सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन,

मुंद्रा, कच्छ, गुजरात

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62,
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A. File No.	:	GEN/ADJ/COMM/716/2023-Adjn -O/o Pr. Commr-Cus-Mundra
B. Order-in-Original No.	:	**MUN-CUSTM-000-COM- 001 -25-26**
C. Passed by	:	**K. Engineer,** **Principal Commissioner of Customs,** **Customs House, AP & SEZ, Mundra.**
D. Date of order and Date of issue:	:	11.04.2025. 11.04.2025.
E. SCN No. & Date	:	SCN F. No. GEN/ADJ/COMM/716/2023-Adjn -O/o Pr. Commr- Cus-Mundra, dated 07.08.2024.
F. Noticee(s) / Party / Importer	:	M/s. Vestas Wind Technology India Pvt. Ltd., Highway Plot NO. 37, Gallops Industrial Park, NH-8A, Ahmedabad, Gujarat 382 220.
G. DIN	**:**	**DIN-20250471MO0000222BBA**

i. यहअपीलआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

ii. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

"केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004"

"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."

iii. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

iv. उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

v. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं॰-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

vi. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

vii. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

viii. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

Whereas, M/s. Vestas Wind Technology India Pvt.Ltd., (IEC code 0497002663), having its address at Highway Plot NO. 37, Gallops Industrial Park, NH-8A, Ahmedabad, Gujarat 382 220 (hereinafter referred to as 'the said importer') has imported **"Casting for Wind Operated Electricity Genertors** falling under CTH No. 85030090,"(hereinafter referred to as 'the said goods') at Mundra Port. The said importer is regularly importing the said goods from Mundra Port on payment of Customs duty.

2. During the course of Post Clearance Audit, it is noticed that M/s. Vestas Wind Technology India Pvt.Ltd., has filed the BoEs (as listed in the Annexure A to the SCN), through the Customs brokers M/s. United safeway India Pvt.Ltd., Samudra Marine Services Pvt. Ltd., M/s Master Logistics Solutions, M/s Shiv Multiport Pvt.Ltd., M/s Rishi Kiran Logistics Pvt. Ltd., and M/s Umershi Manshi Khona and Co. for the import of **"Casting for Wind Operated Electricity Genertors",** classifying the same under Customs Tariff item **85030090**, on payment of BCD @7.5%/5% (20% Sapta notif no. 50/2018-CUS), SWS @10% & IGST @5%, imported from China (Country of origin), Supplier Names are listed in the Annexure-A to this Show Cause Notice. However, **no Countervailing Duty and/or Anti-dumping duty is paid** in view of Notification No.01/2016(CVD) dated 19.01.2016 and Notification No. 42/2017-CUS(ADD) dated 30.08.2017.

3. Countervailing Duty (CVD)

3.1 Whereas, it is observed that the above said imported goods viz. **"Casting for Wind Operated Electricity Genertors",** falling the same under Customs Tariff item **85030090** do fall under the description of goods in Column 3 of the Table under Notification No.01/2016(CVD) dated 19.01.2016 and accordingly, the said goods imported from China are liable for **Countervailing Duty** @ 13.44% of the landed value of the said goods imported from China.

3.2 In terms of Notification No.1/2016- Cus (CVD) dated 19.01.2016 countervailing duty is leviable on the import of Castings for Wind-operated Electricity Generators (WOEG), whether or not machined, in raw, finished or sub-assembled form, or as a part of sub-assembly, or a part of an equipment/component meant for WOEG falling under tariff item 85030090 of the Customs Tariff. The Countervailing duty is applicable on subject goods originating and exported from the People's Republic of China and supplied by any producer or exporter @ 13.44% of the landed value as defined in the said CVD Notification.

3.3 Relevant para of Notification No.01/2016(CVD) dated 19.01.2016 read is as under:-

> *"..... in exercise of the powers conferred by sub-sections (1) and (6) of section 9 of the Customs Tariff Act, read with rules 20 and 22 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff items of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India,* ***countervailing duty at the rate to be worked out as percentage of the landed value of imports of the***

subject goods as specified in the corresponding entry in column (8) *of the said Table, namely:-*

Table

S. No.	*Tariff item*	*Description of goods*	*Country of origin*	*Country of export*	*Producer*	*Exporter*	*Percentage of landed value*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*
.....							
2.	*8483 40 00, 8503 00 10 or 8503 00 90*	*Castings for wind operated electricity generators, whether or not machined, in raw, finished or sub-assembled form, or* ***as a part of a subassembly, or as a part of an equipment/ component meant for wind-operated electricity generators***	*People's Republic of China*	*People's Republic Of China*	*Any*	*Any*	*13.44*

.....

Explanation.- For the purposes of this notification, "landed value" shall be the assessable value as determined under the Customs Act 1962, (52 of 1962) and all duties of customs except duties levied under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act."

3.4 Whereas, it further observed that the **Castings for Wind Operated Electricity Generators** for the purpose of the present notification ***also includes*** a **part of a sub-assembly or a part of an equipment/component meant for wind-operated electricity generators**, as described under column (3) of the Table under the said Notification No. 01/2016(CVD) dated 19.01.2016.

3.5 The importer has imported various parts of WOEG from PR of China classified under tariff item 85030090. Such description of goods falls under the scope of "Casting parts" in terms of the Notification No.01/2016-Customs (CVD) dated 19.01.2016 but the Countervailing duty, applicable @13.44% was not paid by the Importer on import of such goods (parts of WOEG) applicable under the Notification No. 01/2016-Customs(CVD).

3.6 Whereas, Non-payment of the **Countervailing Duty,** in respect of the BoEs, tabulated in Annexure "A", has resulted in short-payment of customs duty(CVD) @13.44% of the landed value of the said goods imported from China, which amounts to **Rs.1,65,31,647/-**, (Column No.12 of Annexure-A) for the period 26.04.2019 to 24.07.2022 as calculated as per Annexure A to the SCN.

4. Anti-Dumping duty (ADD)

4.1 Whereas, it further appeared that the above imported goods as specified in column No. 16 of Annexure "A" which are the parts of **"WOEG"** do fall under the implied meaning of **Casting for Wind Operated Electricity Generators** as per the Note (i) of the Table under **Notification No. 42/2017-CUS (ADD**) dated 30.08.2017 and accordingly, the said goods imported from China are liable for **Anti-dumping duty @ 35.92%** of the landed value of the said goods imported from China.

4.2 In terms of Notification No.42/2017- Cus (ADD) dated 30.08.2017, Anti-Dumping duty (ADD) is also leviable on import of Castings for Wind-operated Electricity Generators (WOEG), whether or not machined, in raw, finished or sub-assembled form, or as a part of sub-assembly, or a part of an equipment/component meant for WOEG falling under tariff item 85030090 of the Customs Tariff. The Anti-Dumping duty(ADD) is applicable on subject goods at the rate of an amount equivalent to the difference between the quantum of anti-dumping duty calculated as per column (8) and the quantum of anti-subsidy/countervailing duty payable, if any, of the said Table under **Notification No. 42/2017-CUS (ADD**) dated 30.08.2017.

4.3 Relevant para of **Notification No. 42/2017-CUS (ADD**) dated 30.08.2017 read is as under:-

"..... in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes definitive anti-dumping duty on the subject goods, the description of which is specified in column (3) of the Table below, falling under Chapter heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the country as specified in the corresponding entry in column (4), exported from the country as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India, an anti-dumping duty at the rate of an amount equivalent to the difference between the quantum of anti-dumping duty calculated as per column (8) and the quantum of anti-subsidy/countervailing duty payable, if any, of the said Table, namely :

Table

S. No.	*Subheading or tariff item*	*Description of goods*	*Country of origin*	*Country of export*	*Producer*	*Exporter*	*Duty amount as % of landed value*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*
.....							
17.	*8483 40 00, 8503 00 10 or 8503 00 90*	*Castings for Wind Operated Electricity Generators*	*China PR*	*China PR*	*Any other combination than S.No. 1 to 16*		*35.92*

Note *– (i)* ***Castings for Wind Operated Electricity Generators*** *for the purpose of the present notification* ***implies*** *"Castings for wind operated electricity generators also known* ***as castings*** *for windmill or wind turbine, whether or not machined, in raw, finished or sub assembled form, or* ***as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators****".*

.....

Explanation. – Landed value of imports for the purpose of this notification shall be the assessable value as determined by the Customs under the Customs Act, 1962

(52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act."

4.4 On perusal of both the notifications, i.e. Notification No. 42/2017- Cus (ADD) dated 30.08.2017, for the purpose of levy of ADD and Notification No. 01/2016-Customs (CVD) dated19.01.2016, for the purpose of levy of CVD vide, it is observed that both are identical to the product. In others words, the goods attract CVD vide **Notification No. 01/2016-Customs (CVD) dated 19.01.2016** also attracts ADD vide Notification No.42/2017- Cus (ADD) dated 30.08.2017 and the rate of ADD shall be an amount equivalent to the difference between the quantum of anti-dumping duty calculated as per column (8) and the quantum of anti-subsidy/countervailing duty payable, if any.

4.5 Whereas, it further appeared that the Castings for Wind Operated Electricity Generators for the purpose of the present notification also includes a part of an equipment/component meant for wind-operated electricity generators, as explained vide Note (i) of the Table under the said **Notification No. 42/2017-Cus(ADD)** dated 30.08.2017.

4.6 Whereas, Non-payment of the **Anti-Dumping Duty,** in respect of the BoEs, as tabulated in the Annexure "A", has resulted in short-payment of Customs duty (ADD) @35.92% of the landed value of the said goods imported from China, which amounts to **Rs.6,82,60,122/-** (Column No.11 of Annexure-A) for the period 26.04.2019 to 24.07.2022, as calculated as per Annexure A to the SCN.

5. <u>Integrated GST (IGST)</u>

5.1 Whereas, it appeared that Non-payment of the Countervailing Duty and the Anti-Dumping Duty, as discussed hereinabove, has also resulted in short-payment of customs duty (IGST) on the total assessable value arrived at by way of adding CVD and ADD in the landed value, for the purpose of calculation of IGST on imported goods and the differential amount of customs duty (IGST) thus short-paid comes to **Rs.42,39,589/-** for the period 26.04.2019 to 24.07.2022, as calculated as per Annexure A to the SCN (Column No.14 of Annexure-A).

6. Thus, total amount of customs duty due to be recovered, comes to **Rs.8,90,31,358/-** , as calculated as under:-

SN	**Customs Duty**	**Amount**
1	BCD short-paid	-
2	SWS short-paid	-
3	CVD @13.44% **(NOT PAID)**	**1,65,31,647/-**
4	ADD @35.92%-13.44% **(NOT PAID)**	**6,82,60,122/-**
5	**Differential IGST not paid**	**42,39,589/-**
6	**Total customs Duty Short-paid**	**8,90,31,358/-**

7. Whereas, in response to letter F.No. S/01-45/PCA/ADD/2023-24 dated 11.05.2023**,** the said importer vide reply letter dated 26.05.2023 stated that they are engaged in the manufacture, supply, erection and maintenance of Wind Operated Electricity Generators (WOEG) a.k.a. Windmills. Various raw materials and parts required for the manufacture of WOEG are imported. They further stated that the above referred letter issued against import of parts from China (refer annexure) under 130-line items covered under 31 -Bills of Entry

with 80-part codes repeatedly, which were imported for use in the manufacture of Tower of WOEG.

7.1 The Anti-Dumping Duty (ADD) & Countervailing Duty (CVD) have been imposed only on "Castings for Wind Operated Electricity Generators" ('WOEG') vide Notification No. 42/2017-(ADD) against the imported articles from China. It has been their contention that the aforesaid definitive ADD /CVD are not imposable to all the import of WOEG parts as such and the same are applicable only on cast parts imported separately. The levy of ADD is on the landed value of the castings imported and the landed value is the assessable value as determined under the Customs Act,1962. Therefore, in their view, the Notifications do not cover list of imports of WOEGs parts that are not castings.

7.2 The said importer has stated that all the imported 80 Part codes, categorized into 6 segments based on its Material group & characteristics and stated that none of these items were made out of Castings.

Part of WTG	Material Group	No of Part codes
Tower	Tower Platform	46
	Tower Flanges	12
	Tower Guardrail	9
	Swing Gate	7
	Gallery Key Lock	3
	Ladder Reinforcement	3
	Total	80

7.3 Since, these parts are solely used for manufacturing Wind turbine generators, they have stated that they have rightly classified under the CTH 8503 0090 for Tower section parts. All the Parts were classified under above referred CTH and cleared with payment of applicable import Duties during importation. They have enclosed a write-up document with made up materials and it's end use for part code wise. They have also enclosed "Technical Write up for (1) Tower Flanges & (2) Tower Internals like ALU/Steel/Floor platforms, Swing gates & Guardrails for V120/V150 - 2.2MW/4MW "along with tower section production process. All the Imported Parts (Table-2) meant for Tower section production are not made of casting and it's end use is only for manufacturing the Tower sections of WOEG. In this view there is no merit in the demand made under the Customs letter. Hence, they requested to drop the proceedings and also requested to provide an opportunity to explain in person if required.

However, **they have not submitted** documentary evidence such as a Certificate from the Charter Engineers to prove that the above said imported goods viz. **"PARTS OF WOEG" as narrated in their reply** do not fall under the description of goods in Column 3 of the Table under Notification No. 01/2016(CVD) dated 19.01.2016 or in the implied meaning of **Casting for Wind Operated Electricity Generators** as per the Note (i) of the Table under **Notification 42/2017-CUS (ADD**) dated 30.08.2017. They have explained the function of their imported goods on their own which is not acceptable. Therefore, their reply dated 26/05/2023 appeared to be a case of suppression of pertinent information as envisaged under Section 28(4) of the Customs Act.

8. Further from the materials group tabulated in the reply, it is observed that all the import items do include casting parts which house various other parts and non-declaration of such parts by way of weight and value while being given an opportunity to do so shows disinclination on part of the Importer to provide critical information to the department. The basic function of a casting is in a wind turbine, to be used in a wind mill along with some

other non-casting parts and components like tower, blades, etc. which leads to the generation of electricity. Further, a large number of castings are collectively used in a windmill. Some of these castings are assembled along with other products to prepare a sub-assembly. Eventually, a windmill comprises a number of these sub-assemblies. It is appropriate to consider castings that may be imported as a part of equipment/component within the scope of the product under consideration so long as the scope of the measures is limited to casting portions of these equipment's/components used for wind mills or wind turbines or wind-operated electricity generators. It appeared that Importer had intentionally furnished documents such as the Bills of Entry and its invoices, packing lists containing incorrect/in-sufficient material particular with respect to the value and weight of casting parts in the imported items. The items imported undeniably consisted of casting parts and such casting parts were manufactured by simple machining and polishing process and the component weight of these casting parts were significant. It is therefore a matter of fact that the items of import in question do have castings as a component and it is incumbent on the Importer to make a complete and correct declaration. Having failed to do so despite opportunities given to them, there is little option but to demand CVD and ADD on the entire value of the imported items to protect revenue interest. The Importer even if contesting the applicability of the CVD and ADD should have been more forthright and put forth the costing of the casting components which are part of the imported items which was not a difficult exercise.

9. Whereas, it appeared that the **Castings for Wind Operated Electricity Generators** for the purpose of the relevant notification ***also includes*** a **part of a sub-assembly or a part of an equipment/component meant for wind-operated electricity generators**, as described under column (3) of the Table under the said Notification No. 01/2016(CVD) dated 19.01.2016.Whereas, it further appeared that the **Castings for Wind Operated Electricity Generators** for the purpose of the relevant Notification ***also includes*** a **part of an equipment/component meant for wind-operated electricity generators**, as explained vide Note (i) of the Table under the said Notification No. 42/2017-Cus(ADD) dated 30.08.2017. Thus, the response submitted by the importer fails to satisfy the query. **These circumstances mandate to take action to recover the differential amount of duty along with due interest and penalty, under relevant sections of the Customs Act, 1962.**

10. Section 17 of the Customs Act, 1962, gives an option to the importer, importing any goods for importation under section 46 ibid, to self-assess the duty, if any, leviable on such goods. In the self-assessment era, the importers have to act more responsibility manner and they are also required to build trust by filing the correct details & description of items along with correct classification of the goods. However, the importer, while filing the above mentioned bills of entry have willfully/intentionally not paid the CVD/ADD on their casting/casting parts of Wind Operated Electricity Generators (WOEG), and also resultantly short-paid IGST, thereby causing the short payment of Customs Duty.

11. The Importer is a regular importer of parts of WOEG (Casting / Non-casting items), hence, they are believed to be well aware of Notification No. 01/2016-Customs (CVD) dated 19.01.2016 and Notification No.42/2017- Cus (ADD) dated 30.08.2017, but it appeared that they have willfully/intentionally not paid the CVD and ADD in terms of Notification No. 01/2016-Customs (CVD) dated 19.01.2016 and Notification No.42/2017- Cus (ADD) dated 30.08.2017, and also resultantly short-paid IGST, thereby causing the short payment of Customs Duty of the above said amount.

12. VIOLATION OF STATUTORY PROVISIONS:-

12.1 In relation to the aforesaid facts, it is pertinent to quote relevant provisions of the Customs Act, 1962 and the importer's violation in respect of the same.

12.2 Whereas, it appeared that the importer has failed to pay Countervailing duty as leviable under sub-section (1) and (6) of Section 9 of the Customs Tariff Act, 1975, read with rules 20 and 22 of the Customs Tariff (and Notification No. 01/2016(CVD) dated 19.01.2016, by way of wrongly self-assessing the Bills of entries filed under Section 46 of the Customs Act, 1962.

12.3 Whereas, it appeared that the importer has failed to pay Anti-dumping duty as leviable under sub-section (1) and (5) of Section 9A of the Customs Tariff Act, 1975, read with rules 18 and 20 of the Customs Tariff (IACADDDADI) Rules, 1995 and Notification No. 42/2017-CUS (ADD) dated 30.08.2017, by way of wrongly self-assessing the Bills of entries filed under Section 46 of the Customs Act, 1962.

12.4 The imported goods, namely, **"Wind Tower with accessories (parts of WOEG)"**, imported from China, include parts falling under the description of goods as described in Column (3) of the Table under Notification 01/2016(CVD) dated 19.01.2016 and in the implied meaning of **Casting for Wind Operated Electricity Generators** as per the Note (i) of the Table under **Notification No. 42/2017-CUS (ADD**) dated 30.08.2017.

12.5 As per Section 12 of the Customs Act, 1962 read with Section 9 of the Customs Tariff Act, 1975 and Rules 20 and 22 of the Customs Tariff (IACCDSADI) Rules, 1995 read with entry at sr. no. 2 of the TABLE under under Notification No. 01/2016(CVD) dated 19.01.2016 and Section 9A of the Customs Tariff Act, 1975 read with Rules 18 and 20 of the Customs Tariff (IACADDDDADI) Rules, 1995, read with entry at sr. no. 17 of the TABLE under Notification No. 42/2017-CUS(ADD)dated 30.08.2017, the said tariff item, as classified by the importer under Customs Tariff item **85030090**, falling under the description of goods in Column (3) of the Table under Notification No. 01/2016(CVD) dated 19.01.2016, attracts countervailing **Duty** @ 13.44% of the landed value of the said goods imported from China, and when included in the implied meaning of **Casting for Wind Operated Electricity Generators,** attracts **Anti-Dumping Duty @ 35.92%** of the landed value of the said goods imported from China. However, the importer failed to properly self-assess and pay the said countervailing duty and Anti-Dumping Duty, as discussed hereinabove.

12.6 As per Section 12 of the Customs Act, 1962 read with sub-section (7) of Section 3 of the Customs Tariff Act, 1975 and read with entry at sr. no. 234 of the SCHEDULE I under Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017 the said tariff item, as classified by the importer under Customs Tariff item **85030090**, attracts **Integrated GST @ 5%** ad valorem, during the period upto 29.09.2021. The integrated GST is leviable on the value of the imported article as determined under sub-section (8) or sub-section (8A) of Section 3 of the Customs Tariff Act, 1975. Accordingly, all customs duties (including ADD), except IGST and GST Cess, are required to be added in the transaction value to arrive at the assessable value for calculation of the integrated tax. However, the importer failed to properly self-assess and short-paid IGST pro-rata, as discussed hereinabove.

12.7 As per sub-section (4) and (4A) of Section 46 of the Customs Act, 1962, the importer, while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall ensure the accuracy and completeness of the information given therein. However, by way of improper self-assessment in the Bills of entries filed under Section 46 of the Customs Act, 1962, the importer has indulged in evasion of duties of customs, amounting to **Rs.8,90,31,358/-,** as discussed above.

12.8 Thus, the importer has contravened the provisions of Section 12 of the Customs Act, 1962 read with Section 9 of the Customs Tariff Act, 1975 and Rules 20 and 22 of the Customs Tariff (IACCDSADI) Rules, 1995 read with Notification 01/2016(CVD) dated 19.01.2016 and Section 9A of the Customs Tariff Act, 1975 read with Rules 18 and 20 of the Customs Tariff (IACADDDDADI) Rules, 1995, read with Notification No. 42/2017-CUS (ADD) dated 30.08.2017. The importer has also contravened the provisions of **Section 46**

of the Customs Act, 1962 and evaded payment of duties of customs amounting to **Rs.8,90,31,358/-**, as discussed above by way of improper self-assessment in the Bills of entries filed under Section 46 of the Customs Act, 1962, thus resorting to willful mis-statement and suppression of facts and rendered themselves liable for action as envisaged under **Section 28(4)** of the Customs Act, 1962 for recovery of duties short-paid amounting to **Rs.8,90,31,358/-**, extended period upto five years is applicable.

12.9 Whereas, the importer has contravened the provisions of Section 12 of the Customs Act, 1962 read with Section 9 of the Customs Tariff Act, 1975 and Rules 20 and 22 of the Customs Tariff (IACCDSADI) Rules, 1995 read with Notification No. 01/2016(CVD) dated 19.01.2016 and Section 9 of the Customs Tariff Act, 1975 read with Rules 18 and 20 of the Customs Tariff (IACADDDDADI) Rules, 1995, read with Notification No. 42/2017-CUS (ADD) dated 30.08.2017. The importer has also contravened the provisions of **Section 46** of the Customs Act, 1962 and evaded payment of duties of customs amounting to **Rs.8,90,31,358/-**,as discussed above and rendered themselves liable for action as envisaged under **Section 28(4)** of the Customs Act, 1962 for recovery of duties short-paid as discussed above along with interest as stipulated under **section 28AA** of the Customs Act, 1962 and the importer has rendered themselves liable to penalty under **Section 117** of the Customs Act,1962.

12.10 The importer has evaded payment of duties of customs amounting to **Rs.8,90,31,358/-**, as discussed above, by way of improper self-assessment in the Bills of entries filed under Section 46 of the Customs Act, 1962, thus resorting to wilfulmis-statement and suppression of facts, the importer has rendered themselves liable to pay penalty under **Section 114A** of the Customs Act, 1962.

12.11 Section 28(4) of the Customs Act, 1962 provides that where any duty has not been levied or not paid or has been short-levied or short paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of ; (a) collusion; or (b) any willful mis-statement; or (c) suppression of facts, by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

12.12 Section 28AA of the Customs Act, 1962 provides for levy of interest on delayed payment of duty.

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten percent and not exceeding thirty-six percent, per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

12.13 Section 28(5) of the Customs Act, 1962 states that 'Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter

or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section(4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under Section 28AA and the penalty equal to fifteen percent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing'.

12.14 Section 28(6) of the Customs Act, 1962 states that 'Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then the proceedings in respect of such person or other person or other persons to whom the notice is employed under sub-section (1) or sub-section (4), shall without prejudice to the provisions of Section 135, 135A and 140 deemed to be conclusive as to the matters stated therein'.

12.15 It is pertinent to mention that the provisions pertaining to Self-Assessment under the Customs Act 1962 which were implemented w.e.f. 08.04.2011 under the Finance Act 2011, ushers in a trust based Customs-Trade partnership leading to greater facilitation of complaint trade. Board's Circular no. 17/2011 dated 08.04.2011 specifies that the responsibility for assessment has been shifted to the importer/exporter; that Section 17 of the Customs Act 1962 provides for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be, in the electronic form (Section 46 or 50); that the importer or exporter at the time of self-assessment will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported/export goods while presenting Bill of Entry or Shipping Bill. However, it is viewed that non-compliant importers/exporters could face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade policy or any other provision under the Customs Act, 1962 or the Allied Acts. From the above mentioned facts, it is clearly evident that the importer has not exercised due diligence in respect of self-assessing the subject goods on their importation and has thus violated the provisions of the Self-Assessment procedures.

12.16 As per sub-section (4) of Section 46 of Customs Act 1962, the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods. In the subject case, the importer has violated the provisions of the Customs Act 1962 in as much as misclassified the imported goods, resulting in short-payment of customs duties. Therefore such violation amounts to misdeclaration in terms of the Provisions of Section 111(m) of the Customs Act, 1962.

12.17 Sec 111 of Customs Act, 1962 provides for confiscation of improperly imported goods and the applicable subsections are (m) which has been detailed below:

> *"(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to subsection (1) of section 54."*

12.18 Sec. 112 (a) of Customs Act, 1962 provides for penalty for improper importation of goods, etc. It states "Any person, -

"(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act." Since the importer has rendered the impugned goods liable for confiscation under Section 111 of the Customs Act 1962, the importer is liable for penal action under Section 112 (a) of the Customs Act 1962."

12.19 Sec. 114A of the Customs Act, 1962 provides for Penalty for short-levy or non-levy of duty in certain cases. - Where the duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be as determined under 22 sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

13. In view of above, a notice dated 15.04.2024, was issued to M/s. Vestas Wind Technology India Pvt. Ltd., (IEC code 0497002663), Ahmedabad, wherein they were called upon to show cause in writing to the Commissioner of Customs, Customs House Mundra, Kutch, having his office at Mundra Port & SPL Economic Zone, Mundra-370 421, within thirty days from the receipt of the notice, as to why:-

i. The assessment in respect of Bills of entry mentioned in Annexure-A should not be rejected;

ii. Countervailing duty (CVD) at 13.44% under notification No.01/2016-Cus. (CVD) dated 19.01.2016 on the said goods namely parts of WOEG imported vide the Bills of Entry as detailed in the Annexure-A to this notice should not be applied;

iii. Anti-Dumping Duty (ADD) at applicable rate under notification No.42/2017-Cus. (ADD) dated 30.08.2017 on the said goods namely parts of WOEG imported vide the Bills of Entry as detailed in the Annexure-A to this notice should not be applied;

iv. Assessable Value for the purpose of calculation of IGST should not be recalculated so as to add the amount of the duties of customs of CVD and the ADD as discussed hereinabove to recalculate the amount of IGST payable;

v. The differential Customs duties totally amounting to **Rs.8,90,31,358/-** (Rupees Eight Crores Ninety Lakhs Thirty One Thousand Three Hundred and Fifty Eight only) (CVD- 1,65,31,647**/- +** ADD – 6,82,60,122**/-+ IGST- 42,39,589/-**), as discussed hereinabove, should not be demanded and recovered from them in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962;

vi. The impugned goods with the total declared Assessable value of Rs. 19,00,33,758/- as detailed in Annexure-A to this notice, should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962, for short levy of duty by reason of willful misstatement & suppression of facts;

vii. Penalty should not be imposed upon them under the provision of Section 112(a) of the Customs Act, 1962 for rendering imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962;

viii. Penalty should not be imposed upon them under the provision of Section 114A of the Customs Act, 1962 for the reasons of willful misstatement & suppression of facts as detailed above.

ix. Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

Written submissions and Personal Hearing

14. I observe that *'Audi alteram partem'*, is an important principle of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to the noticee on 18.02.2025 and 26.03.2025. Advocate Ms Shobhana Krishnan, authorized representative of the noticee attended the final personal hearing dated 26.03.2025, via virtual mode before the adjudicating authority and during PH they have stated that:

i. that ADD and CVD is not leviable on the parts imported by Vestas as the said imported parts are tower components which are non-casting parts. She further submitted that the product under consideration under ADD and CVD notifications are castings of WOEG only and the imported parts are beyond the scope of levy of ADD and CVD under the said notifications as these are fabricated parts

ii. She also submitted that demand to the extent of Rs. 1,73,58,212/- has to be dropped in respect of the imports between 26.04.2019 to 06.01.2020 as during the said period, ADD and CVD were levied simultaneously. She submitted that as per the ADD notification, in case CVD and ADD were leviable simultaneously, the ADD must be levied only at 22.48% instead of 35.92%.

iii. *She also prayed that the proposals to invoke the extended period of limitation, confiscate the goods and impose penalties be dropped as the issue in the Show-Cause Notice is purely an interpretative issue and the Department has also not brought on record any evidence to allege suppression, wilful misstatement or collusion."*

15 The Noticee submitted reply dated 19.03.2025 in response to the subject Show Cause Notice wherein he interalia stated that:

15.1 CVD/ ADD IS NOT LEVIABLE ON PARTS OTHER THAN CASTINGS USED FOR MANUFACTURE IN WOEG.

i At the outset, the Noticee submits that the demand in the SCN in respect to subject goods i.e., parts used in Tower of WOEG is erroneous as the they are non-casting components. Therefore, the demand made in the impugned SCN must be dropped.

ii In this regard, it is pertinent to refer to the relevant portions of the CVD and the ADD Notification which describe the goods on which the levy has been proposed to be imposed. The relevant portions of the same are extracted below:

CVD Notification

"Whereas, in the matter of ***'Castings for wind-operated electricity generators whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators' (hereinafter referred to as the subject goods)*** *falling under tariff items 8483 40 00, 8503 00 10 or 8503 00 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), hereinafter referred to as the Customs Tariff Act, originating in or exported from, People's Republic of China (hereinafter referred to as the subject country), and imported into India, the designated authority in its final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, vide notification No. 17/6/2013-DGAD, dated the 27th November, 2015 has come to the conclusion that – …"*

ADD Notification

"Whereas in the matter of ***'Castings for Wind Operated Electricity Generators' (hereinafter referred to as the subject goods)*** *falling under*

tariff item 8483 40 00, 8503 00 10 or 8503 00 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from China PR (hereinafter referred to as the subject country), and imported into India, the designated authority in its final findings vide notification no. 14/28/2013-DGAD dated the 28th July, 2017, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 28th July, 2017, has come to the conclusion that –

…

Note -

(i) Castings for Wind Operated Electricity Generators for the purpose of the present notification implies "Castings for wind operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators".

iii From a perusal of the two Notifications, it is evident that the terms of the Notification are clear in as much as these Notifications have proposed to levy CVD/ ADD on the ***castings for wind operated electricity generators.***

iv In this regard, it is submitted that it is relevant to break down the above notes in both the Notifications to understand the implied intent and nature of the goods covered by the said Notifications. The wordings and terms used in the Note which is common to both the Notifications are as follows:

"Castings for wind operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators"

v The term 'Castings' used in the above sentence has to be read along with every phrase after the commas. The above note is to be broken down and read as follows:

a) Castings for windmill or wind turbine, whether or not machined

b) Castings for windmill or wind turbine in raw, finished or sub-assembled form

c) Castings as a part of a sub-assembly

d) Castings as a part of an equipment/component meant for WOEG

vi From the above, it can be seen that every component of WOEG, be it, raw, finished or sub-assembly form, part of sub assembly, part of an equipment/component meant for WOEG are covered under the ADD/CVD Notifications **provided they are made by way of castings**.

vii In this regard, it is submitted that the interpretation of the Department in the SCN that all parts of WOEG are castings by default is incorrect as it will lead to an illogical and absurd conclusion as that was clearly never the intent of the levy wherein all parts of WOEG will suffer the ADD/CVD. The Notifications clearly indicate that the scope for levy of ADD/CVD is only components of WOEG i.e., raw, finished or sub-assembly, part of sub assembly, part of an equipment/component meant for WOEG which are castings. This means there may also be parts which may be non-castings.

Interpretation which is illogical should be avoided.

viii It is well settled principle of law that interpretation which is illogical should be avoided. Reliance in this regard is placed on the decision of the Hon'ble Supreme

Court in ***Mahadeo Prasad Bais (Dead)* v. *Income-Tax Officer 'A' Ward, Gorakhpur and another* - (1991) 4 SCC 560.** In the said case, it has been held that an interpretation which will result in an anomaly or absurdity should be avoided and where literal construction creates an anomaly, absurdity and discrimination, statute should be liberally construed even slightly straining the language so as to avoid the meaningless anomaly. Emphasis has been laid on the principle that if an interpretation leads to absurdity, it is the duty of the court to avoid the same.

ix Reliance in this regard is further placed on ***State of Jharkhand and Others* v. *Tata Steel Ltd. and Ors.* - (2016) 11 SCC 147** wherein it has been observed as follows:

"25. In Oxford University Press v. Commissioner of Income Tax (2001) 3 SCC 359, Mohapatra, J. has opined that interpretation should serve the intent and purpose of the statutory provision. In that context, the learned Judge has referred to the authority in State of T.N. v. Kodaikanal Motor Union (P) Ltd. (1986) 3 SCC 91 wherein this Court after referring to K.P. Varghese v. ITO [(1981) 4 SCC 173 and Luke v. IRC (1964) 54 ITR 692 has observed :-

"The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye 'some' violence to language is permissible."

26. Sabharwal, J. (as His Lordship then was) has observed thus :-

"... It is well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. It was held that construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. It was said that the literalness in the interpretation of Section 52(2) must be eschewed and the court should try to arrive at an interpretation which avoids the absurdity and the mischief and makes the provision rational, sensible, unless of course, the hands of the court are tied and it cannot find any escape from the tyranny of literal interpretation. It is said that it is now well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction. In such a case the court may read into the statutory provision a condition which, though not expressed, is implicit in construing the basic assumption underlying the statutory provision. ..."

x Reliance in this regard is further placed on the following decisions:

- ***Southern Motors v. State of Karnataka, 2017 (358) E. L.T. 3 (S.C.)***

- ***Hansraj Gordhandas* v. *H.H. Dave, Assistant Collector of Central Excise & Customs, Surat and others* (1969) 2 SCR 252 = 1978 (2) E.L.T. (J350) (S.C.)**

xi The Noticee further submits that it is to be noted that the said Notifications do not define the term 'castings.**'** Castings is a metal working process where the metal is first heated to a melting point, then poured into a mold to obtain the desired shape Thus, in case the parts imported are not obtained by way of castings process, no demand for CVD/ ADD is sustainable.

xii To better understand **the scope of the products on which CVD/ ADD** has been levied under the respective notifications, it is pertinent to refer to the Final Findings issued by the Designated Authority which has defined the scope of the Product Under Consideration ("PUC") on which the levies have been proposed.

Final Findings of the Designated Authority shows that ADD is proposed to be levied only on castings.

xiii It is submitted that in the Final Findings the Designated Authority has confirmed that the PUC on which ADD is levied is castings for WOEG. The relevant portion of the order is extracted below:

> *"In view of the above, the Authority holds that the scope of the product under consideration defined in the notice of initiation is appropriate and* ***defines the scope of the product under consideration*** *as follows:*
>
> ***Castings for wind-operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators.****"*

xiv In page 10 of the ADD Final Findings, the Designated Authority has specifically excluded tower, blades, etc., from the ambit of castings. The relevant portion of the Final Findings is provided below:

> *"(iv) The product under consideration has also been collectively referred to as castings for wind operated electricity generators (WOEG). The basic function of a casting is to be used in a wind mill along with some* ***other non-casting parts and components like tower, blades, etc****. which leads to the generation of electricity. A windmill requires a number of casting parts including Hub, Rotohub, Rotor Nabe,…."*

xv Thus, it is clear from the findings of the Designated Authority that the components of WOEG such as windmill or wind turbine, whether or not machined, finished, sub-assembled form, or as a part of sub-assembly or part of an equipment/component are subject to ADD **only if it is castings.** It is submitted that, in other words, it is clear that the scope of PUC cannot be extended to all components and the **ADD was proposed only on the castings**. This position is further strengthened by the fact that even under the ADD Notification which brought into effect the levy of ADD has only defined the scope of castings as mentioned above.

Even in case of CVD, the findings of Designated Authority contemplate ***levy only on Casting components.***

xvi It is submitted that even in case of levy of CVD the scope of the PUC was limited to castings. The Designated Authority under the Ministry of Commerce, after following

the procedures prescribed under the CVD Rules, had recommended imposition of definitive countervailing duty on the import of subject goods from China after having come to a conclusion that, the subject goods have been exported to India from subject country at subsidized value, thus resulting in subsidization of the product; the domestic industry has suffered material injury due to subsidization of the subject goods; the material injury has been caused by the subsidized imports of the subject goods originating in or exported from the subject country.

xvii The Findings of the Designated Authority were notified vide Notification No. SI 99 dated 27/10/2015 of the Ministry of Commerce and Industry, Department of Commerce (Directorate General of Anti-Dumping and Allied Duties). The relevant provisions of the said final findings relevant for the purposes of this opinion are as under.

*"**Scope of the products covered under the investigation:***

The scope of Product Under Consideration [PUC] as defined in the initiation investigation is "Castings for wind-operated electricity generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators.

After considering the submissions made by the domestic industry as well as the objections raised by various other interested parties with regard to, the scope of the PUC, the Designated Authority, after detailed examination held as follows: —

a. *The product under consideration (PUC) in the present investigation, as defined in the initiation notification, is "**Castings for wind-operated electricity generators, whether or not machined, in raw, finished or sub- assembled form, or as a part of a sub-assembly, or as a part of an equipment/ component meant for wind-operated electricity generators".** The product under consideration has also been collectively referred to as castings for wind operated electricity generators (WOEG).*

b. *The basic function of a casting is in a wind turbine, to be used in a wind mill along with some other non-casting parts and components like tower, blades, etc. which leads to the generation of electricity.*

c. ***The product under consideration is a casting for a wind-operated electricity generator (WOEG) which is popularly known as windmill**. A windmill is a mill that converts the wind energy into mechanical energy by means of rotating blades, which in turn moves the turbine to generate electricity. A windmill comprises of various casting and non-casting parts such as fan or blades made of fibre glass, tower made of steel structure etc.*

d. *A windmill requires a number of casting parts including Hub, Rotor hub, Rotor Nabe, Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation, Bearing Housing, Bearing Support, Hollow Shaft, Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft, Lateral Suspender, Pitch Stop, Stator, Generator castings, Part of Generators, Rotor, Torque Arm support, etc.*

e. *Although the product under consideration is classified under Customs subheading No. 8503 under Chapter 85 of Customs Tariff Act, 1975, as reported by the domestic industry and reflected in the relied upon imports data obtained from DGCI&S, the PUC is being imported under various other heads as well. However, customs classification is indicative only*

and not binding on the scope of the investigation. It has been contended by the opposite interested parties that the scope of the product under consideration is too wide. It has also been contended that the scope of the product under consideration refers only to castings in a generator used in a windmill. The Authority notes that there are at least three terminologies in vogue in this regard - (a) windmill; (b) wind turbine; and (c) wind-operated electricity generators. All these nomenclatures are one and the same meant for generating electricity from the kinetic power of the wind. For example, the Customs authorities have issued Notification No. 21/2014- Customs dated 11th July '2014 which refers to "Parts and raw materials required for use in manufacturing the Wind Operated Electricity Generators". This further proves that when it refers to "Wind Operated Electricity Generators", it actually refers to wind mill. The Authority thus notes that windmill, wind turbine and WOEG refer to the same product and castings for WOEG are nothing but castings for windmill or castings for wind turbine.

f. *The Authority notes that the basic production process involved in the production of the product under consideration is production of raw casting. Once raw casting has been made, it undergoes multiple machining operations. These machining operations can be performed either by the producers themselves or by standalone parties specializing in machining operations (in China or in India) or by the end consumers themselves. Further, a large number of castings are collectively used in a windmill. Some of these castings are assembled along with other products to prepare a sub-assembly. Eventually, a windmill comprises of a number of these sub-assemblies. Therefore, the eventual consumer has a choice of buying the product under consideration at any stage of its production process and even as a part of a sub-assembly.*

g. *Some of the sub-assemblies used in a windmill include Gear Box, Nacelle assembly and Hub pitch assembly. These sub-assemblies comprise of castings and other components. For example, Nacelle assembly consists of base frame, Gear Box consists of Planet Carrier, Housings, Torque arm and Hub assembly consist of Rotor hub/Hub and a pitch system. Therefore, it is open to a consumer to either buy a casting and other mating parts separately and assemble at its own place, or, instead buy the sub-assembled product as well.*

h. *The operations involved in preparing sub-assembly are almost a screw-driver technology and efforts involved are quite insignificant in proportion to overall operations carried out. Therefore, it is quite feasible for an eventual consumer to buy sub-assembled products instead of buying castings and other products separately.* ***The Authority, therefore, notes that if the scope of the PUC does not include the sub-assemblies, it shall defeat the very purpose of imposing any trade defense measure, if any. The Authority however appreciates that the scope of the PUC cannot be extended to entirety of subassemblies, merely because it contains castings within the scope of the measures. The Authority therefore holds that it is appropriate to consider sub-assemblies within the scope of the product under consideration so long as the scope of the CVD measures, if any, is limited to casting portions of the sub-assemblies.***

i. *For the reasons similar to inclusion of sub-assemblies, it is appropriate to consider castings that may be imported as a part of equipment/component*

within the scope of the product under consideration so long as the scope of the measures is limited to casting portions of these equipments/components used for wind mills or wind turbines or wind-operated electricity generators.

j. In view of the above, the Authority holds that the scope of the product under consideration defined in the notice of initiation is appropriate and defines the scope of the product under consideration for final determination as follows:

> *"Castings for wind-operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators"*

xviii Thus, it is clear from the findings of the Designated Authority that the components of WOEG such as windmill or wind turbine, whether or not machined, finished, sub-assembled form, or as a part of sub-assembly or part of an equipment/component are subject to CVD **only if it is castings.** It is submitted that, in other words, it is clear that the scope of PUC cannot be extended to all components, and the **CVD was proposed only on the castings parts**.

xix From the above, it can be seen that the Final Findings has clearly stated that *A windmill requires a number of casting parts including* ***Hub, Rotor hub, Rotor Nabe, Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation, Bearing Housing, Bearing Support, Hollow Shaft, Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft, Lateral Suspender, Pitch Stop, Stator, Generator castings, Part of Generators, Rotor, Torque Arm support, etc.***

xx However, the above list does not include Tower components such as tower platform, tower flanges, etc. Further, the Final Findings specifically identifies that *the basic function of a casting is in a wind turbine, to be used in a wind mill along with some other non-casting parts and components like tower, blades, etc. which leads to the generation of electricity.* Therefore, the Final Findings has clearly observed that tower and its components are non-casting parts.

xxi The Noticee submits that the Final Findings as well as the ADD/CVD Notification clearly indicate that ***the product under consideration for levy of ADD/CVD is a casting for a WOEG.***

xxii It is seen from the Final Findings that the authority held categorically that the scope of PUC cannot be extended to a) parts which are not castings and b) should be limited only to the casting portion of a sub-assembly or a part/ equipment or component**.** It is pertinent to note that the Designated Authority has also observed at several places in their Final Findings that the CVD measure is **limited only to the casting portions of sub-assemblies.** The Designated Authority has also acknowledged that there are non-casting parts and components like tower, blades etc., along with which casting parts are to be used

xxiii Thus, it is evident from a perusal of the final findings of the Designated Authority that the scope of the levies was not on all parts imported for manufacturing of WOEGs, but only on the casting portion of the sub-assemblies/ parts/ components/ equipment. In view of the above submissions, the proposal to levy CVD/ ADD on the subject goods i.e., parts of tower which are not casting components (as per the final findings) is unsustainable and must be dropped.

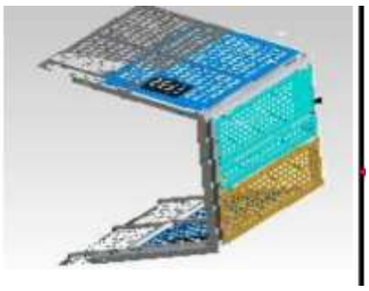
Demand of duty in respect of non-casting components is unsustainable.

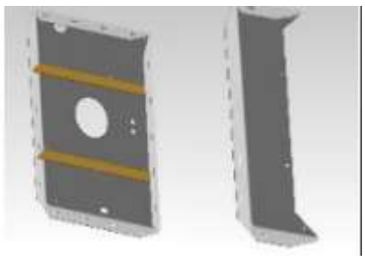
xxiv It is submitted that the Department sought to demand duty to the tune of Rs. 8,90,31,358/- in respect of subject goods.

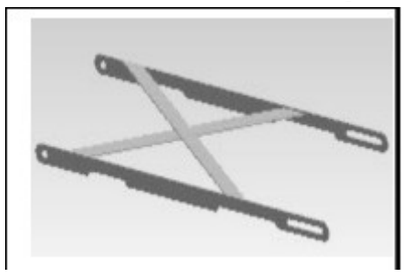
xxv The subject goods are used in the Tower of the WOEG which are manufactured by heating the cut raw materials and obtaining the desired shape of the said components. The materials with which the subject tower parts are made are Aluminum and mild steel parts. The subject parts are Aluminum/steel fabricated components only.

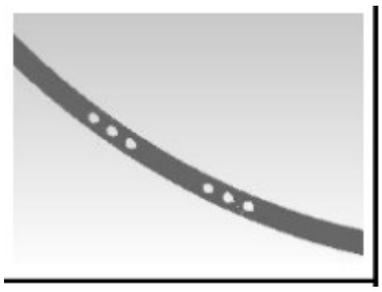
xxvi It is submitted that castings is a metal working process where the metal is first heated to a melting point, then poured into a mold to obtain the desired shape. This process is used to make heavy components such as rotor hubs, main bearing housing, etc.

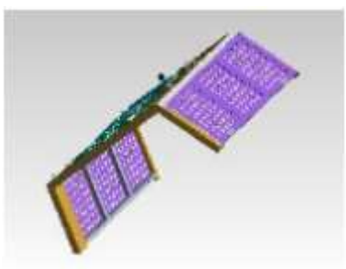
xxvii A look into the pictures of the subject parts would clearly indicate that they are not obtained by way of casting. These are obtained by process which is not casting.











xxviii Therefore, the subject goods, which are Aluminum/steel fabricated components only and are not made from casting or cast steel materials, cannot be considered as casting components of WOEG.

xxix As stated hereinabove, the levy of ADD/ CVD under the Notifications is restricted only to ***castings***. Since the subject goods are non-casting, the Department cannot levy ADD/CVD on the subject goods.

xxx The impugned SCN alleges that the subject goods are casting of WOEG but has not provided any evidence to show that the subject goods are castings. Merely because the subject goods are used in WOEG does not indicate that they are automatically castings of WOEG and subject to levy of ADD/CVD. Therefore, the grounds basis which the impugned SCN has been issued is baseless and thus, the impugned SCN merits to be dropped.

The Department has failed to discharge the burden of proof that the subject goods are castings.

xxxi In the instant case, it is pertinent to note that other than a bald allegation in the SCN that subject goods are casting parts because they are parts of WOEG and therefore, ADD/ CVD have to be levied, the Department has not produced any other evidence to prove that the subject goods are castings components. It is submitted that there is no detailed analysis of the parts covered under the SCN to show that they are made of castings. Further, it is submitted that the Department has not analyzed whether the subject goods are castings or not.

xxxii The Noticee submits that the SCN has not provided any other evidence/ reports to suggest that the subject goods are made through the process of castings. Thus, in such circumstances, it is evident that the Department has failed to discharge the burden that the subject goods imported by the Noticee are indeed castings.

xxxiii It is well settled position that in case of levy notifications, the burden to prove that a levy is applicable on the Noticee is that of the Department and not the Noticee. Even in the present case, the ADD/CVD Notifications are levy Notifications. In view of the same, the allegation in the impugned SCN, in para 7.4, that the Noticee has not submitted documentary evidences such as a Certificate from the Chartered Engineers to prove that the imported goods viz., "PARTS of WOEG" are not subject to ADD/CVD is unsustainable as it is the Department's burden to prove that the subject parts are castings.

xxxiv The Noticee submits that when a tax demand is raised by the Department on the ground of short levy/non-levy of tax by an assessee, the burden of proof to establish such short levy/non-levy of tax is on the Department and that the Department has failed to discharge its burden in view of the submissions made above. However, in the present case, the SCN has neither made any efforts in this regard, nor does it rely on any expert opinion/technical information in support of its contention.

xxxv Reliance is placed on the following decisions wherein it has been held that the burden of proof to levy tax is on the revenue:

- *CCE v. Railway Equipment and Engg. Works, 2015 (325) E.L.T. 184 (Tri. - Del.);*
- *Union of India v. Garware Nylons Ltd., (1996) 10 SCC 413;*
- *CC v. Foto Centre Trading Co., 2008 (225) ELT 193 (Bom.);*
- *CCE v. Khalsa Charan Singh And Sons, 2010 (255) ELT 379 (P&H);*
- *H.P.L Chemicals vs. CCE 2006 (197) E.L.T. 324 (S.C.).*

xxxvi In the light of above decisions, the Noticee humbly submits that the burden of proof is on the Department to prove that the Noticee has short paid the CVD/ ADD by mis-declaring the imported goods. However, it is submitted that the Department has failed to provide any legal basis as to why the subject goods must be considered as castings and be subject to the levies proposed in the SCN.

xxxvii Further, no evidence, expert report, statement, etc. have been relied upon in the SCN that support the view that the subject goods are indeed castings and are therefore subject to levy of ADD/ CVD under the respective Notifications. Therefore,

it is submitted that the Department has failed to discharge the burden of proof for subject the goods to the levy of CVD/ ADD on the subject goods. On the contrary, the Noticee has produced sufficient evidence to establish that the subject goods are castings components.

15.2 EXTENDED PERIOD OF LIMITATION UNDER SECTION 28(4) IS NOT INVOKABLE IN THE PRESENT CASE

i It is submitted that by virtue of Section 28(1) of the Customs Act, the proper officer can demand duty for a period of two years from the relevant date. Relevant portion of Section 28 is extracted below for ready reference:

> *"**Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.** – (1) Where any duty ..... of facts, -*
>
> *(a) The proper officer shall, within two years ..... notice;"*

ii Relevant date has been defined under Explanation 1 to Section 28 of the Customs Act to mean the date on which the proper officer makes an order for the clearance of goods. Relevant portion is extracted below for easy reference:

> *"Explanation 1. – For the purposes of this section, "relevant date" means, -*
>
> *In a case ....., **the date on which the proper officer makes an order for the clearance of goods."***

iii Therefore, it is clear that according to Section 28(1), the SCN must be issued within a period of 2 years from the date on which the proper officer makes an order for the clearance of goods, which is the date of out of charge of a bill of entry. Therefore, the SCN dated 15.04.2024, inasmuch as it proposes to demand duty in respect of goods imported vide Bills of Entry prior to 15.04.2022, is unsustainable and merits to be dropped.

iv The Noticee submits that the period involved in the SCN is 26.04.2019 to 15.08.2022. The bifurcation of demand between normal and extended period of limitation is provided below:

Particulars	Normal Period (16.04.2022 - 15.04.2024)	Extended Period (26.04.2019- 15.04.2022)
Duty demand proposed under the impugned SCN	Rs. 1,90,58,065/-	Rs. 6,99,73,291/-

v It can be noticed that the Bills involved in present case predominantly pertain to period prior to 16.04.2022 and therefore, the demand to the tune of Rs. 6,99,73,291/- falls under the extended period of limitation.

vi The Noticee submits that the extended period of limitation under section 28(4) of the Customs Act is not invokable in the present case as none of their ingredients therein are satisfied.

> *"(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, —*

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."

vii It is the allegation in para 12.9 of the SCN that the extended period of limitation is invokable in the present case since the Noticee despite being aware that the subject goods imported are "casting parts" has willfully suppressed the same to avoid payment of CVD/ ADD in respect of the imports. No other reason has been provided in the SCN as to how the extended period of limitation is invokable.

viii At the outset, the Noticee submits that the extended period of limitation is invokable only in cases where the Department has proven the existence of either collusion, suppression or misstatement of facts. In the present case, the demand, inasmuch as it pertains to the period beyond the normal period of limitation, is unsustainable as the existence of neither of these conditions has been proven by the Department. Therefore, the demand of CVD/ ADD to the tune of Rs. 8,90,31,358/- in respect of the period in dispute is unsustainable as this is beyond the period of two years contemplated under Section 28. Therefore, it is submitted that this demand cannot be sustained.

Extended period is not invokable when issue relates to interpretation.

ix Further, the Noticee submits that in view of the various submissions made in the preceding paragraph, they *bona fide* believed that the imported goods did not attract anti-dumping duty or countervailing duty.

x In any case, the issue relates to interpretation of complex entries of notifications and is purely legal in nature. Therefore, the extended period of limitation cannot be invoked.

xi The Noticee submits that it is settled law that the extended period cannot be invoked when the case involves an interpretatory issue. The Noticee places reliance on the following judicial decisions in support of the contention that extended period cannot be invoked in cases involving interpretation of statutory provisions.

- Singh Brothers vs. Commissioner of Customs & Central Excise, Indore, [2009 (14) STR 552 (Tri.-Del.]);
- Steelcast Ltd. vs. Commissioner of Central Excise, Bhavnagar, [2009 (14) STR 129 (Tri.-Del].);
- P.T. Education & Training Services Ltd. vs. Commissioner of Central Excise, Jaipur, [2009 (14) STR 34 (Tri.-Del.)]; and
- K.K. Appachan vs. Commissioner of Central Excise, Palakkad, [2007 (7) STR 230 (Tri.-Bang.)]

xii The Noticee submits that the onus is on the department to prove that the Noticee has wilfully mis-declared or suppressed facts with intent to evade payment of duty.

In the present case, the non-payment of CVD/ ADD on the import of subject goods is justifiable for the reasons stated in the foregoing paragraph.

xiii Further, the Department failed to prove that the Noticee has acted with any mala fide intent. There is nothing on record to show the existence of fraud, collusion or suppression of materials facts or information. Therefore, the larger period of limitation is not invokable. Reliance is placed on the following decisions in support of the above submission:

- Shahnaz Ayurvedics v. CCE – 2004 (173) ELT 337 (All), affirmed in 2004 (174) ELT A34 (SC)
- Devans Modern Breweries Ltd. v. CCE - 2006 (202) ELT 744 (SC)

xiv Similarly, the Noticee also relies upon decision of the Hon'ble Supreme Court in the case of ***Continental Foundation v. CCE, 2007 (216) ELT 177 (SC)***, wherein the Hon'ble Apex Court has held as under:

> *"10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly.* ***Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty****. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression****.*** *When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement****.*** *The latter implies making of an incorrect statement with the knowledge that the statement was not correct."*
>
> *… (Emphasis supplied)*

xv In view of the above, none of the ingredients required to invoke extended period of limitation exist in the present case. Hence, invoking extended period of limitation is not sustainable.

Extended period of limitation cannot be alleged when the declaration of the imported is correct:

xvi It is the Noticee's submission that the description for example "WIND TOWER FLANGE (SIZE 5300X 4600 X 150) (15 PCS) (PART OFWIND TURBINE GENRATOR}PO 4508048454 WIND TOWER FLANGE (SIZE 5300X 4600 X 150) (15)" specified in the Bill of Entry is correct. It is the Department's case that the parts are "casting parts" as prescribed in the CVD/ ADD Notifications. In this regard, the Noticee submits that as stated in Ground A above, the imported goods are non-casting and not covered under the purview of the ADD and CVD Notification. Given the same, the Noticee's actions are *bona fide,* and no *mala fide* intention can be attributed.

xvii Further, it is not the case of the Department that the goods imported by the Noticee are different from what has been declared. Thus, there is no "misdeclaration" in the present case and the description of goods is proper. Reliance in this regard is placed on the Tribunal's decision in ***Sirthai Superware India Ltd. v. CC, 2020 (371) E.L.T. 324 (Tri. - Mumbai),*** wherein it has been clearly held that even under the self-assessment regime, when the description given in the Bill of Entry is correct, mis-declaration etc. cannot be alleged.

xviii A similar view has been taken in ***Vesuvias India Ltd. v. CC, 2019 (370) E.L.T. 1134***. Relevant portion of the decision is extracted below:

> *"5. …. The only point of allegation that can sustain in the present case is that the assessee has wrongly classified the imported goods in their bills of entry. The importer assessee is not an expert in classification of products and it is always possible that they claimed wrong classification. It is open for the department to direct the importer to correct classification or issue a show cause notice proposing revision of classification. Merely claiming the wrong classification by itself does not amount to misdeclaration of the goods and there is nothing on record to show that the description of the goods in the Bill of Entry and other documents as well as in the test report do not match. The department's case has to fail on this ground alone for the extended period of limitation and correspondingly the penalties also need to be set aside."*

xix In para 11 of the impugned SCN, it has been alleged that the Noticee is a regular importer of parts of WOEG (Casting/Non Casting items) and, hence they are believed to be well aware of the CVD and ADD Notification and has willfully/intentionally not paid the CVD and ADD in terms of CVD and ADD Notification.

xx In this regard, it is submitted that the Noticee is a regular importer of parts of WOEG. It is because of the said reason that the Noticee has been discharging ADD/CVD wherever the components are made of castings.

xxi It is submitted that the Noticee has not discharged ADD/CVD in the present because the subject goods are not castings and therefore are not subject to ADD/CVD. Therefore, the allegation in the SCN is unsustainable and merits to be dropped.

xxii In para 12.4, the impugned SCN has simply made a bald statement that "*the imported goods, namely, "Wind Tower with accessories (parts of WOEG) imported from China, include parts falling the description of goods as described in Column (3) of the Table under CVD Notification and in the implied meaning of Casting for Wind Operated Electricity Generators as per Note (i) under ADD Notification".*

xxiii In this regard, it is submitted that the Department has not disputed the fact that the goods imported are Wind Tower and accessories. In para 8 of the impugned SCN, the Department themselves have observed that towers are non-casting parts. Furthermore, it is submitted that the Noticee was under the bona fide belief that the subject goods are not covered under the ADD/CVD Notifications because they are not made of casting as such. As discussed above, the said Notifications for the purpose of levy of ADD/CVD are to be understood as including only those parts, sub-assembly, component/equipment of WOEG which are made of castings. As, only products which are actually manufactured through casting process are covered under the ADD/CVD Notifications, the Noticee was under the bona fide belief that the subject goods, being non-casting tower flanges, are not covered within the scope of the Notifications.

xxiv Therefore, while the Department accepts the fact that towers are non-casting, the allegation of the Department that the subject goods are castings is baseless and contradictory. Therefore, the impugned SCN merits to be dropped.

xxv In view of the above decisions, the Noticee submits that extended period cannot be invoked in the present case and the SCN merits to be dropped as illegal.

15.3 IN THE ABSENCE OF SUBSTANTIVE PROVISIONS IN CUSTOMS TARIFF ACT, INTEREST AND PENALTY TO THE EXTENT OF DIFFERENTIAL IGST CANNOT BE IMPOSED**.**

i The Noticee submits that the impugned SCN has, *inter alia,* proposed an amount of Rs. 83,83,171/- as differential IGST. In this regard, the impugned SCN has proposed interest and penalty in respect of the non-payment of differential IGST of Rs. 42,39,588/- as well.

ii The Noticee submits that in the present case, the interest and penalty is also in relation to demand of differential IGST leviable under Section 3(7) of the Customs Tariff Act, 1975 (‘**CTA**’). However, it is to be noted that the CTA has limited machinery provisions and therefore it borrows various provisions from the Customs Act for implementation of its provisions. Section 3(12) of the CTA is the borrowing provision regarding IGST and other additional duties.

> *“(12) The provisions of the Customs Act, 1962 (52 of 1962), and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties, shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.”*

iii The Noticee submits that, on a reading of the above provision, it is clear that Section 3 of CTA which levies duties other than basic customs duty, borrows the substantive provisions of Customs Act for implementation the collection of the levy. However, substantive provisions relating to interest, penalty, confiscation, fine from the Customs Act are not explicitly borrowed from Customs Act vide the borrowing provision in respect of IGST.

iv The Noticee submits that the question that arises here is whether interest and penalty can be imposed on an assessee in the absence of substantive provision under a statute creating or imposing such liability, which is differential IGST in the present case.

v In this regard, the Bombay High Court in ***Mahindra & Mahindra Ltd. v. Union of India [2022 (10) TMI 212 - BOMBAY HIGH COURT]*** has considered a similar issue of levy of interest and penalty in relation to amounts payable as duty other than basic customs duty. This case pertains to imposition of interest and penalty under Customs Act 1962 on the portion of demand pertaining to surcharge or additional duty of customs or special additional duty of customs levied under Section 3 of CTA by resorting to Section 3(6) of CTA which is the borrowing provision. It is to be noted that Section 3(6) of CTA in the said case, as it stood then, is *pari materia* to Section 3(12) of CTA.

vi The Court has laid down the said position after considering the provisions of section 3(6) which are identical to the present section 3(12) of the Customs Tariff Act. This decision of the Hon’ble Bombay High Court has been affirmed by the Apex Court in ***Union of India Vs Mahindra And Mahindra Ltd, 2023-VIL-72-SC-CU.*** Further, the Review Petition filed by the Department has also been dismissed vide order dated 09.01.2024 in Review Petition (Civil) Diary No. 41195/2023.

vii Reliance in this regard is also placed on the following decisions:

- *India Carbon Ltd. v. State of Assam, (1997) 6 SCC 479*
- *J.K. Synthetics Ltd. Ltd. v. CTO, (1994) 4 SCC 276*
- *Chiripal Poly Films Ltd. v. CC, Final Order No. 11628-11630/2024- CESTAT AHMEDABAD*

- *Acer India Pvt. Ltd. v.CC, Chennai, 2023-VIL-998-CESTAT-CHE-CU*:

viii Therefore, in view of the above decisions, the Noticee submits that interest and penalty cannot be imposed in relation to the differential IGST chargeable under Section 3(7) of the CTA as there is no substantive provision under CTA charging/levying/imposing such liability.

Section 106 of Finance (No. 2) Act, 2024 is not applicable to the present case

ix It is a settled position in law that in the absence of the machinery provisions, a levy could not be imposed. The abovementioned judicial precedents have confirmed the view that in the absence of machinery provisions, the imposition of interest and penalty on differential IGST demand would be unlawful. In this regard, it is pertinent to note that Section 106 of Finance (No. 2) Act, 2024 amends Section 3(12) of CTA to make applicable provisions relating to interest and penalty to IGST payable on import. The relevant portions are extracted below:

Section 3(12) of the Customs Tariff Act, 1975 before amendment	***Section 106 of the Finance (No. 2) Act, 2024 (Section 3(12) of Customs Tariff Act, 1975 after amendment)***
Section 3 (12). The provisions of the Customs Act, 1962 (52 of 1962.) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act	*106. In section 3 of the Customs Tariff Act, 1975 (51 of 1975.) (hereinafter referred to as the Customs Tariff Act, for sub-section (12), the following sub-section shall be substituted, namely: -* *"(12) The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be."*

x In this regard, the Noticee submits that the Finance (No. 2) Act, 2024 is not applicable to the present case as it is prospective in nature and does not have retrospective effect. The rule against retrospective operation is a fundamental rule of law, and the proposed amendment do not specify that they are retrospective in nature. In this regard, reliance is placed on ***Govinddas v. Income-tax Officer (1976) 1 SCC 906***, wherein it was observed as following:

> "11.Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, *unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability* otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that all statutes other than those which are merely declaratory or which relate only to matters

of procedure or of evidence are prima facie prospectively and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

xi The above view was confirmed in ***Commissioner of Income Tax (Central) -I, New Delhi Versus Vatika Township Private Limited, 2014 (9) TMI 576***. There relevant paragraph is extracted below for ease of reference:

"Addition of this proviso in the Finance Act, 2003 further makes it clear that such a provision was necessary to provide for surcharge in the cases of block assessments and thereby making it prospective in nature. The charge in respect of the surcharge, having been created for the first time by the insertion of the proviso to Section 113, is clearly a substantive provision and hence is to be construed prospective in operation. The amendment neither purports to be merely clarificatory nor is there any material to suggest that it was intended by Parliament"

xii It is pertinent to note that Section 3(12) of CTA has been amended vide Section 106 of Finance (No. 2) Act, 2024, thereby making the provisions related to interest and penalty applicable to IGST demands. In this regard, the Noticee submits that the machinery provisions may have changed now, but the provisions which were active during the taxable event has to be considered. Further, the levy of customs duties is on the act of importation or exportation, and in the present case the taxable event has already occurred prior to the amendment i.e., between 2019-2021. Hence, aforementioned amendment is not applicable to the present case.

xiii Further, Section 159A of the Customs Act, 1962 provides that amendments shall not affect the previous operation of any rule, regulation, notification, or order so amended, repealed, superseded, or rescinded. Thus, an inference can be drawn that the aforesaid amendment to Section 3(12) of the Customs Tariff Act, 1975 cannot be applied retrospectively in the Noticee's case, since the taxable event (importation and exportation) has already occurred prior to the amendment.

xiv Therefore, the Noticee submits that interest cannot be imposed in relation to demand of differential IGST under Section 3(7) of the CTA as there was no substantive provision under CTA charging/levying/imposing such liability during the relevant period. Hence, the Impugned SCN to the extent of interest is unsustainable and merits to be dropped.

xv Therefore, the impugned SCN proposing to impose interest and penalty to the extent of differential IGST is unsustainable and merits to be dropped.

15.4 DEMAND OF INTEREST IS NOT SUSTAINABLE WHEN DUTY IS NOT PAYABLE

i. The SCN, in para 12.9, has demanded interest under Section 28AA of the Customs Act. Section 28AA of the Customs Act, 1962 is extracted below:

*"**Section 28AA.** Interest on delayed payment of duty – (1) Notwithstanding ..... section."*

ii. The Noticee submits that the demand of interest is not sustainable in present case as the duty is not payable as demonstrated in the foregoing paragraphs. The subject goods have been correctly classified and no CVD/ ADD is leviable in the present case.

iii. It is a cardinal principle of law that when the principal demand is not justified, there is no liability to pay ancillary demands. Therefore, it is submitted that the Noticee is not liable to pay interest as demanded in the SCN.

iv. The Hon'ble Supreme Court of India in ***Prathibha Processors vs. UOI, 1996 (88) E.L.T. 12 (S.C.)***, has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest, either. Relevant portion from the judgement is extracted below for a ready reference:

> *"The "interest" payable under Section 61(2) of the Act is a mere "accessory" of the principal and if the principal is not recoverable/payable, so is the interest on it. This is a basic principle based on common sense and also flowing from the language of Section 61(2) of the Act. The principal amount herein is the amount of duty payable on clearance of goods. When such principal amount is nil because of the exemption, a fortiori, interest payable is also nil. In other words, we are clear in our mind that the interest is necessarily linked to the duty payable."*

v. In view of the above, it is submitted that the demand of interest under the SCN is not sustainable and deserves to be set aside.

15.5 GOODS NOT LIABLE FOR CONFISCATION UNDER SECTION 111 OF THE CUSTOMS ACT.

i The imported goods are proposed to be held liable for confiscation under Section 111(m) of the Customs Act *vide* para 12.8 of the SCN on the ground that the Noticee has willfully suppressed that the imported goods are casting parts in order to avoid payment of CVD/ ADD in respect of the imports.

ii However, it is pertinent to note that the SCN has not given as to how the Noticee has indulged in wilful misstatement of suppression of facts. As stated in ground C above, the Noticee had properly described the goods in the Bills of Entry and had also appropriately classified the goods. Thus, in these circumstances, the subject goods cannot be held to be liable to confiscation under Section 111(m) of the Customs Act, 1962.

iii At the outset, the Noticee submits that mere short payment of duty will not render the goods liable for confiscation.

Confiscation under section 111(m) of the Act not sustainable:

iv The Noticee submits that the imported goods are not liable to confiscation under section 111(m) of the Act.

> *"Section 111. Confiscation of improperly imported goods etc. - The following goods brought from a place outside India shall be liable to confiscation:*
>
> *(m) any goods which do not correspond ……;"*

v The Hon'ble Supreme Court in ***Northern Plastic Ltd. v. CC, 1998 (101) E.L.T. 549 (S.C.),*** has held that merely claiming the benefit of exemption or a particular classification under the bill of entry does not amount to mis-declaration of any particular under section 111(m) of the Act.

vi Relying on the decision of the Apex court in Northern Plastic *(supra)*, the Bombay High Court in ***CC v. Gaurav Enterprises, 2006 (193) E.L.T. 532 (Bom.),*** has held that claiming the benefit of exemption in the Bills of entry filed under the Act does not amount to suppression / mis-declaration on part of the assessee.

vii In fact, it has been held in ***Lewek Altair Shipping Private Limited v. CC, 2019 (366) E.L.T. 318 (Tri. - Hyd.),*** that claiming an incorrect classification, or the benefit of an ineligible exemption notification does not amount to making a false or incorrect statement because it is not an incorrect description of the goods or their value but only a claim made by the assessee. In the present case, the subject goods are eligible for exemption. Therefore, the goods cannot be held liable for confiscation.

viii The Tribunal's decision in Lewek Altair Shipping (Supra) has been affirmed by the Hon'ble Supreme Court in ***Commissioner v. Lewek Altair Shipping Pvt. Ltd., 2019 (367) E.L.T. A328 (S.C.)***.

ix In ***Sutures India Pvt. Ltd. vs. CC, 2009 (245) ELT 596 (Tri.-Bang.)***, the Hon'ble Tribunal has held as follows:

> *"10.5 It can be seen from the above reproduced ratio, that the law is clearly settled as to the claiming of classification of the goods and claiming exemption under particular notification is a matter of belief and would not amount to mis-declaration. We find that the ratio of the law as laid down by the Hon'ble Supreme Court squarely covers the issue in favour of the appellant, as they cannot be alleged to have mis-declared the item as ophthalmic equipment."*

x The Noticee also relies on ***Kirti Sales Corpn. vs. CC, 2008 (232) ELT 151 (Tri.-Del.)***, wherein the Hon'ble Tribunal has held that to attract the provisions of Section 111(m), the *mis-declaration should be intentional*. The Hon'ble Tribunal in this case held as under:

> *"6.We are inclined to accept the case of the Revenue that the goods imported were texturized fabric. However, whether the declaration in the Bill of Entry amounts to 'misdeclaration' so as to attract the provisions of Section 111(m) of the Customs Act in a given case depend upon the facts of the case. To constitute 'misdeclaration', the declaration must be intentional. Misdeclaration cannot be understood as same as wrong declaration, of course, made bona fide, the possibility of which cannot be ruled out altogether. The question, therefore, is whether the appellant had intentionally and deliberately mis-declared the goods as non-texturized fabric rather than texturized fabric. On this point, we are inclined to accept the case of the Appellants that the declaration had been made on the basis of documents supplied by the foreign supplier and there was no intentional or deliberate wrong declaration or misdeclaration on its part so as to attract the mischief of Section 111(m) of the Customs Act. The facts of the case in the instant case……"*
>
> *(Emphasis supplied)*

xi Similarly, in ***JK* Industries *vs. CC, 1996 (88) ELT 41***, the Tribunal has held that the claim for exemption is not a declaration for the purposes of Section 111(m) of the Customs Act, 1962 and hence the tribunal invalidated confiscation of goods and imposition of penalty. Reliance is also placed on the following decisions:

- *Hindustan Lever Ltd. vs. CC [1996 (83) ELT 520]*
- *Metro Tyres Ltd. vs. CCE [1994 (74) ELT 964]*

xii In view of the decision of Apex court in Northern plastic *(supra)* and other decisions referred to above, it is submitted that a mere claim to classification or exemption in the Bill of does not amount to mis-declaration of any particular as contemplated by section 111(m) of the Act. Moreover, in the present case, the subject goods have

been correctly classified. Therefore, there is no misdeclaration to attract mischief of Section 111(m).

xiii In view of the above submissions, it is submitted that a mere claim to an exemption and classification does not amount to mis-declaration so long as the description given in the Bill of Entry is correct. In the instant case the Noticee had given the description of the imported goods correctly. No attempt has been made by the Noticee to mis-declare the goods. Hence, the imported goods cannot be held liable for confiscation under Section 111(m) of the Act.

xiv The Noticee places reliance on the case of ***Porcelain Crafts and Components Exim Ltd. vs. CC [2001 (138) ELT 471 (Tri. – Kolkata)]***, wherein it was observed that confiscation of the goods can be ordered only when there is positive evidence to prove *mala fides* on the part of the importer. In the present case, the SCN fails to disclose or rely on any positive evidence to prove *mala fides* on the part of the Noticee.

xv Therefore, it is submitted that the proposal for confiscation of the subject goods under Section 111(m) of the Customs Act is legally not sustainable and is hence, liable to be dropped.

15.6 NO PENALTY CAN BE IMPOSED ON THE NOTICEE UNDER SECTION 112(a) OF THE CUSTOMS ACT.

i The SCN has proposed to impose penalty under section 112(a) on the Noticee. In this regard, the Noticee submits that the same is unsustainable and deserves to be dropped.

ii At the outset, it is submitted that penalty under Section 112 of the Customs Act is linked to confiscation under Section 111 of the Customs Act, i.e., where the goods are liable to confiscation under Section 111, only then penalty can be imposed under Section 112 *ibid*. As has been appropriately demonstrated in the submissions made above, there arises no case for confiscation of the goods under sections 111(m) or section 111(o) of the Customs Act. Hence, there is also no case for invoking Section 112 to impose penalty on the Noticee.

iii It is submitted that the SCN has not given any reason as to how penalty is imposable on the Noticee.

Penalty cannot be imposed where duty demand is not sustainable:

iv Firstly, it is submitted that no duty is payable as the Noticee had correctly claimed the exemption for the subject goods. For the same reason, it is submitted that no penalty can be imposed on the Noticee.

v In ***CCE v. H.M.M. Limited, 1995 (76) ELT 497 (SC)***, the Hon'ble Supreme Court has held that the question of penalty would arise only if the department were able to sustain the demand. Similarly, in the case of ***CCE v. Balakrishna Industries, 2006 (201) ELT 325 (SC),*** the Hon'ble Supreme Court has held that penalty is not imposable when differential duty is not payable. In view of the above submissions, it is humbly submitted that penalty is not imposable as the demand itself is not sustainable.

vi The Noticee further submits that the imposition of penalty is incorrect and bad in law for the following reasons. The relevant portion of Section 112 is extracted below:

> *"SECTION 112. Penalty for improper importation of goods, etc. – Any person, -*
> *(a) who, in relation to any goods,…… an act, or*

(b) Any person who acquires possession …….. shall be liable, -

…

(ii) in the case of dutiable goods, ……. whichever is the greater."

vii Section 112(a) of the Customs Act provides for imposition of penalty on any person,

a) who does or omits to do any act which renders such goods liable to confiscation under Section 111 or

b) abets the doing or omission of such an act;

viii In the present case, it is submitted that the Noticee has not committed an act or omission that has rendered the goods liable for confiscation. The SCN also does not specify the exact act or omission on part of the Noticee. Therefore, no penalty under section 112(a) is imposable.

ix Further, it is also now a settled position that no penalty under section 112(a) of the Customs Act is imposable in cases where the issue involved is one of classification/exemption and the importer has acted *bona fide*.

x In view of the above submissions, the Noticee submits that the imposition of penalty in the present case is incorrect and merits to be set aside.

Penalty cannot be imposed in cases involving interpretation of exemption provisions:

xi The Noticee submits that it has been held in catena of judgments that no penalty is imposable on an assessee when the issue involved is one of interpretation of notifications prescribing a levy or exempting a levy.

xii In ***Whiteline Chemicals v. CCE, 2008 (229) E.L.T. 95 (Tri. – Ahmd.),*** the Hon'ble Tribunal set aside the penalties on the assessee as the issue involved was one of interpretation of terms of an exemption notification. It was held as under:

"5.However, we find that the issue involved is bona fide interpretation of notification and does not call for imposition of any penalty upon the appellants. The same is, accordingly, set aside."

xiii In ***Vadilal Industries Ltd. v. CCE, 2007 (213) E.L.T. 157 (Tri. - Ahmd.)***, the Tribunal has again held as under:

"10.However, the learned Advocate submits the following alternative pleas that the price realised by them, should have been treated as cum-duty price and no penalty should have been imposed as this is a case of difference in interpretation. There is no issue of limitation involved as the show cause notices were issued within the normal period of limitation."

Penalty cannot be imposed on the Noticee as there was no intention to evade duty:

xiv Without prejudice to the above submissions, it is submitted that in terms of various decisions of the Hon'ble Supreme Court and various other High Courts and Tribunals, penalty cannot be imposed on the assessee in absence of *mens rea* on part of the assessee.

xv It is a settled law that when an assessee is under a *bona fide* belief that a particular exemption is available or regarding description of goods, penalty cannot be imposed on the assessee, even if ultimately it is found that the exemption is not available.

xvi As already submitted, the conduct of the Noticee was *bona fide*. Therefore, it cannot be said that the Noticee in any manner, abetted the doing or omission of an act, which act or omission rendered the goods liable to confiscation. Consequently, the proposal to impose penalty under Section 112(a) on the Noticee must be dropped.

15.7 NO PENALTY CAN BE IMPOSED ON THE NOTICEE UNDER SECTION 114A AND 117 OF THE CUSTOMS ACT.

i In the SCN, penalty under the section is proposed to be imposed on the sole ground that the Noticee has willfully suppressed that the imported goods are casting parts in order to avoid payment of CVD/ ADD in respect of the imports. The Noticee submits that they have correctly classified the goods. Therefore, there is no case for imposition of penalty under section 114A on the Noticee.

ii Section 114A of the Customs Act, 1962 reads as under:

> *"**SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases.** - Where the duty ....."*

iii From a reading of the above provisions, it is evident that levy of penalty under Section 114A is linked to confirmation of demand under Section 28 of the Customs Act, 1962 and the same ingredients as are applicable for invoking extended period under the proviso to Section 28(1) of the Customs Act, 1962, are applicable for levy of penalty under this Section as well. As already submitted, there has been no collusion or any willful misstatement or suppression of facts on the part of the Noticee and therefore the proposal for levy of penalty under Section 114A is not sustainable in law.

iv Without prejudice to the submissions in the foregoing paragraphs, it is submitted that the liability to penalty under Section 114A of the Customs Act, 1962 can arise only when the duty has not been levied or short-levied etc. by reason of collusion or any willful misstatement or suppression of facts. As already submitted, there is no suppression of facts or willful misstatement in the instant case.

v Without prejudice to the above, it is submitted that the conduct of the Noticee was totally *bona fide*. The Noticee neither had any intention to evade payment of duty, nor had any knowledge of the liability of the goods to confiscation. In the absence of any malafide on part of the Noticee, no penalty is imposable.

vi In ***Hindustan Steel Ltd. v. State of* Orissa *[1978 (2) ELT (J159) (SC)],*** Hon'ble Supreme Court has held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the *bona fide* belief. Relevant portions of the judgment are extracted below:

> *"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."*
>
> (Emphasis *Supplied*)

vii Following the above judgment, in the case of ***Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax [1980 (6) ELT 295 (SC)],*** Hon'ble Supreme Court has held that penalty cannot be imposed when an assessee raises

a contention of *bona fide*. It is submitted that the conduct of the Noticee in the present case was totally *bona fide* and therefore no penalty is imposable.

viii The Noticee submits that the element of *mens rea* is absent from the case in point. The Noticee declared the description of imported goods in the bills of entry on the *bona fide* belief that the imported goods are non-casting components. Therefore, penalty under section 114A of the Customs Act, 1962 cannot be imposed on the Noticee.

ix In view of the above settled position of law and considering the fact that there is complete absence of *mens rea* in the present case, it is prayed that the proposal to impose penalty on the Noticee be dropped.

Penalty under Section 117 is not imposable

x The SCN has proposed to impose a penalty under Section 117 of the Customs Act. The said section is extracted below:

"SECTION 117. Penalties for contravention, etc., not expressly mentioned. -

Any person ..... four lakh rupees."

xi On a perusal of the above, it is clear that penalty under Section 117 is residuary in nature and is imposable only where there is no express penalty provided elsewhere.

xii In the present case, as the Noticee has not contravened any provision of the Customs Act, the said section cannot be invoked. Therefore, it is submitted that the proposal to impose penalty is unsustainable and merits to be dropped.

15.8 Further vide letter dated 26.03.2025, an additional submission to Show cause notice, was submitted by the noticee along with a compilation of case laws and notifications. The same is reproduced below -

i. The present submissions are being made without prejudice to the submission of the Noticee that no ADD or CVD is leviable in respect of the subject goods.

ii. It is submitted that in the present case, it is not in doubt that for the period from 30.08.2017 i.e., from the date on which Notification No. 42/2017-ADD was notified till the expiry of Notification No. 01/2016-CVD dated 19.01.2016, i.e., 19.01.2021, both Anti-Dumping Duty and Countervailing Duty were leviable in respect of import of castings for wind operated electricity generators. The same is also evident from a perusal of the following paragraph of the ADD notification:

"(ii) The Anti-Subsidy/countervailing Duty is already in place on Castings for wind operated electricity generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a subassembly, or as a part of an equipment/ component meant for wind-operated electricity generators vide Custom Notification No. 1/2016-Customs (CVD), dated the 19th January, 2016."

iii. In these circumstances, it is pertinent to note that the ADD notification specifically stipulates that in case of a levy of CVD or anti-subsidy duty in respect of the goods for which ADD is levied under the notification, ADD must be determined after taking into account the difference between the ADD proposed to be levied and the CVD levied. The relevant portion of the ADD Notification is extracted below for reference:

"Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules,

1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes definitive anti-dumping duty on the subject goods, the description of which is specified in column (3) of the Table below, falling under Chapter heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the country as specified in the corresponding entry in column (4), exported from the country as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India, ***an anti-dumping duty at the rate of an amount equivalent to the difference between the quantum of anti-dumping duty calculated as per column (8) and the quantum of anti-subsidy/countervailing duty payable, if any, of the said Table, namely*** *:- …"*

iv. In other words, if ADD and CVD are simultaneously leviable in respect of the same goods, then the amount of ADD levied must be redetermined as follows:

ADD Leviable in respect of goods where CVD/ Anti-Subsidy is	=	ADD prescribed in ADD Notification in Column (8)	− CVD Prescribed in CVD Notification in Column(8)

v. Therefore, it is submitted that in the present case, the effective rate of ADD leviable in respect of the subject goods for the period starting from 30.08.2017 till 19.01.2021 shall be 22.48%. Accordingly, the Noticee submits that the demand of Rs. 1,73,58,212/- in the Show-Cause Notice in respect of ADD must be dropped as the same has been calculated by assuming ADD to be leviable at 35.92% instead of 22.48%.

vi. It is submitted that the above submissions is only an argument which is taken without prejudice to the submissions of the Noticee that no CVD or ADD is leviable in respect of the import of subject goods and shall not be taken to construe acceptance of any liability whatsoever.

DISCUSSION AND FINDINGS

16. I have gone through the facts of the case, records and documents placed before me. Personal hearing was attended by Authorized Representatives of the Noticee on the scheduled date i.e. 26.03.2025 and written submissions dated 19.03.2025 and 26.03.2025 were made by the Noticee.

16.1 After carefully considering the facts of the case, written submissions made by the Noticee and record of Personal Hearing, the issues to be decided before me are:-

i. Whether the impugned goods are made up of combination of casting and non-casting parts.

ii. whether the assessment in respect of Bills of entry mentioned in Annexure-A should not be rejected;

iii. Whether Countervailing duty (CVD) at 13.44% under notification No.01/2016-Cus. (CVD) dated 19.01.2016 on the said goods namely parts of WOEG imported vide the Bills of Entry as detailed in the Annexure-A to this notice be applied;

iv. Whether Anti-Dumping Duty (ADD) at applicable rate under notification No.42/2017-Cus. (ADD) dated 30.08.2017 on the said goods namely parts of WOEG imported vide the Bills of Entry as detailed in the Annexure-A to this notice be applied;

v. Whether Assessable Value for the purpose of calculation of IGST be recalculated so as to add the amount of the duties of customs of CVD and the ADD as discussed hereinabove to recalculate the amount of IGST payable;

vi. Whether the differential Customs duties totally amounting to **Rs.8,90,31,358/-** (Rupees Eight Crores Ninety Lakhs Thirty One Thousand Three Hundred and Fifty Eight only) (CVD- 1,65,31,647**/- +** ADD – 6,82,60,122**/-+ IGST- 42,39,589/-**), as discussed hereinabove, not be demanded and recovered from them in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962;

vii. Whether the impugned goods with the total declared Assessable value of Rs. 19,00,33,758/- as detailed in Annexure-A to this notice, be held liable to confiscation under Section 111(m) of the Customs Act, 1962, for short levy of duty by reason of willful misstatement & suppression of facts;

viii. Whether the penalty be imposed upon them under the provision of Section 112(a) of the Customs Act, 1962 for rendering imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962;

ix. Whether the penalty be imposed upon them under the provision of Section 114A of the Customs Act, 1962 for the reasons of willful misstatement & suppression of facts as detailed above.

x. Whether the penalty be imposed upon them under Section 117 of the Customs Act, 1962.

17. Before examining these issues, it is important to go through the submissions of the noticee. Accordingly, I proceed to discuss the same below:

i. Noticee submits that the demand in the SCN in respect to subject goods i.e., parts used in Tower of WOEG is erroneous as they are non-casting components. Therefore, the demand made in the impugned SCN must be dropped.

ii. In this regard, it is pertinent to refer to the relevant portions of the CVD and the ADD Notification which describe the goods on which the levy has been proposed to be imposed. The relevant portions of the same are extracted below:

CVD Notification

"Whereas, in the matter of ***'Castings for wind-operated electricity generators whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators' (hereinafter referred to as the subject goods)*** *falling under tariff items 8483 40 00, 8503 00 10 or 8503 00 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), hereinafter referred to as the Customs Tariff Act, originating in or exported from, People's Republic of China (hereinafter referred to as the subject country), and imported into India, the designated authority in its final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, vide notification No. 17/6/2013-DGAD, dated the 27th November, 2015 has come to the conclusion that – …"*

ADD Notification

"Whereas in the matter of ***'Castings for Wind Operated Electricity Generators' (hereinafter referred to as the subject goods)*** *falling under tariff item 8483 40 00, 8503 00 10 or 8503 00 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from China PR (hereinafter referred to as the subject country), and imported into India, the designated authority in its final findings vide notification no. 14/28/2013-DGAD dated the 28th July, 2017, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 28th July, 2017, has come to the conclusion that –*

…

***Note** -*

(i) Castings for Wind Operated Electricity Generators for the purpose of the present notification implies "Castings for wind operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators".

iii. From a perusal of the two Notifications, it is evident that the terms of the Notification are clear in as much as these Notifications have proposed to levy CVD/ ADD on the ***castings for wind operated electricity generators.***

iv. In this regard, it is submitted that it is relevant to break down the above notes in both the Notifications to understand the implied intent and nature of the goods covered by the said Notifications. The wordings and terms used in the Note which is common to both the Notifications are as follows:

> *"Castings for wind operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators"*

v. The term 'Castings' used in the above sentence has to be read along with every phrase after the commas. The above note is to be broken down and read as follows:

1. Castings for windmill or wind turbine, whether or not machined
2. Castings for windmill or wind turbine in raw, finished or sub-assembled form
3. Castings as a part of a sub-assembly
4. Castings as a part of an equipment/component meant for WOEG

vi. From the above, it can be seen that every component of WOEG, be it, raw, finished or sub-assembly form, part of sub assembly, part of an equipment/component meant for WOEG are covered under the ADD/CVD Notifications provided they are made by way of castings.

vii. In this regard, it is submitted that the **interpretation of the Department** in the SCN that all parts of WOEG are castings by default is incorrect as it will lead to an illogical and absurd conclusion as that was clearly never the intent of the levy wherein all parts of WOEG will suffer the ADD/CVD. The Notifications clearly indicate that the scope for levy of ADD/CVD is only components of WOEG i.e., raw, finished or sub-assembly, part of sub assembly, part of an equipment/component meant for WOEG which are castings. This means there may also be parts which may be non-castings.

Interpretation which is illogical should be avoided.

viii. It is well settled principle of law that interpretation which is illogical should be avoided. Reliance in this regard is placed on the decision of the Hon'ble Supreme

Court in ***Mahadeo Prasad Bais (Dead)*** **v.** ***Income-Tax Officer 'A' Ward, Gorakhpur and another*** **- (1991) 4 SCC 560.** In the said case, it has been held that an interpretation which will result in an anomaly or absurdity should be avoided and where literal construction creates an anomaly, absurdity and discrimination, statute should be liberally construed even slightly straining the language so as to avoid the meaningless anomaly. Emphasis has been laid on the principle that if an interpretation leads to absurdity, it is the duty of the court to avoid the same.

ix. Reliance in this regard is further placed on ***State of Jharkhand and Others*** **v.** ***Tata Steel Ltd. and Ors.*** **- (2016) 11 SCC 147** wherein it has been observed as follows:

> *"25. In Oxford University Press v. Commissioner of Income Tax (2001) 3 SCC 359, Mohapatra, J. has opined that interpretation should serve the intent and purpose of the statutory provision. In that context, the learned Judge has referred to the authority in State of T.N. v. Kodaikanal Motor Union (P) Ltd. (1986) 3 SCC 91 wherein this Court after referring to K.P. Varghese v. ITO [(1981) 4 SCC 173 and Luke v. IRC (1964) 54 ITR 692 has observed :-*
>
> > *"The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye 'some' violence to language is permissible."*
>
> *26. Sabharwal, J. (as His Lordship then was) has observed thus :-*
>
> > *"... It is well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. It was held that construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. It was said that the literalness in the interpretation of Section 52(2) must be eschewed and the court should try to arrive at an interpretation which avoids the absurdity and the mischief and makes the provision rational, sensible, unless of course, the hands of the court are tied and it cannot find any escape from the tyranny of literal interpretation. It is said that it is now well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction. In such a case the court may read into the statutory provision a condition which, though not expressed, is implicit in*

construing the basic assumption underlying the statutory provision. ..."

x. Reliance in this regard is further placed on the following decisions:

- *Southern Motors v. State of Karnataka, 2017 (358) E. L.T. 3 (S.C.)*
- *Hansraj Gordhandas* v. *H.H. Dave, Assistant Collector of Central Excise & Customs, Surat and others* (1969) 2 SCR 252 = 1978 (2) E.L.T. (J350) (S.C.)

17.1 In view of above, I totally agree with the Notiocee that the intent of CVD Notification No. 01/2016(CVD) dated 19.01.2016 and ADD Notification No.- 42/2017-CUS(ADD) dated 30.08.2017 is to impose duty on the castings used in the Wind Operated Electricity Generator. I further agree on perusal of the two Notifications that it is evident that the terms of the Notification are clear in as much as these Notifications have proposed to levy CVD/ ADD on the ***castings for wind operated electricity generators.*** Further, Casting in terms of above said Notifications to be read as follows:

i) Castings for windmill or wind turbine, whether or not machined

ii) Castings for windmill or wind turbine in raw, finished or sub-assembled form

iii) Castings as a part of a sub-assembly

iv) Castings as a part of an equipment/component meant for WOEG

17.2 I find that there is no deviation in interpretation of said Notifications by the Noticee as well as by the department. Both are of the opinion that CVD/ADD be levied on the Casting parts of the Wind Operated Electricity Generators.

17.3 However, I find no strength in the claim of the noticee that interpretation of the Department in the SCN is that all parts of WOEG are castings by default. These claims of the noticee are factually incorrect as it is accepted fact by the department that Wind Mill is made up of various sub-assemblies and these sub-assemblies in turn are made up of combination of casting and non-casting parts. It is evident from the Para 8 of the SCN produced below:

"The basic function of a casting is in a wind turbine, to be used in a wind mill along with some other non-casting parts and components like tower, blades, etc. which leads to the generation of electricity. Further, a large number of castings are collectively used in a windmill. Some of these castings are assembled along with other products to prepare a sub- assembly. Eventually, a windmill comprises a number of these sub-assemblies. It is appropriate to consider castings that may be imported as a part of equipment/component within the scope of the product under consideration so long as the scope of the measures is limited to casting portions of these equipment's/components used for wind mills or wind turbines or wind-operated electricity generators."

17.4 I further find that the Noticee while denying the interpretation of the department relied upon various Judgements i.e

- *Mahadeo Prasad Bais (Dead)* v. *Income-Tax Officer 'A' Ward, Gorakhpur and another* - (1991) 4 SCC 560,
- *State of Jharkhand and Others* v. *Tata Steel Ltd. and Ors.* - (2016) 11 SCC 147,

- *Southern Motors v. State of Karnataka, 2017 (358) E. L.T. 3 (S.C.),*
- *Hansraj Gordhandas* v. *H.H. Dave, Assistant Collector of Central Excise & Customs, Surat and others* (1969) 2 SCR 252 = 1978 (2) E.L.T. (J350) (S.C.)

I find that these judgement are not applicable in the present case as these judgements talk about mis-interpretation by the department but in the instant case the interpretation of the Notifications by the department is correct.

17.5 Further, the Findings of the Designated Authority were notified vide Notification No. SI 99 dated 27/10/2015 of the Ministry of Commerce and Industry, Department of Commerce (Directorate General of Anti-Dumping and Allied Duties). The relevant provisions of the said final findings relevant for the purposes of this issue are as under.

*"**Scope of the products covered under the investigation:***

After considering the submissions made by the domestic industry as well as the objections raised by various other interested parties with regard to, the scope of the PUC, the Designated Authority, after detailed examination held as follows: —

*i. The product under consideration (PUC) in the present investigation, as defined in the initiation notification, is "**Castings for wind-operated electricity generators, whether or not machined, in raw, finished or sub- assembled form, or as a part of a sub-assembly, or as a part of an equipment/ component meant for wind-operated electricity generators".** The product under consideration has also been collectively referred to as castings for wind operated electricity generators (WOEG).*

vii Some of the sub-assemblies used in a windmill include Gear Box, Nacelle assembly and Hub pitch assembly. These sub-assemblies comprise of castings and other components. For example, Nacelle assembly consists of base frame, Gear Box consists of Planet Carrier, Housings, Torque arm and Hub assembly consist of Rotor hub/Hub and a pitch system. Therefore, it is open to a consumer to either buy a casting and other mating parts separately and assemble at its own place, or, instead buy the sub-assembled product as well.

*viii. The operations involved in preparing sub-assembly are almost a screw-driver technology and efforts involved are quite insignificant in proportion to overall operations carried out. Therefore, it is quite feasible for an eventual consumer to buy sub-assembled products instead of buying castings and other products separately. **The Authority, therefore, notes that if the scope of the PUC does not include the sub-assemblies, it shall defeat the very purpose of imposing any trade defense measure, if any. The Authority however appreciates that the scope of the PUC cannot be extended to entirety of subassemblies, merely because it contains castings within the scope of the measures. The Authority therefore holds that it is appropriate to consider sub-assemblies within the scope of the product under consideration so long as the scope of the CVD measures, if any, is limited to casting portions of the sub-assemblies.***

ix. For the reasons similar to inclusion of sub-assemblies, it is appropriate to consider castings that may be imported as a part of equipment/ component within the scope of the product under consideration so long as the scope of the measures is limited to casting portions of these

equipments/components used for wind mills or wind turbines or wind-operated electricity generators."

From above findings of designated authority, it is clear that the interpretation adopted by the department, that Wind Mill are made up of Sub-assemblies and these sub-assemblies are any combination of casting and non-casting parts, is correct and in line with the above findings. I find that Noticee has in fact mis-interpreted the basis of the allegations in the Show Cause.

18 *The Department has failed to discharge the burden of proof that the subject goods are castings.*

i. Noticee submits that In the instant case, it is pertinent to note that other than a bald allegation in the SCN that subject goods are casting parts because they are parts of WOEG and therefore, ADD/ CVD have to be levied, the Department has not produced any other evidence to prove that the subject goods are castings components. It is submitted that there is no detailed analysis of the parts covered under the SCN to show that they are made of castings. Further, it is submitted that the Department has not analyzed whether the subject goods are castings or not.

ii. The Noticee submits that the SCN has not provided any other evidence/ reports to suggest that the subject goods are made through the process of castings. Thus, in such circumstances, it is evident that the Department has failed to discharge the burden that the subject goods imported by the Noticee are indeed castings. Reliance is placed on the following decisions wherein it has been held that the burden of proof to levy tax is on the revenue:

- CCE v. Railway Equipment and Engg. Works, 2015 (325) E.L.T. 184 (Tri. - Del.);
- Union of India v. Garware Nylons Ltd., (1996) 10 SCC 413;
- CC v. Foto Centre Trading Co., 2008 (225) ELT 193 (Bom.);
- CCE v. Khalsa Charan Singh And Sons, 2010 (255) ELT 379 (P&H);
- H.P.L Chemicals vs. CCE 2006 (197) E.L.T. 324 (S.C.).

iii. In the light of above decisions, the Noticee humbly submits that the burden of proof is on the Department to prove that the Noticee has short paid the CVD/ ADD by mis-declaring the imported goods. However, it is submitted that the Department has failed to provide any legal basis as to why the subject goods must be considered as castings and be subject to the levies proposed in the SCN.

18.1 At the outset, I find that it is not the allegation in the SCN that the impugned goods are castings. Noticee has mis-interpreted the SCN and given vague submissions that deviate from the true nature of the SCN. Further, it is responsibility of the Noticee to make true/complete declaration while filing Bills of Entry, as the issue was raised by Audit Section wherein live goods are not available for verification of the true nature of the impugned goods from any expert agency.

18.2 Further, **the provisions pertaining to Self-Assessment under the Customs Act 1962** which were implemented w.e.f. 08.04.2011 under the Finance Act 2011, ushers in a trust based Customs-Trade partnership leading to greater facilitation of complaint trade.

Board's Circular no. 17/2011 dated 08.04.2011 specifies that the responsibility for assessment has been shifted to the importer/exporter; that Section 17 of the Customs Act 1962 provides for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be, in the electronic form (Section 46 or 50); that the importer or exporter at the time of self-assessment will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported/export goods while presenting Bill of Entry or Shipping Bill. However, it is viewed that non-compliant importers/exporters could face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade policy or any other provision under the Customs Act, 1962 or the Allied Acts.

18.3 From above, I find that it is the responsibility of the Noticee to give correct and complete declaration in terms of weight, value and other constituent materials. Further, if Noticee failed to do so at time of filing of Bills of Entry, there was need to submit the same as soon as the department enquired, but Noticee failed to do so even after enquiry from the department. It is evident from Para 8 of the Show Cause Notice as produced below:

> *"Further from the materials group tabulated in the reply, it is observed that all the import items do include casting parts which house various other parts and non-declaration of such parts by way of weight and value while being given an opportunity to do so shows disinclination on part of the Importer to provide critical information to the department.*
>
> *It appeared that Importer had intentionally furnished documents such as the Bills of Entry and its invoices, packing lists containing incorrect/in-sufficient material particular with respect to the value and weight of casting parts in the imported items.*
>
> *It is therefore a matter of fact that the items of import in question do have castings as a component and it is incumbent on the Importer to make a complete and correct declaration. Having failed to do so despite opportunities given to them, there is little option but to demand CVD and ADD on the entire value of the imported items to protect revenue interest. The Importer even if contesting the applicability of the CVD and ADD should have been more forthright and put forth the costing of the casting components which are part of the imported items which was not a difficult exercise."*

18.4 I find that on being enquired by the department regarding the bifurcation of impugned goods on basis of casting and non-casting parts along with weight and value, Noticee failed to do so despite opportunities given to them.

18.5 I find that the noticee has referred to a number of case laws in his reply to Show Cause Notice. I observe that decisions from Higher Courts cannot straight away be used as precedents for other cases, and must be decided based after comparison of facts. Further, cases with different facts and circumstances cannot be relied upon. This is because the facts and circumstances of each case are unique, and the principles of natural justice must be applied to the specific context of the case. A single additional or different fact can make a significant difference in the conclusions of two cases. Hence, I find that it is not proper to blindly rely on a decision when disposing of cases.

19 EXTENDED PERIOD OF LIMITATION UNDER SECTION 28(4) IS NOT INVOKABLE IN THE PRESENT CASE

i. The Noticee submits that the period involved in the SCN is 26.04.2019 to 15.08.2022. The bifurcation of demand between normal and extended period of limitation is provided below:

Particulars	Normal Period (16.04.2022-15.04.2024)	Extended Period (26.04.2019-15.04.2022)
Duty demand proposed under the impugned SCN	Rs. 1,90,58,065/-	Rs. 6,99,73,291/-

ii. It can be noticed that the Bills involved in present case predominantly pertain to period prior to 16.04.2022 and therefore, the demand to the tune of Rs. 6,99,73,291/- falls under the extended period of limitation.

iii. The Noticee submits that the extended period of limitation under section 28(4) of the Customs Act is not invokable in the present case as none of their ingredients therein are satisfied.

> *"(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, —*
>
> *(a) collusion; or*
>
> *(b) any wilful mis-statement; or*
>
> *(c) suppression of facts,*
>
> *by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."*

iv. It is the allegation in para 12.9 of the SCN that the extended period of limitation is invokable in the present case since the Noticee despite being aware that the subject goods imported are "casting parts" has willfully suppressed the same to avoid payment of CVD/ ADD in respect of the imports. No other reason has been provided in the SCN as to how the extended period of limitation is invokable.

v. At the outset, the Noticee submits that the extended period of limitation is invokable only in cases where the Department has proven the existence of either collusion, suppression or misstatement of facts. In the present case, the demand, inasmuch as it pertains to the period beyond the normal period of limitation, is unsustainable as the existence of neither of these conditions has been proven by the Department. Therefore, the demand of CVD/ ADD to the tune of Rs. 8,90,31,358/- in respect of the period in dispute is unsustainable as this is beyond the period of two years contemplated under Section 28. Therefore, it is submitted that this demand cannot be sustained.

19.1 In view of above, I find that Importer has failed to appreciate the fact that the appropriate description of goods was not declared. Importer has not declared the combination of parts as casting and non-casting parts, hence, the same lead to the incomplete declaration and evasion of duty. Therefore, it amounts to willful mis-statement on the part of importer leading to evasion of duty. There was no complex interpretation involved in determination of the casting and non-casting parts by the Noticee as the Noticee is dealing in the impugned goods from long time. On enquired by the department, Noticee has not submitted any acceptable clarification. Hence, the intent of Noticee to evade duty deliberately is apparently clear.

19.2 Further, the facts in case of HOTLINE CPT LTD. Versus COMMISSIONER OF C. EX., INDORE 2016 (333) E.L..T 356 (Tn. - Del.) is similar to the present case and the ratio of judgement, is squarely applicable in this case. The main para of judgement is reproduced below:

> *"The appellant has contended that it had informed Revenue wayback in 2001 vide letter dated 23-5-2001 about such repairs. We have perused that letter dated 235-2001. In that letter it is not even indicated that it will be using goods imported at concessional rate of duty under Notification No. 25/99-Cus. for repair work. Indeed there is no evidence to show that the appellant ever informed Revenue about using goods imported at concessional rate of duty for such repair work. The appellant was a well-established manufacturer of CPTs and was fully aware that the concessional rate of duty was applicable to only such goods as were used for manufacture of excisable goods. It was also aware that its repair activity did not amount to. manufacture as it was so held by CESTAT in its own case wayback in 2004. In spite of that it used such parts for repairs which clearly shows its intention to evade customs duty by indulging in suppression.* ***Indeed, as has been brought out in the impugned order, when Revenue sought the information regarding use of such goods it indulged in prevarication instead of providing specific answer****. Thus wilful suppression of facts on the part of the appellant is clearly evident. The judgments in the case of Chemphar Drugs & Liniments (supra) and Pad mini Products (supra) essentially state that mere inaction or failure on the part of the appellant is not sufficient to invoke the extended period and there has to be conscious or deliberate withholding of information or some positive act on the part of the appellant to demonstrate suppression has to be brought out to invoke the extended period. In the present case it is evident that the appellant was fully aware that the repair of CPTs did not amount to manufacture, it was also aware that the goods imported at .concessional rate of duty were to be used only for manufacture of excisable goods and still it used those goods for repair. Not only that when information was sought, it indulged in prevarication. Thus the said judgments do not come to the rescue of the appellant. As regards the judgment of CESTAT in the case of Tudor (I) Ltd. (supra) referred to by the appellant to advance the proposition that repair/remaking amounts to manufacture, suffice to say that in that case CESTAT held that the processes undertaken clearly supported the conclusion that they. amounted to manufacture while in its own case, CESTAT had given a finding that repair of CPTs did not amount to manufacture."*

Accordingly, it is concluded that due to the deliberate action of wilful misstatement and suppression of facts, section 28(4) of the Customs Act, 1962 is rightly applicable.

20 Extended period of limitation cannot be alleged when the declaration of the imported goods is correct:

i. Noticee submits that the description for example "WIND TOWER FLANGE (SIZE 5300X 4600 X 150) (15 PCS) (PART OFWIND TURBINE GENRATOR}PO 4508048454 WIND TOWER FLANGE (SIZE 5300X 4600 X 150) (15)" specified in the Bill of Entry is correct. It is the Department's case that the parts are "casting parts" as prescribed in the CVD/ ADD Notifications. In this regard, the Noticee submits that as stated in Ground A above, the imported goods are non-casting and not covered under the purview of the ADD and CVD Notification. Given the same, the Noticee's actions are *bona fide,* and no *mala fide* intention can be attributed.

ii. Further, it is not the case of the Department that the goods imported by the Noticee are different from what has been declared. Thus, there is no "misdeclaration" in the present case and the description of goods is proper. Reliance in this regard is placed on the Tribunal's decision in ***Sirthai Superware India Ltd. v. CC, 2020 (371) E.L.T. 324 (Tri. - Mumbai),*** wherein it has been clearly held that even under the self-assessment regime, when the description given in the Bill of Entry is correct, mis-declaration etc. cannot be alleged.

iii. A similar view has been taken in ***Vesuvias India Ltd. v. CC, 2019 (370) E.L.T. 1134***. Relevant portion of the decision is extracted below:

> *"5. …. The only point of allegation that can sustain in the present case is that the assessee has wrongly classified the imported goods in their bills of entry. The importer assessee is not an expert in classification of products and it is always possible that they claimed wrong classification. It is open for the department to direct the importer to correct classification or issue a show cause notice proposing revision of classification. Merely claiming the wrong classification by itself does not amount to misdeclaration of the goods and there is nothing on record to show that the description of the goods in the Bill of Entry and other documents as well as in the test report do not match. The department's case has to fail on this ground alone for the extended period of limitation and correspondingly the penalties also need to be set aside.*

20.1 In this regard, I find that the declaration is incomplete in terms of determination of applicability of CVD & ADD. Noticee has declared the impugned goods but not give bifurcation as to what part of impugned goods is made up of casting and what part is made up of non-casting. In absence of such declaration, Impugned goods come under scrutiny, and on being enquired about the same during post clearance audit, Noticee refrained from submitting this important information to the department. Therefore, having failed to do so despite opportunities given to them, there is little option but to demand CVD and ADD on the entire value of the imported items to protect revenue interest. The Importer even if contesting the applicability of the CVD and ADD should have been more forthright and put forth the costing of the casting components which are part of the imported items which was not a difficult exercise." As evident from the above mentioned CVD & ADD Notifications, Casting even as part of equipment or component that is meant for Wind Operated Electricity Generator is liable for CVD & ADD. Noticee refrained from providing this crucial information and further strengthen the belief of wilful mis-statement and suppression of facts.

20.2 Further, the noticee relied upon the judgement of ***Sirthai Superware India Ltd. v. CC, 2020 (371) E.L.T. 324 (Tri. - Mumbai)*** *that is not applicable in present case as in said*

case declaration was correct but in present case declaration is incorrect in terms of incomplete information.

20.3 Further, the noticee relied upon the judgement of ***Vesuvias India Ltd. v. CC, 2019 (370) E.L.T. 1134***. but this judgement is also not applicable in present case as the facts of the said judgement are different and talked about classification of goods but in instant case there is no issue of classification.

21. IN THE ABSENCE OF SUBSTANTIVE PROVISIONS IN CUSTOMS TARIFF ACT, INTEREST AND PENALTY TO THE EXTENT OF DIFFERENTIAL IGST CANNOT BE IMPOSED**.**

i. The Noticee submits that the impugned SCN has, *inter alia,* proposed an amount of Rs. 83,83,171/- as differential IGST. In this regard, the impugned SCN has proposed interest and penalty in respect of the non-payment of differential IGST of Rs. 42,39,588/- as well.

ii. The Noticee submits that in the present case, the interest and penalty is also in relation to demand of differential IGST leviable under Section 3(7) of the Customs Tariff Act, 1975 ('**CTA**'). However, it is to be noted that the CTA has limited machinery provisions and therefore it borrows various provisions from the Customs Act for implementation of its provisions. Section 3(12) of the CTA is the borrowing provision regarding IGST and other additional duties.

> *"(12) The provisions of the Customs Act, 1962 (52 of 1962), and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties, shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act."*

iii. The Noticee submits that, on a reading of the above provision, it is clear that Section 3 of CTA which levies duties other than basic customs duty, borrows the substantive provisions of Customs Act for implementation the collection of the levy. However, substantive provisions relating to interest, penalty, confiscation, fine from the Customs Act are not explicitly borrowed from Customs Act vide the borrowing provision in respect of IGST.

iv. The Noticee submits that the question that arises here is whether interest and penalty can be imposed on an assessee in the absence of substantive provision under a statute creating or imposing such liability, which is differential IGST in the present case.

v. In this regard, the Bombay High Court in ***Mahindra & Mahindra Ltd. v. Union of India [2022 (10) TMI 212 - BOMBAY HIGH COURT]*** has considered a similar issue of levy of interest and penalty in relation to amounts payable as duty other than basic customs duty. This case pertains to imposition of interest and penalty under Customs Act 1962 on the portion of demand pertaining to surcharge or additional duty of customs or special additional duty of customs levied under Section 3 of CTA by resorting to Section 3(6) of CTA which is the borrowing provision. It is to be noted that Section 3(6) of CTA in the said case, as it stood then, is *pari materia* to Section 3(12) of CTA.

vi. The Court has laid down the said position after considering the provisions of section 3(6) which are identical to the present section 3(12) of the Customs Tariff Act. This decision of the Hon'ble Bombay High Court has been affirmed by the Apex Court in ***Union of India Vs Mahindra And Mahindra Ltd, 2023-VIL-72-SC-CU.*** Further, the

Review Petition filed by the Department has also been dismissed vide order dated 09.01.2024 in Review Petition (Civil) Diary No. 41195/2023.

vii. Therefore, in view of the above decisions, the Noticee submits that interest and penalty cannot be imposed in relation to the differential IGST chargeable under Section 3(7) of the CTA as there is no substantive provision under CTA charging/levying/imposing such liability.

21.1 In view of above, I relied upon the judgement of the CESTAT Bench at Kolkata in the matter of ***Texmaco Rail Engineering Limited* v. *CC* [2024 (1) TMI 902]**. The Tribunal held that interest was leviable on the differential IGST on the following grounds:

> *"The usage of the words 'shall' and 'in addition to such duty' under Section 28AA(1) emphatically indicates the applicability of interest to a scenario where duty becomes payable. Thus, what has been borrowed for the realisation of interest payable and applicability as an automatic route are the structural elements of Section 28 of the Customs Act.*
>
> *The legislature has consciously incorporated interest provision which is rendered applicable to the CTA.*
>
> *Section 28AA of the Customs Act starts with a non-obstante clause, thereby giving importance to the said provision to hold them as a determinant and a predominant provision in the law."*

Therefore, I find that the Interest and penalty are rightly imposed on differential IGST in the Show Cause Notice.

21.2 I observe that in terms of Section 28AA (1) of the Customs Act, 1962 the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section. Therefore, interest at the appropriate rate also recoverable from Noticee.

22. GOODS NOT LIABLE FOR CONFISCATION UNDER SECTION 111 OF THE CUSTOMS ACT

i. The imported goods are proposed to be held liable for confiscation under Section 111(m) of the Customs Act *vide* para 12.8 of the SCN on the ground that the Noticee has willfully suppressed that the imported goods are casting parts in order to avoid payment of CVD/ ADD in respect of the imports.

ii. However, it is pertinent to note that the SCN has not given as to how the Noticee has indulged in wilful misstatement of suppression of facts. As stated in ground C above, the Noticee had properly described the goods in the Bills of Entry and had also appropriately classified the goods. Thus, in these circumstances, the subject goods cannot be held to be liable to confiscation under Section 111(m) of the Customs Act, 1962.

iii. At the outset, the Noticee submits that mere short payment of duty will not render the goods liable for confiscation.

Confiscation under section 111(m) of the Act not sustainable:

iv. The Noticee submits that the imported goods are not liable to confiscation under section 111(m) of the Act.

"Section 111. Confiscation of improperly imported goods etc. - The following goods brought from a place outside India shall be liable to confiscation:

(m) any goods which do not correspond ……;"

v. The Hon'ble Supreme Court in ***Northern Plastic Ltd. v. CC, 1998 (101) E.L.T. 549 (S.C.),*** has held that merely claiming the benefit of exemption or a particular classification under the bill of entry does not amount to mis-declaration of any particular under section 111(m) of the Act.

vi. Relying on the decision of the Apex court in Northern Plastic *(supra)*, the Bombay High Court in ***CC v. Gaurav Enterprises, 2006 (193) E.L.T. 532 (Bom.),*** has held that claiming the benefit of exemption in the Bills of entry filed under the Act does not amount to suppression / mis-declaration on part of the assessee.

vii. In fact, it has been held in ***Lewek Altair Shipping Private Limited v. CC, 2019 (366) E.L.T. 318 (Tri. - Hyd.),*** that claiming an incorrect classification, or the benefit of an ineligible exemption notification does not amount to making a false or incorrect statement because it is not an incorrect description of the goods or their value but only a claim made by the assessee. In the present case, the subject goods are eligible for exemption. Therefore, the goods cannot be held liable for confiscation.

viii. The Tribunal's decision in Lewek Altair Shipping (Supra) has been affirmed by the Hon'ble Supreme Court in ***Commissioner v. Lewek Altair Shipping Pvt. Ltd., 2019 (367) E.L.T. A328 (S.C.)***.

ix. In ***Sutures India Pvt. Ltd. vs. CC, 2009 (245) ELT 596 (Tri.-Bang.)***, the Hon'ble Tribunal has held as follows:

"10.5 It can be seen from the above reproduced ratio, that the law is clearly settled as to the claiming of classification of the goods and claiming exemption under particular notification is a matter of belief and would not amount to mis-declaration. We find that the ratio of the law as laid down by the Hon'ble Supreme Court squarely covers the issue in favour of the appellant, as they cannot be alleged to have mis-declared the item as ophthalmic equipment."

x. The Noticee also relies on ***Kirti Sales Corpn. vs. CC, 2008 (232) ELT 151 (Tri.-Del.)***, wherein the Hon'ble Tribunal has held that to attract the provisions of Section 111(m), the *mis-declaration should be intentional*. The Hon'ble Tribunal in this case held as under:

"6. We are inclined to accept the case of the Revenue that the goods imported were texturized fabric. However, whether the declaration in the Bill of Entry amounts to 'misdeclaration' so as to attract the provisions of Section 111(m) of the Customs Act in a given case depend upon the facts of the case. To constitute 'misdeclaration', the declaration must be intentional. Misdeclaration cannot be understood as same as wrong declaration, of course, made bona fide, the possibility of which cannot be ruled out altogether. The question, therefore, is whether the appellant had intentionally and deliberately mis-declared the goods as non-texturized fabric rather than texturized fabric. On this point, we are inclined to accept the case of the Appellants that the declaration had been made on the basis of documents supplied by the foreign supplier and there was no intentional or deliberate wrong declaration or misdeclaration on its part so as to attract the mischief of Section 111(m) of the Customs Act. The facts of the case in the instant case……"

(Emphasis supplied)

xi. Similarly, in ***JK* Industries *vs. CC, 1996 (88) ELT 41***, the Tribunal has held that the claim for exemption is not a declaration for the purposes of Section 111(m) of the Customs Act, 1962 and hence the tribunal invalidated confiscation of goods and imposition of penalty. Reliance is also placed on the following decisions:

- *Hindustan Lever Ltd. vs. CC [1996 (83) ELT 520]*
- *Metro Tyres Ltd. vs. CCE [1994 (74) ELT 964]*

xii. In view of the decision of Apex court in Northern plastic *(supra)* and other decisions referred to above, it is submitted that a mere claim to classification or exemption in the Bill of does not amount to mis-declaration of any particular as contemplated by section 111(m) of the Act. Moreover, in the present case, the subject goods have been correctly classified. Therefore, there is no misdeclaration to attract mischief of Section 111(m).

xiii. In view of the above submissions, it is submitted that a mere claim to an exemption and classification does not amount to mis-declaration so long as the description given in the Bill of Entry is correct. In the instant case the Noticee had given the description of the imported goods correctly. No attempt has been made by the Noticee to mis-declare the goods. Hence, the imported goods cannot be held liable for confiscation under Section 111(m) of the Act.

xiv. The Noticee places reliance on the case of ***Porcelain Crafts and Components Exim Ltd. vs. CC [2001 (138) ELT 471 (Tri. – Kolkata)]***, wherein it was observed that confiscation of the goods can be ordered only when there is positive evidence to prove *mala fides* on the part of the importer. In the present case, the SCN fails to disclose or rely on any positive evidence to prove *mala fides* on the part of the Noticee.

xv. Therefore, it is submitted that the proposal for confiscation of the subject goods under Section 111(m) of the Customs Act is legally not sustainable and is hence, liable to be dropped.

22.1 In this regard, I find that all the import items do include casting parts which house various other parts and non-declaration of such parts by way of weight and value while being given an opportunity to do so shows disinclination on part of the Importer to provide critical information to the department. Further, a large number of castings are collectively used in a windmill. Some of these castings are assembled along with other products to prepare a sub- assembly. Eventually, a windmill comprises a number of these sub-assemblies. It is appropriate to consider castings that may be imported as a part of equipment/component within the scope of the product under consideration so long as the scope of the measures is limited to casting portions of these equipment's/components used for wind mills or wind turbines or wind-operated electricity generators. It appeared that Importer had intentionally furnished documents such as the Bills of Entry and its invoices, packing lists containing incorrect/in-sufficient material particular with respect to the value and weight of casting parts in the imported items. The items imported undeniably consisted of casting parts and such casting parts were manufactured by simple machining and polishing process and the component weight of these casting parts were significant and it is incumbent on the Importer to make a complete and correct declaration. Having failed to do so despite opportunities given to them, Noticee shows inclination towards non-submission of proper information to the department even when enquiry being made by the department. This act of Noticee of non submission of crucial information for quantification of applicable CVD & ADD amounts to ill intention of Noticee to avoid payment of government dues.

22.2 Section 17 of the Customs Act, 1962, gives an option to the importer, importing any goods for importation under section 46 ibid, to self-assess the duty, if any, leviable on such goods. In the self-assessment era, the importers have to act more responsibility manner and they are also required to build trust by filing the correct details & description of items along with correct classification of the goods. However, the importer, while filing the above mentioned bills of entry have willfully/intentionally not paid the CVD/ADD on their casting goods of Wind Operated Electricity Generators (WOEG), and also resultantly short-paid IGST, thereby causing the short payment of Customs Duty. This act of Noticee, of not declaring complete information intentionally at time of filing of BE and not furnishing the same on enquiry from department, held the goods valued at Rs. 17,59,54,044/- liable for confiscation under Section 111(m) of the Customs Act, 1962. The contention of the noticee that the goods are not liable to confiscation are not tenable

22.3 The Noticee relied upon following judgements:-

- *Northern Plastic Ltd. v. CC, 1998 (101) E.L.T. 549 (S.C.),*
- *CC v. Gaurav Enterprises, 2006 (193) E.L.T. 532 (Bom.),*
- *Lewek Altair Shipping Private Limited v. CC, 2019 (366) E.L.T. 318 (Tri. - Hyd.),*
- *Commissioner v. Lewek Altair Shipping Pvt. Ltd., 2019 (367) E.L.T. A328 (S.C.).*
- *JK* Industries *vs. CC, 1996 (88) ELT 41*

It is pertinent to note that the fact of above case are different from the instant case as in above cases, Importer claimed ineligible notification benefit but in instant case noticee has not claimed any ineligible notification and the duty is to be levied by way of Notification.

22.4 In support of my view, I relied upon the judgement of **EVERSHINE CUSTOMS (C & F) PVT LTD., New Delhi Vs. COMMISSIONER OF CUSTOMS, New Delhi, CESTAT** Principal Bench observed as under -

> *"19. The responsibility therefore, rests entirely on the importer and without such a provision, the Customs law cannot function. Sub-section (1) of section 46 requires the importer to make an entry of the goods imported. Sub-section (4) requires him to make a declaration confirming the truth of the contents of the Bill of Entry."* By taking the goods outside the ambit of Notification no. 02/2019-customs, the noticee have tried to evade payment of applicable CVD on the said goods. Hence, I find that the impugned goods are liable for confiscation under Section 111(m) of the Act, ibid.

From above observations of principal bench, it is clear that the responsibility rests entirely on the importer to make a declaration confirming the truth of the contents of the Bill of Entry. In the instant case, noticee failed to declare the correctness of goods and also failed to do so when the same was enquired by the department. This behaviour of noticee of suppressing the facts make the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

22.5 From above, once the goods liable for confiscation, the same therefore become liable for imposition of redemption fine for the goods already been cleared for Home Consumption.

22.6 In this respect, I place reliance on the judgement of **Hon'ble Madras High Court in the case of M/s Venus Enterprises reported at 2006 (199) ELT 205(Mad.)**. The appeal against this decision has also been dismissed by Hon'ble Supreme Court. in the case of M/s Dadha Pharma P. Lid. V/s Secretary to the Govt. of India [Writ Petition Nos. 1856 to 1859 of 1975, decided on 44.10.1977, 2000(126). E.L.7.535], the Hon'ble High Court of Madras held that action can be taken under Section 112 of the Customs Act, 1962 even if goods are not available for confiscation. It further held that Section 110 as well as Section 111 ibid

speaks of liability to confiscation and not actual confiscation. The relevant para '14' reads as follows:

> "A careful reading of the sections would clearly show that it is the liability to confiscation that is spoken to and not the actual confiscation. Therefore, it would mean that the power to adjudicate upon for the imposition of penalty for improper importation, springs from the liability to confiscate, and not actual confiscation. This is because not only Section 110 occurs under a different chapter, but the purpose of that section relates only to seizure about which I have already noted. There again the words are 'any goods are liable to confiscation under this Act.' Merely because the department by reason of its inaction is not in a position to seize the goods, does rot and cannot disable it adjudicating upon the liability for action under Section 111 read with Section 112 of the Act. In other words, the language of both the sections above referred to does not warrant the actual confiscation, but merely speaks of the liability of the goods being confiscated. This is the plain and most unambiguous meaning of the phraseology 'liable to confiscation' spoken to in these two sections."

22.7 I also place reliance on the order of Hon'ble Madras High Court in the case of Visteon Automotive Systems India Limited Vs CESTAT, Chennai, wherein it has been held that the availability of goods is not necessary for imposing redemption fine. Vide the said order it was inter alia held that

> "…. opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act ….", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

In view of the above, I find that the impugned goods are confiscable and redemption fine is liable to be imposed on the noticee under Section 125 of the Customs Act, 1962.

23. NO PENALTY CAN BE IMPOSED ON THE NOTICEE UNDER SECTION 114A AND 117 OF THE CUSTOMS ACT

i. In the SCN, penalty under the section is proposed to be imposed on the sole ground that the Noticee has willfully suppressed that the imported goods are casting parts in order to avoid payment of CVD/ ADD in respect of the imports. The Noticee submits that they have correctly classified the goods. Therefore, there is no case for imposition of penalty under section 114A on the Noticee.

ii. Section 114A of the Customs Act, 1962 reads as under:

> ***"SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases.*** *- Where the duty ……"*

iii. From a reading of the above provisions, it is evident that levy of penalty under Section 114A is linked to confirmation of demand under Section 28 of the Customs Act, 1962 and the same ingredients as are applicable for invoking extended period under the proviso to Section 28(1) of the Customs Act, 1962, are applicable for levy of penalty under this Section as well. As already submitted, there has been no

collusion or any willful misstatement or suppression of facts on the part of the Noticee and therefore the proposal for levy of penalty under Section 114A is not sustainable in law.

iv. Without prejudice to the submissions in the foregoing paragraphs, it is submitted that the liability to penalty under Section 114A of the Customs Act, 1962 can arise only when the duty has not been levied or short-levied etc. by reason of collusion or any willful misstatement or suppression of facts. As already submitted, there is no suppression of facts or willful misstatement in the instant case.

v. Without prejudice to the above, it is submitted that the conduct of the Noticee was totally *bona fide*. The Noticee neither had any intention to evade payment of duty, nor had any knowledge of the liability of the goods to confiscation. In the absence of any malafide on part of the Noticee, no penalty is imposable.

vi. In ***Hindustan Steel Ltd. v. State of* Orissa *[1978 (2) ELT (J159) (SC)],*** Hon'ble Supreme Court has held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the *bona fide* belief. Relevant portions of the judgment are extracted below:

vii. "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

viii. Following the above judgment, in the case of ***Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax [1980 (6) ELT 295 (SC)],*** Hon'ble Supreme Court has held that penalty cannot be imposed when an assessee raises a contention of *bona fide*. It is submitted that the conduct of the Noticee in the present case was totally *bona fide* and therefore no penalty is imposable.

ix. The Noticee submits that the element of *mens rea* is absent from the case in point. The Noticee declared the description of imported goods in the bills of entry on the *bona fide* belief that the imported goods are non-casting components. Therefore, penalty under section 114A of the Customs Act, 1962 cannot be imposed on the Noticee.

x. In view of the above settled position of law and considering the fact that there is complete absence of *mens rea* in the present case, it is prayed that the proposal to impose penalty on the Noticee be dropped.

Penalty under Section 117 is not imposable

xi. The SCN has proposed to impose a penalty under Section 117 of the Customs Act. The said section is extracted below:

"SECTION 117. Penalties for contravention, etc., not expressly mentioned. -

Any person ..... four lakh rupees."

xii. On a perusal of the above, it is clear that penalty under Section 117 is residuary in nature and is imposable only where there is no express penalty provided elsewhere.

xiii. In the present case, as the Noticee has not contravened any provision of the Customs Act, the said section cannot be invoked. Therefore, it is submitted that the proposal to impose penalty is unsustainable and merits to be dropped.

23.1 From the above, I find that Importer has failed to appreciate the fact that the appropriate description of goods was not declared. Importer has not declared the combination of parts as casting and non-casting parts, hence, the same lead to the incomplete declaration and evasion of duty. Therefore, it amounts to willful mis-statement on the. part of importer leading to evasion of duty. There was no complex interpretation involved in determination of the casting and non-casting parts by the Noticee as the Noticee is dealing in the impugned goods from a long time. On enquired by the department, Noticee did not submit any acceptable clarification. Hence, the intent of Noticee to evade duty deliberately is apparently clear.

23.2 I find that the element of suppression of material facts and wilful mis-statement has been discussed in various para's above. It is apparently clear that Noticee's intent was to evade duty by suppression of material facts by way of incomplete declaration and keep the suppression even when enquiry was sent by the department. Hence, on the basis of the facts of the cases, I find that the penalty under section 114A of customs act, 1962 is applicable as the element of suppression of material facts and wilful mis-statement in this case has been found beyond doubt.

24. Now, I come to examine the penalty imposable on the Noticee under Section 112(a) and 114A of the Customs Act, 1962. I find that Section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28, is also liable to pay penalty under Section 114A. These acts and omissions of the Importer rendered them liable for penal action under Section 114A of the Customs Act, 1962.

I find that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable.

I find that there is a mandatory provision of penalty under Section 114A of the Customs Act, 1962 where duty is determined under section 28 of the Customs act, 1962. Therefore, I find that when penalty under Section 114A is imposed then penalty under Section 112(a) of Customs Act, 1962 cannot be imposed.

25. As regards imposition of penalty under Section 117 of the Customs Act, 1962, I find that Section 117 proposes penalty where no express penalty elsewhere provided for such contravention or failure, As already penalty has been imposed under Section 114A of the Customs Act, 1962, and nothing has been brought forth in the Show Cause Notices, which can justify additional penalty under Section 117 of the Act, ibid, therefore, I do not find any reason to impose penalty on the noticee under Section 117 of the Customs Act, 1962.

26. It is further submitted by noticee that in the present case, it is not in doubt that for the period from 30.08.2017 i.e., from the date on which Notification No. 42/2017-ADD was notified till the expiry of Notification No. 01/2016-CVD dated 19.01.2016, i.e., 19.01.2021, both Anti-Dumping Duty and Countervailing Duty were leviable in respect of import of castings for wind operated electricity generators. The same is also evident from a perusal of the following paragraph of the ADD notification:

> *"(ii) The Anti-Subsidy/countervailing Duty is already in place on Castings for wind operated electricity generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a subassembly, or as a*

part of an equipment/ component meant for wind-operated electricity generators vide Custom Notification No. 1/2016-Customs (CVD), dated the 19th January, 2016."

vii. In these circumstances, it is pertinent to note that the ADD notification specifically stipulates that in case of a levy of CVD or anti-subsidy duty in respect of the goods for which ADD is levied under the notification, ADD must be determined after taking into account the difference between the ADD proposed to be levied and the CVD levied. The relevant portion of the ADD Notification is extracted below for reference:

"Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes definitive anti-dumping duty on the subject goods, the description of which is specified in column (3) of the Table below, falling under Chapter heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the country as specified in the corresponding entry in column (4), exported from the country as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India, ***an anti-dumping duty at the rate of an amount equivalent to the difference between the quantum of anti-dumping duty calculated as per column (8) and the quantum of anti-subsidy/countervailing duty payable, if any, of the said Table, namely*** *:- …"*

viii. In other words, if ADD and CVD are simultaneously leviable in respect of the same goods, then the amount of ADD levied must be redetermined as follows:

ADD Leviable in respect of goods where CVD/ Anti-Subsidy is	=	ADD prescribed in ADD Notification in Column (8)	−	CVD Prescribed in CVD Notification in Column(8)

ix. Therefore, it is submitted that in the present case, the effective rate of ADD leviable in respect of the subject goods for the period starting from 30.08.2017 till 19.01.2021 shall be 22.48%. Accordingly, the Noticee submits that the demand of Rs. 1,73,58,212/- in the Show-Cause Notice in respect of ADD must be dropped as the same has been calculated by assuming ADD to be leviable at 35.92% instead of 22.48%.

26.1 I have gone through the submissions of the noticee and the Notification No. 42/2017-CUS(ADD) dated 30.08.2017. I find that the rate at which ADD to be applied during the period when CVD is leviable is clearly mentioned in the ADD Notification itself and the same is produced below:

"an anti-dumping duty at the rate of an amount equivalent to the difference between the quantum of anti-dumping duty calculated as per column (8) and the quantum of anti-subsidy/countervailing duty payable, if any, of the said Table, namely:- "

From above, it is clear that ADD on impugned goods come into force on 30.08.2017 and CVD was in force on this day and continued till 18.01.2021 (expiry of five years from the date of publication of CVD notification). Therefore, as per ADD notification, effective ADD rate need to be calculated taking into account the CVD duty. I find that the effective rate formula for ADD submitted by the noticee is correct. I find that the submission made by the

noticee regarding the applicability of effective ADD is correct and the same is to be taken into account while calculating the ADD on impugned goods.

I find that the effective rate of ADD is 24.48% (ADD@35.92% - CVD@13.44%) till 18.01.2021 (CVD notification is leviable till 18.01.2021 and becomes inactive after this day) and effective rate of ADD is 35.92% from 19.01.2021 onwards. Accordingly, the duty liability has been recalculated and is attached as **Annexure-A** and the gist is produced below:-

Total Landed value = Rs. 19,00,33,758/-

(Amount in Rs.)

	As proposed in SCN	Recalculated	Duty reduced
ADD	6,82,60,122 (@35.92%)	5,17,28,476 (@22.48% till 18.01.2021)) (35.92% from 19.01.2021 onwards)	1,65,31,646
CVD	1,65,31,647	1,65,31,647	0
Differential IGST	42,39,589	34,13,007	8,26,582
Total Duty Payble	8,90,31,358	**7,16,73,129**	**1,73,58,228**

From the above, it is seen that the total duty demand alleged in Show Cause Notice is Rs. 8,90,31,358/- but on recalculating the same, it is concluded that the total duty amount reduced by Rs. 1,73,58,228/- and the new total duty liability comes out to Rs.7,16,73,129/-.

27. In view of above discussions and findings supra, I pass the following order.

Order

27.1. I reject the assessment in respect of Bills of entry mentioned in Annexure-A.

27.2. I hold that Countervailing duty (CVD) at 13.44% under notification No.01/2016-Cus. (CVD) dated 19.01.2016 on the said goods namely parts of WOEG imported vide the Bills of Entry as detailed in the Annexure-A is applicable;

27.3. I hold that Anti-Dumping Duty (ADD) at 22.48% till 18.01.2021 and at 35.92% from 19.01.2021 onwards under notification No.42/2017-Cus. (ADD) dated 30.08.2017 on the said goods namely parts of WOEG imported vide the Bills of Entry as detailed in the Annexure-A is applicable;

27.4. I hold that Assessable Value for the purpose of calculation of IGST is to be recalculated so as to add the amount of the duties of customs of CVD and the ADD as discussed hereinabove to recalculate the amount of IGST payable;

27.5. I confirm demand of differential Customs duties totally amounting to **Rs.7,16,73,129/-** (Rupees Seven Crores Sixteen Lakhs Seventy Three Thousand One Hundred and Twenty Nine only) (CVD- 1,65,31,647**/- +** ADD– 5,17,28,476**/-**+ IGST- 34,13,007/-), as discussed hereinabove and the same is to be recovered from M/s Vestas Wind Technology India Pvt. Ltd. under Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962;

27.6. I order for the confiscation of the impugned goods with the total declared Assessable value of Rs. 17,59,54,044/- as detailed in Annexure-A under Section

111(m) of the Customs Act, 1962, for short levy of duty by reason of willful misstatement & suppression of facts. However, since the subject goods have already been cleared for Home Consumption. I impose a redemption fine of Rs. 1,00,00,000 (Rupees One Crore Only) on the noticee in terms of Section 125 of the Customs Act, 1962.;

27.7. I impose penalty of Rs. 7,16,73,129/- (Rupees Seven Crores Sixteen Lakhs Seventy Three Thousand One Hundred and Twenty Nine only) on M/s Vestas Wind Technology India Pvt. Ltd. under Section 114A of the Customs Act, 1962 for the reasons of wilful mis-statement and suppression of facts. I refrain from imposing penalty under section 112 (a) of the Customs Act, 1962, since as per 5th proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

27.8. I refrain from imposing penalty on M/s Vestas Wind Technology India Pvt. Ltd. under Section 117 of the Customs Act, 1962, for the reasons as discussed above.

28. This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or rules made there under or any other law for the time being in force.

11/4/2025

(K. Engineer)
Pr. Commissioner of Customs,
Custom House, Mundra.

DIN:-

F.No. GEN/ADJ/COMM/716/2023-Adjn-O/o Pr Commr-Cus-Mundra

To (The Noticee),

M/s. Vestas Wind Technology India Pvt. Ltd.,
Highway Plot NO. 37, Gallops Industrial Park,
NH-8A, Ahmedabad, Gujarat 382 220.

Copy to:

(i) The Deputy/Assistant Commissioner, Customs House, Mundra for information

(ii) The Supdt. (EDI) for necessary action at their end.

(iii) Notice Board.

(iv) Guard file/Office Copy.