in terms of its language. If in the Notification exemption is granted with reference to tariff items in the First Schedule to the Customs Tariff Act, 1975, then the same Rules of Interpretation must apply. In that case the goods will be classified, even for the purposes of the Notification, as they are classified for purposes of payment of customs duty. But where the language is plain and clear effect must be given to it. In this Notification what is exempted is components, including components of fuel efficient motor cars in semi-knocked down packs and completely knocked down packs. Undoubtedly, for purposes of levy of custom duty, by virtue of Interpretative Rule 2(a), the components in a completely knocked down pack would be considered to be cars. But in view of the clear language of the Notification the components including components in completely knocked down packs are exempted. Effect must be given to the wording of this Notification. Thus components in completely knocked down packs would get the exemption under this Notification, even though for purposes of classification they may be considered to be cars.*

19. Applicant proposes to import seats of aircraft claiming exemption of Notification No. 12/2012-Cus (S. No. 454), wherein parts (other than rubber tubes) of aircraft of heading 8802 are subjected to nil rate of duty. Contention of the applicant is that seats of aircrafts are parts of aircrafts, thus, Notification No.12/2012-Cus needs to be extended to them. Revenue on the other hand, heavily relying on General Rules for Interpretation for Import Tariff, pleads that there is specific entry for "seats of a kind used for aircraft" under Tariff item 94011000, thus proposed import should be classified under that entry and benefit of said Notification be not extended to the Applicant. It is

settled position of law that exemption notification is to be read strictly and interpreted in terms of its language – when language is plain and clear, effect must be given to it. Plain reading of the notification show that all parts (other than rubber tubes) of aircraft of Heading 8802 are exempt from Customs duty including seats of aircraft. As per S. No. 454 of subject notification, parts of aircraft of Heading 8802 falling under any Chapter of Customs Tariff are exempt from duty. Tariff item 8802 contains “Other aircrafts (For example, Helicopters, Aeroplanes), Spacecrafts (including Satellites) and suborbital and Spacecrafts Launch Vehicles. Applicant proposes to import seats of aircrafts, which is part of aircraft. Aircraft falls under Tariff item 8802 and its seats, which is also part of aircraft. It is to be noted that if the intention of the Govt. was not to extend benefit of said notification to seats of aircraft, it would have mentioned so in the notification, along-with rubber tubes, to which this benefit is not extended. To our mind, the approach of Revenue to apply General Rules for Interpretation for Import Tariff, even for interpretation of notification in this case, is legally incorrect.

20. The benefit of Notification No. 12/2012-Cus (S.No. 454) is available to parts (other than rubber tubes), of aircraft of heading 8802. There can be no doubt that seats are integral part of the aeroplane. This is also confirmed by the Department of Civil Aviation by clarifying that the seat would form part of the aircraft. Further, it is not possible for the airline to operate the flight without seats. Similarly, one cannot think of passengers travelling in aeroplane without seats. Further, the applicant satisfies condition No. 75, which is necessary for being eligible to avail said notification in as much as the applicant is an “operator” engaged in aircraft operation and proposes to operate scheduled air transport service ( air transport service undertaken between the same two or more places and operated according to a published time table or with flights or so regular or frequent that they constitute a recognizable systematic series, each flight being open to use by members of the public). The fact that applicant is “operator” for “operating scheduled air transport service” has not been challenged by the Revenue, further confirms applicant satisfies said condition No. 75.

21. Further, Revenue submits that in this case, new seats are meant for replacement and up-gradation, which can-not be considered an activity of servicing, repairing or maintenance. Thus, applicant would not be eligible to avail benefit of Notification No. 12/2012-Cus dated 17.03.2012. In the instant case, benefit of said Notification is to be extended to the Aviation Industry; therefore, it may be appropriate to ascertain the meaning of words “maintenance” from the Aircraft Act, 1937 and rules made there-under. It is observed that Rule 3 (33C) and Rule 60 of the Aircraft Rules, 1937, maintenance inter-alia include replacement, modifications, repairs and servicing. Further, “enhancement” would be covered under “modification”. Therefore, the contention of Revenue is devoid of merit.

22. In view of the above, we hold that new seats that are being imported for replacing the existing seats in aircraft are for servicing, repair or maintenance of the aircraft under condition no. 21 of the Notification No. 12/2012-Cus.

Sd/-

**(S.S.Rana)**  
**Member**

Sd/-

**(V.S.Sirpurkar)**  
**Chairman**