



OFFICE OF THE COMMISSIONER OF CUSTOMS  
KACHCHH COMMISSIONERATE  
CUSTOM HOUSE: KANDLA,  
NEW CUSTOMS BLDG, NR. BALAJI TEMPLE,  
KANDLA, DISTRICT: KACHCHH, GUJARAT,  
PINCODE-370210

PHONE : 02836-271468-469 FAX : 271467

F.No.S/43-63/SIIB/2011-12

Dated: 24.01.2014

**SHOW CAUSE NOTICE ISSUED UNDER SECTION 28 AND 124 OF THE  
CUSTOMS ACT, 1962**

M/s Vestas Wind Technology India Pvt. Ltd, 298, Rajiv Gandhi Salai, Sholinganallur, Chennai-600119 (hereinafter called "Importer") imported various components / parts of wind mill i.e. wind towers, blades, frames, hubs and packing materials (for the purpose of safe transport of towers, blades and frames) viz. Barge frames, Low Hub Frame, Tower Foot, Tower Frapping Brackets, Double stacker frames, SOC containers etc. These packing materials are in the nature of specialized frames designed exclusively for the purpose of transporting the imported wind mill parts namely towers, blades etc.

2. Intelligence was gathered by the officers of SIIB, Custom House, Kandla that the importer while importing the goods had deliberately not declared the packing materials for components / parts of wind mill / SOC containers with a view to evade custom duty. It was also gathered that the specialized packing materials were not in the nature of optional equipment but it was a part of the goods being imported and that the same had commercial value. Preliminary Intelligence also suggested that the Importer had paid for these equipments along with the imported goods and that the transaction was also reflected in their commercial invoices. Intelligence further suggested that Importer had indulged in concealing the actual transaction value with a view to avoid the applicable custom duty and thus, manipulated the various documents submitted to the Customs.

3. In the wake of above intelligence, SIIB, Kandla started investigations into all the imports made by the Importer. It was found that during the period from January, 2011 to February, 2012, packing materials viz. Tower Foot, Tower Frapping Brackets, Low Hub Frame, Double stacker frames etc, were imported but these were not declared to the customs by the importer in the Bills of Entry. **The details of such goods are mentioned in Annexure-B attached to this notice.** The value of these goods is Rs.10,98,12,887/- involving duty amounting to Rs.2,67,06,548/-.

17086  
23/11



3.1 A seizure memo dated 07.11.2013 was issued in respect of the aforesaid undeclared goods valued at Rs.10,98,12,887/- directing M/s.Vestas not to remove, part with, or otherwise deal with the goods except with prior written permission of the proper authority. The said seized goods were handed over to M/s.Vestas under a Supratnama dtd.07.11.2013 for safe custody duly acknowledged by Shri R. Kannan, Manager Logistics of M/s.Vestas Wind Technology India Pvt Ltd. In view of the request made by M/s.Vestas vide their letter dtd.07.11.2013 for release of the seized goods, the Commissioner of Customs, Kandla considered their request and ordered for provisional release of the seized goods on furnishing Bond of 100% Value of the seized goods and 25% BG of the value of the seized goods. This was communicated to M/s.Vestas vide letter dtd.07.11.2013. M/s.Vestas vide letter dtd.06.01.2014, received on 10.01.2014, furnished a provisional release bond for the 100% value of the said seized goods, Bank Guarantee dtd.20.12.2013 for Rs.2,74,53,222/- & amendment to B.G. dtd.07.01.2014, which were forwarded to Group Assistant Commissioner for necessary action. Meanwhile, M/s.Vestas vide their letter dtd.03.01.2014 informed that there was a theft attempt by a gang at their Bhachau Yard, wherein the seized goods were kept inside the containers; that they had registered this case with local police through Yard Incharge for necessary security arrangement; that the police was investigating the case, however advised them to immediately move the containers with materials available at the yard to safer place to avoid further attempts / thefts as the present yard was not safe enough and was located in a very remote place; that they were shifting the entire material available at the present yard to the new yard near Anjar. They requested for permission to shift the seized materials from Bhachau to Anjar. The said request was considered vide letter dtd.07.01.2014.

3.2 M/s.Vestas vide letter dtd.02.01.2014, received on 03.01.2014, enclosed an Annexure-A showing the details of imported goods, wherein benefit of Noti.No.104/94-Cus dtd.16.03.1994 was availed but duty was not paid. The value of the said goods was Rs.23,71,41,010/- and duty involved was Rs.5,82,34,253/-. They informed that as regards all the goods other than SOC containers as mentioned in the Annexure-A, they confirmed that the same had been re-exported by M/s.Vestas under different shipping bills; that as regards SOC containers, they enclosed an Appendix I showing the latest detailed position of these containers; that on perusal of this Appendix I it can be seen that there were 15 such containers which were surrendered by them to the Leasing Company and later on shipped out of country by them; that the details of their shipping bills in case of 10 containers were also mentioned therein; that for the remaining 5 containers, the Leasing Company M/s.DSV Air & Sea A/S, Denmark had given a letter dtd.23.12.2013 certifying that these containers had been shipped out and re-exported from India to various countries.



In view of the above, they made the following prayers :

- (i) that the containers lying at Bachavu Yard mentioned in the Appendix I may be seized in terms of Section 110 of the Customs Act, 1962 and the same may be permitted to be provisionally released for re-export in terms of Section 110A of the Customs Act, 1962;
- (ii) that towards the undeclared packing materials, they had paid the differential duty along with interest totally amounting to Rs.2,89,57,316 + Rs.46,02,074/- vide TR6 Challan Nos. Nil dated 04.07.2012 and as per the facts available in the Seizure Memo, for the undeclared packing materials, the differential duty and interest works out to Rs.2,67,06,548/-. As such, an excess duty amount of Rs.28,13,286/- (principal Rs.24,25,983/- and interest Rs.3,87,303/-) was paid at the earlier instance.
- (iii) that the total liability towards the above containers may be adjusted towards the excess differential duty and interest for these containers.
- (iv) that these containers may be permitted for provisional release without imposing any penalty towards the adjudication liabilities,
- (v) that all the containers may be permitted for re-export as per Section 74 of the Customs Act, 1962 read along with the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995 and on re-export, they may be permitted to avail the benefit of Drawback of Customs Duties;

On perusal of the Appendix-I submitted by M/s.Vestas, it was found that there were total 63 SOC containers valued at Rs.70,18,643/- in respect of which benefit of Noti.No.104/94-Cus dtd.16.03.1994 was availed and duty was not paid. Out of these 63 containers, 31 containers valued at Rs.34,79,519/- were re-exported by M/s.Vestas under different shipping bills as detailed in the Appendix-I. 15 containers valued at Rs.16,40,158/- were surrendered by them to the Leasing Company and later on shipped out of country by the Leasing Company. 17 containers valued at Rs.18,98,966/- were lying at their Bhachau Yard as per their letter dtd.02.01.2014 and later on shifted to their Anjar Yard as per permission granted vide letter dtd.07.01.2014. Since the 17 containers were physically available, a seizure memo dated 09.01.2014 was issued in respect of the aforesaid 17 containers valued at Rs.18,98,966/- directing M/s.Vestas not to remove, part with, or otherwise deal with the goods (empty marine containers) except with prior written permission of the proper authority. The said seized goods were handed over to M/s.Vestas under a Supratnama dtd.09.01.2014 for safe custody duly acknowledged by Shri R. Kannan, Sr. Manager Logistics of M/s.Vestas Wind Technology India Pvt Ltd. In view of the request made by M/s.Vestas vide their letter dtd.02.01.2014 for release of the seized goods (empty marine containers), the Commissioner of Customs, Kandla considered their request and ordered for provisional release of the seized goods on execution of Bond of full value of the seized goods and Bank Guarantee of Rs.5 lacs. This was communicated to M/s.Vestas vide letter dtd.15.01.2014. M/s.Vestas vide their E-Mail dtd.22.01.2014

12.04.2012 and on 22.08.2012 under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that:

- i. at the time of import of WOEG components, those re-exportable Barge frames were classified as 'durable containers' vide Notification No.104/94-Cus which exempted containers of durable nature from the whole of the Customs duty and Additional duty;
- ii. the Board Circular No.69/2002-Cus dtd 25<sup>th</sup> October 2002 clarified that "As per the meaning assigned to the words 'durable' and 'container' in various dictionaries, it appears that any goods (containers) used for packaging or transporting other goods, and capable of being used several times, would fall in the category of 'containers of durable nature';
- iii. the terms of import invoices would be in Ex-Works, FOB and CIF in general and their supplier M/s. Vestas Bulgaria EOOD, Bulgaria raised commercial invoice in their name for the whole cargo supplied by them and accordingly, they made the payment to the supplier as per commercial invoice; that they also made "purchase contract/order" with overseas supplier;
- iv. for those frames, they had made the payment to the supplier inadvertently and they had already initiated process to get back the money from the supplier as per RBI regulations; that they had received back the entire foreign exchange from the overseas supplier in respect of declared packing materials which were part of commercial invoices raised by overseas supplier.
- v. the subject goods under investigation, were used as packing material for safe ocean transport, storage at ports/intermediate storages, handling and domestic transportation and storage at project site purposes etc. Hence, these goods were imported and there was no mentioning in commercial invoice for export;
- vi. that they imported the goods which were durable and reusable containers, however, they did not put to use till date as it cannot be used for any other purpose except re-export the same to their manufacturing unit for re-use;
- vii. that because of delay in erection at project site due to rains and site readiness, the re-export could not be done within prescribed time limit (6 months); that they had already applied for the extension for a period of 6 months; that he was not in position to produce the permission granted to them for the extension of further six month; that since the material was ready for shipment, they had not applied for further extension for the same assuming that re-export would happen / take place in January 2012 itself;
- viii. they had neither re-exported the goods nor applied for the further extension; that they could not re-export these goods;



- ix. that he was aware of provision of this section to some extent, however, their company had started imports from January 2011, and at the material time they had not availed the benefit of the said provisions.

6.2 The statement was verified with the facts available and various documentary evidences collected during the course of investigations. It is revealed that the importer had not declared the actual commercial transaction with respect to the specialized packing equipments. Only in some cases, where these goods were declared, they claimed the benefit of notification 104/94-cus. Further, all these components were not only had commercial value but the importer had made payments to the overseas supplier.

6.3 The total foreign exchange payments made for the specialized equipment i.e. packing materials by the importer is more than Rs.34 crores approximately. The claim of the importer's representative that these payments were inadvertently made appears to be false and a poor 'after-thought' defense. No correspondences with the supplier have been put forward in their defense during investigations.

6.4 The importer also failed to produce any evidence with regard to the statement made by them that they had received back the entire foreign exchange from the overseas supplier in respect of declared packing materials which were part of commercial invoices raised by overseas supplier.

7. In the wake of the claim of the Importer that part of the specialized equipment which was imported against payment of import duty is being exported, the SIIB examined the export consignment covered under Shipping Bill No. F 003 dated 14.06.2012 filed by M/s Vestas Wind Technology India P. Ltd in presence of Shri G Sudarshan, Senior Manager & Shri G Krishna Rao, Executive Operation of CHA M/s NTC Shipping Services Pvt. Ltd. on 20.07.2012. During the examination, it was noticed that the description of the goods were V 100 Barge Frames and in the shipping they had mentioned that the goods were for re-export under Section 74 of the Customs Act, 1962. While examining the export goods with respect to import documents with a view to establish their identity, it was noticed that no such marks, numbers etc. were declared in the import documents presented at the time of imports namely Bills of Entry, Invoice, packing list etc. Hence, in view of the above, the goods currently being exported were not identifiable with import documents and thus their identity (the goods) cannot be established.

8.1 During the course of investigations, the Importer agreed to the facts that they had cleared some of the specialized packing materials without declaring the same in the Bills of Entry. They agreed to the duty liability of Rs.2,89,57,316/- which is the duty calculated on the commercial value of these goods. The details of the value

and the duty calculation is shown in **Annexure-C** to this notice as worked out by the importer. During the course of investigation, the importer have made voluntary payment of Rs.2,89,57,316/- vide Challan No.735 dated 04.07.2012 towards Customs duties on the packing materials imported by them from Kandla port which were not declared. They have also paid a total amount of Rs.46,02,074/- vide Challan No.1529 dated 04.10.2012 towards interest for delayed payment of Customs duties.

8.2 The specialized equipment claimed as packing materials imported by the importer during the period 2010-11 to 2011-12 and for which bonds were executed under 104/94-Cus, were not re-exported within the prescribed time limit nor the extended period, if any. These facts have also been admitted by Shri R Kannan, Manager Logistics of M/s Vestas Wind Technology India Pvt. Ltd., Chennai in his statements recorded on 12.04.2012 and 22.08.2012 under Section 108 of the Customs Act, 1962. Thus, these goods are also liable for the applicable custom duty. The differential duty calculation is summarized as below :

Annexure	Particulars	Value (Rs)	Duty Amount (Rs)
A	Imported goods wherein benefit of Notification No.104/94-Cus dated 16.3.94 availed and duty not paid	23,71,41,010/-	5,82,34,253/-
B	Imported Goods Which Were Not Declared	10,98,12,887/-	2,67,06,548/-
<b>Total duty liability = A+B</b>		34,69,53,897/-	8,49,40,801/-
C	Duty Amount Deposited During Investigation In Respect Of Non-Declared Packing Materials as worked out by the importer	10,91,60,287/-	2,89,57,316/-
<b>Differential duty recoverable = A+B-C</b>		23,77,93,610/-	5,59,83,485/-

The seizures effected are also summarized as under :

**SUMMARY OF GOODS SEIZED PERTAINING TO ANNEXURE-A I.E. DECLARED GOODS**

Annexure	Particulars	Value (Rs)
A (i.e. total a + b below)	Imported goods wherein benefit of Notification No.104/94-Cus dated 16.3.94 availed and duty not paid	23,71,41,010/-
a	Goods other than SOC containers and re-exported by Vestas	23,01,22,367/-
b	63 SOC containers	70,18,643/-
<b>BREAK UP OF b ABOVE</b>		
(i)	31 SOC containers re-exported by M/s.Vestas under different Shipping Bills	34,79,519/-
(ii)	15 SOC containers surrendered by M/s.Vestas to Leasing Company and later on shipped out of country by the Leasing Company	16,40,158/-
(iii)	<b>17 SOC containers physically available and seized under Seizure Memo dtd.09.01.2014</b>	<b>18,98,966/-</b>



**SUMMARY OF GOODS SEIZED PERTAINING TO ANNEXURE-B I.E. UNDECLARED GOODS**

Annexure	Particulars	Value (Rs)
B	Packing materials imported, but not declared to the Customs by the importer in the bills of entry	10,98,12,887/-
Seized	All the goods of Annexure-B seized being physically available	10,98,12,887/-

**9. RELEVANT LEGAL PROVISIONS:**

**Notification No.104/94-Cus dated 16.03.1994 as amended by Notification No.101/95-Cus dated 26.05.1995 :**

*"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, **hereby exempts container of a durable nature falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from,***

*(a) the **whole of the duty of customs** leviable thereon under the said First Schedule; and*

*(b) the **whole of the additional duty** leviable thereon under section 3 of the said Customs Tariff Act:*

*Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs **binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction** of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so :*

*Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit."*

**The Customs Act, 1962**

**i) SECTION 28 - Recovery of duties not levied or short-levied or erroneously refunded – Section 28(4): (w.e.f.08.04.2011)**

**(4)** Where any duty has not been levied or has been short-levied 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 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.

**ii) SECTION 28 – Notice for payment of duties, interest etc - Section 28(1): (upto 07.04.2011)**

(1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may,

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;

(b) in any other case, within six months,

from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part 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:

Provided that where any duty has not been levied or has been short-levied 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 wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted.

**iii) SECTION 28AA (w.e.f. 08.04.2011) - Interest on delayed payment of duty :**

(1) Notwithstanding anything contained in any judgement, 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 per cent and not exceeding thirty six per cent 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 they duty ought to have been paid or from the date of such erroneous refund, as the case may be, upto the date of payment of such duty.

**iv) SECTION 28AB (upto 07.04.2011) - Interest on delayed payment of duty in special cases :**

(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2), or has paid the duty under sub-section (2B), of section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten per cent, and not exceeding thirty-six per cent, per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2), or sub-section 2B, of section 28, till the date of payment of such duty:

**v) SECTION 111. Confiscation of improperly imported goods, etc. – The following goods brought from a place outside India shall be liable to confiscation: –**

- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act.....;
- (n) .....
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

**vi) SECTION 112. Penalty for improper importation of goods, etc. – 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 omission of such an act, or

b) ....., shall be liable to

(i) .....

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

**vii) SECTION 114A. 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 [xxx] 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 [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined :

#### **DISCUSSION OF EVIDENCES :**

10.1 M/s.Vestas imported specialized equipment & packing materials viz. Tower Foot, Tower Frapping Brackets, Low Hub Frame, Double stacker frames, SOC containers etc (As detailed in Annexure-B attached) during the period from January, 2011 to February, 2012, which they did not declare at the time of import. During the course of investigations, the Importer agreed to the facts that they had cleared some of the specialized packing materials without declaring the same in the Bills of Entry. They agreed to the duty liability of Rs.2,89,57,316/- which is the duty calculated on the commercial value of these goods. During the course of investigation, the importer have made voluntary payment of Rs.2,89,57,316/- vide Challan No.735 dated 04.07.2012 towards Customs duties on the packing materials imported by them from Kandla port which were not declared. They have also paid a total amount of Rs.46,02,074/- vide Challan No.1529 dated 04.10.2012 towards interest for delayed payment of Customs duties. The said undeclared imported packing materials totally valued at Rs.10,98,12,887/- were under seizure. The said goods under seizure and later on provisionally released, as detailed in Annexure-B to this notice, are liable for confiscation under Section 111(I) of the Customs Act, 1962. The Bond and Bank Guarantee furnished at the time of provisional release of the said goods are liable to be enforced for recovery of duty / interest / fine / penalty etc. Further, the customs duty along with interest is liable to be demanded from them on the said undeclared packing materials. The duty & interest already paid is required to be appropriated towards the duty demand.



10.2 From the evidences gathered during investigations and the legal provisions, as discussed above, it appears that M/s.Vestas imported specialized equipment & packing materials viz. Barge frames, Low Hub Frame, Tower Foot, Tower Frapping Brackets, Double stacker frames, SOC containers etc valued at Rs.23,71,41,010/- (As detailed in Annexure-A attached to this notice), wherein they claimed the benefit of Notification No.104/94-Cus dtd.16.03.1994.

10.2.1 Some of these equipments were purchased by the importer and the transaction formed part of the import invoices. Noti.No.104/94-Cus dtd.16.03.1994 provides for exemption from duty in respect of containers which are of durable nature. CBEC vide Circular No.69/2002-Customs dtd.25.10.2002 clarified that "as per the meanings assigned to the words 'durable' and 'container' in various dictionaries, it would appear that any goods (containers) used for packaging or transporting other goods, and capable of being used several times, would fall in the category of 'containers of durable nature'. It is not necessary that the "container" must be enclosed from all sides or capable of being locked or sealed. In the instant case, if the containers are durable for supplier, then the cost of the containers (packing materials) could not have been recovered from the importer. In case of containers which are used several times, the supplier require the said containers to be returned back to them urgently for rotating them further. In this case, the packing materials were not re-exported for a substantial period. In the case of import of "durable containers" the same will not be part of the commercial invoice and the supplier would be supplying the same on re-export basis, which is not the case in the subject imports. In such cases, supplier is charging only rent and not the full cost of containers. The Importer has accepted this position. Having paid for the import of some of the equipments, it appeared to be a modus followed by the Importer to declare the same as "durable containers" to claim duty exemption under notification 104/94-cus, while the same are not in the nature of 'durable container' as mentioned in the subject notification. Thus, the said imported specialized equipment & packing materials do not appear to qualify for the exemption claimed under the notification no.104/94-Cus.

10.2.2 It is also seen that all these packing materials were not re-exported by them within 6 months in terms of Noti.No.104/94-Cus dtd.16.03.1994. The Importer had executed re-export bonds, in terms of the notification 104/94-Cus at the time of import, binding themselves to re-export these goods along with SOC containers within 6 months of their import. During investigations, it is revealed that the goods imported by them claiming benefit of Noti.No.104/94-Cus and as mentioned in Annexure-A to this notice were not re-exported by them within the prescribed time limit or within extended period. The importer not only failed to comply with the condition of the bonds executed but also did not seek any further extension of the time of re-export in terms of the conditions of the notification. The importer applied

submission along with the Bond. The Bond and Bank Guarantee furnished at the time of provisional release of the said goods are liable to be enforced for recovery of duty / interest / fine / penalty etc.

10.3 It appears that the importer indulged in willful mis-statement of facts with an intention to evade customs duty inasmuch as the declared goods are not in the nature of 'durable container' as mentioned in the subject notification; that some of these goods have been procured by them on the basis of commercial transaction with the supplier, which has been accepted by the importer. Thus, the very claim of the exemption under Notification No.104/94-Cus dated 16.03.1994 (mentioned in Annexure A) was a willful mis-statement to avail duty exemption. In addition to this, it appears that M/s.Vestas have surrendered 15 containers to Leasing Company, who later shipped them out (exported). This was done by M/s.Vestas without the knowledge of the Customs Department and thereby suppressing the material facts from the Department.

10.4 As regards the packing materials which were not declared, it further appears that they intentionally did not declare the said packing materials (mentioned in Annexure B to this notice) at the time of import to evade payment of duty. Thus, they resorted to suppression of facts with intention to evade payment of customs duty.

10.5 The duty along with interest is therefore liable to be recovered from them under proviso to Section 28(1) (till 07.04.2011) / Section 28(4) (w.e.f.08.04.2011) of the Customs Act, 1962 and Section 28AB (till 07.04.2011) / 28AA (from 08.04.2011) of the Customs Act, 1962 respectively read with bonds furnished by them under Noti.No.104/94-Cus at the time of import. The packing materials (mentioned in Annexure A) were allowed to have been imported without payment of duty in terms of bonds furnished by them under Noti.No.104/94-Cus dtd.16.03.1994 but subsequently the conditions stipulated therein were contravened by the importer by way of mis-statement of facts as discussed in the foregoing Paras. Therefore all such bonds appear to be enforceable. Hence by above acts and omission the importer have rendered themselves liable for penal action under Section 112(a) and / or 114A of the Customs Act, 1962.

11. Now, therefore, M/s.Vestas Wind Technology India Pvt. Ltd, 298, Rajiv Gandhi Salai, Sholinganallur, Chennai – 600119 are hereby called upon to show cause in writing to the Commissioner of Customs, Kandla having his office situated at New Custom House, Near Balaji Temple, Kandla within thirty days from the date of receipt of this notice, as to why :



- a. The benefit of duty exemption as claimed under Notification No.104/94-Cus dated 16.03.1994 in respect of goods mentioned in Annexure-A should not be denied to them and Customs duty amounting to Rs.8,49,40,801/- [Rs.5,82,34,253/- as per Annexure-A on account of wrong availment of benefit of exemption under Noti.No.104/94-Cus dtd.16.03.1994 (+) Rs.2,67,06,548/- as per Annexure-B on the goods which were not declared], should not be demanded under proviso to Section 28(1) (till 07.04.2011) / Section 28(4) (w.e.f.08.04.2011) read with bonds furnished by them under Noti.No.104/94-Cus at the time of import. The amount of Rs.2,89,57,316/- (As per Annexure-C) deposited by the importer vide Challan No.735 dated 04.07.2012 during investigation should not be appropriated against the demand of the Customs duty.
- b. The interest under section 28AB (till 07/04/2011) and 28AA (from 08.04.2011) of the Customs Act, 1962 should not be demanded and recovered at the appropriate rate. The amount of Rs.46,02,074/- deposited towards interest by the importer vide Challan No.1529 dated 04.10.2012 during investigation should not be appropriated against the demand of interest.
- c. The goods declared as packing materials i.e. Barge frames, Low Hub Frame, Tower Foot, Tower Frapping Brackets, Double stacker frames, SOC containers etc. on returnable basis (re-export) valued at Rs.23,71,41,010/- should not be confiscated under Section 111(m) and/or 111(o) of the Customs Act, 1962. Some of these declared imported packing materials i.e. SOC containers totally valued at Rs.18,98,966/- were under seizure as detailed in Annexure-A to the Seizure Memo dtd.09.01.2014. Since the Commissioner of Customs, Kandla considered their request and ordered for provisional release of the said seized goods on execution of Bond of full value of the seized goods and Bank Guarantee of Rs.5 lacs, why fine in lieu of confiscation should not be imposed upon them under Section 125 of the Customs Act, 1962 and why the Bond executed by them should not be enforced and Bank Guarantee furnished by them at the time of provisional release of said seized goods should not be encashed against their above liabilities towards duty, interest, fine and penalty etc.
- d. The undeclared packing materials i.e. Tower Foot, Tower Frapping Brackets, Low Hub Frame, Double stacker frames & SOC containers etc valued at Rs.10,98,12,887/-, which were under seizure, should not be confiscated under Section 111(l) of the Customs Act, 1962. Since the seized goods have been provisionally released to the importer, why fine in lieu of confiscation should not be imposed upon them under Section 125 of the Customs Act, 1962 and why the Bond executed by them should not be enforced and Bank Guarantee

furnished by them at the time of provisional release of seized goods should not be encashed against their above liabilities towards duty, interest, fine and penalty etc.

- e. Penalty should not be imposed on them for their willful acts and omissions as discussed above under Section 112(a) and/or 114A of the Customs Act, 1962.
- f. The Bonds furnished by them under Noti.No.104/94-Cus dtd.16.03.1994 and Bonds and Bank Guarantees furnished at the time of provisional release of the goods are liable to be enforced for recovery of duty / interest / fine / penalty etc.

12. The above Noticee is hereby directed to show cause within 30 (thirty) days of the receipt of this notice. They are further directed to state or mention in their written reply within 30 (Thirty) days, whether they intend to be heard in person when the case is posted for adjudication. If no reply is received from them within the stipulated time period, it will be presumed that they do not desire to be heard in person. The above Noticee is further required to produce the evidences in their defense while presenting reply to this notice.

13. If no cause is shown by the Noticee against the action proposed to be taken within the 30 (Thirty) days of the receipt of this notice or if they do not appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of merits and material evidence available on records.

14. This Notice is issued under the Customs act, 1962 without prejudice to any other action that may be taken against them under the customs Act 1962 or any other act for the time being in force.

15. The documents relied upon for the purpose of this notice are attached to this Notice (as per annexure-D) and the copies thereof wherever not earlier supplied are enclosed herewith or would be made available for inspection on demand being made in writing within 30 days from the date of the receipt of this Notice.

  
(K.L. GOYAL)  
Commissioner

**(By Regd.A.D. / By Hand Delivery)**

F. No. S/43-63/SIIB/2011-12

Date: 24/01/2014

To,  
M/s Vestas Wind Technology India Pvt. Ltd,  
298, Rajiv Gandhi Salai, Sholinganallur,  
Chennai – 600 119



Copy to:

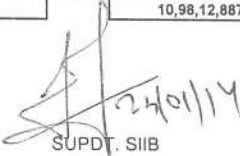
1. ✓ The Superintendent (Adjudication), Custom House, Kandla – along with show cause notice and copies of relied upon documents – for adjudication by the Commissioner, CH, Kandla
2. ✓ The Assistant Commissioner, Assessment Group-V/VI, Custom House, Kandla.
3. Guard File

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ANNEXURE-B DETAILS OF IMPORTED GOODS WHICH WERE NOT DECLARED (in INR)												
Sl. No	BOENO.	Date	Description of the Transport Equipment	Qty in Nos	Accessable Value	Basic Duty	CVD 10%	Cess on CVD 3%	Cess on Basic 3%	SAD 4%	Duty Amount	Present status of B/E i.e. whether assessed finally or provisionally
1	2549015	07.01.2011	Tower Foot (2 Nos / Section)	100	9188351	689126	987748	29632	51195	437842	2195544	Final
1	2549015	07.01.2011	Tower Frapping Brackets (8 Pcs/Section)	400	6991427	524357	751578	22547	38954	333155	1670592	Final
2	3191872	12.04.2011	Low Hub Frame for 2 MW	22	2859506	214463	307397	9222	15932	136261	683275	Provisional
2	3191872	12.04.2011	Tower Foot (2 Nos / Section)	32	3088134	231610	331974	9959	17206	147155	737905	Provisional
2	3191872	12.04.2011	Tower Frapping Brackets (8 Pcs/Section)	128	2349765	176232	252600	7578	13092	111971	561473	Provisional
3	3283891	21.04.2011	Low Hub Frame for 2 MW	1	129978	9748	13973	419	724	6194	31058	Final
4	3535370	18.05.2011	Tower Foot (2 Nos / Section)	104	9075303	680648	975595	29268	50565	432455	2168531	Provisional
4	3535370	18.05.2011	Tower Frapping Brackets (8 Pcs/Section)	416	6905402	517905	742331	22270	38475	329055	1650036	Provisional
4	3535370	18.05.2011	Double Stacker Frame	22	5782084	578208	636029	19081	37000	282096	1552414	Provisional
5	3574839	23.05.2011	Double Stacker Frame	5	1314110	131411	144552	4337	8409	64113	352821	Provisional
6	3578938	23.05.2011	Double Stacker Frame	5	1314110	131411	144552	4337	8409	64113	352821	Provisional
7	4350577	12.08.2011	Tower Foot (2 Nos / Section)	48	4160677	312051	447273	13418	23182	198264	994188	Provisional
7	4350577	12.08.2011	Tower Frapping Brackets (8 Pcs/Section)	208	3429683	257226	368691	11061	19109	163431	819518	Provisional
8	5331249	29.11.2011	Tower Foot (2 Nos / Section)	40	3882213	291166	417338	12520	21631	184995	927649	Provisional
8	5331249	29.11.2011	Tower Frapping Brackets (8 Pcs/Section)	160	2953977	221548	317553	9527	16459	140763	705849	Provisional
8	5331249	29.11.2011	Double Stacker Frame	2	584633	58463	64310	1929	3741	28523	156966	Provisional
9	5501986	19.12.2011	Tower Foot (2 Nos / Section)	64	6528013	489601	701761	21053	36372	311072	1559860	Provisional
9	5501986	19.12.2011	Tower Frapping Brackets (8 Pcs/Section)	256	4967168	372538	533971	16019	27676	236695	1186898	Provisional
9	5501986	19.12.2011	Double Stacker Frame	8	2457678	245768	270345	8110	15727	119905	659854	Provisional
10	5503883	19.12.2011	Tower Foot (2 Nos / Section)	16	1632003	122400	175440	5263	9093	77768	389965	Provisional
10	5503883	19.12.2011	Tower Frapping Brackets (8 Pcs/Section)	64	1241792	93134	133493	4005	6919	59174	296724	Provisional
10	5503883	19.12.2011	Double Stacker Frame	2	614419	61442	67586	2028	3932	29976	164964	Provisional
11	5503884	19.12.2011	Tower Foot (2 Nos / Section)	48	4896010	367201	526321	15790	27279	233304	1169895	Provisional
11	5503884	19.12.2011	Tower Frapping Brackets (8 Pcs/Section)	192	3725376	279403	400478	12014	20757	177521	890173	Provisional
11	5503884	19.12.2011	Double Stacker Frame	6	1843258	184326	202758	6083	11795	89929	494891	Provisional
12	5705765	11.01.2012	Tower Foot (2 Nos / Section)	64	6608682	495651	710433	21313	36822	314916	1579136	Provisional
12	5705765	11.01.2012	Tower Frapping Brackets (8 Pcs/Section)	256	5028549	377141	540569	16217	28018	239620	1201565	Provisional
12	5705765	11.01.2012	Double Stacker Frame	4	1244024	124402	136843	4105	7961	60693	334004	Provisional
13	5708781	11.01.2012	Tower Foot (2 Nos / Section)	24	2478256	185869	266413	7992	13808	118094	592176	Provisional
13	5708781	11.01.2012	Tower Frapping Brackets (8 Pcs/Section)	96	1885706	141428	202713	6081	10507	89857	450587	Provisional
14	4661267	16.09.2011	40' SOC containers	2	220880	22088	24297	729	1413	10776	59,303	Provisional
15	4661271	16.09.2011	40' SOC containers	2	220880	22088	24297	729	1413	10776	59,303	Provisional
16	5889956	01.02.2012	40' SOC containers	1	110440	11044	12148	364	707	5388	29,652	Provisional
16	5889956	01.02.2012	20' SOC containers	1	100400	10040	11044	331	642	4898	26,956	Provisional
Total					10,98,12,887						2,67,06,548	

Rechecked by, Supdt.  
23/01/14  
PO SIIB


  
24/01/14  
SUPDT. SIIB



RESULTS OF DUTY AMOUNT PROPOSED DURING INVESTIGATION in RESPECT OF NON-DECLARED PACKING MATERIALS AS WORKED OUT BY M/S.VESTAS											
Sl. No.	BOE No. / Date	Description of the Transport Equipment	Vendor	Qty in Nos.	Accessable Value in INR	Basic Duty	Cess on Basic 3%	CVD 10%	Cess on CVD 3%	SAD 4%	Duty Amount in INR
1	2549015 / 07.01.2011	Tower Foot (2 Nos / Section)	Vestas Bulgaria Eood, Bulgaria	100	91,88,351	9,18,835.10	27,565	10,13,475	30,404.25	4,47,145.22	24,37,424.73
1	2549015 / 07.01.2011	Tower Frapping Brackets (8 Pcs/Section)	Vestas Bulgaria Eood, Bulgaria	400	69,91,427	6,99,142.70	20,974	7,71,154	23,134.63	3,40,233.32	18,54,639.34
					1,61,79,777.99	SubTotal Value					42,92,064.07
2	3191872 / 12.04.2011	Low Hub Frame for 2 MW	Vestas Bulgaria Eood, Bulgaria	22	28,59,506	2,85,950.64	8,579	3,15,404	9,462.11	1,39,156.05	7,58,550.86
2	3191872 / 12.04.2011	Tower Foot (2 Nos / Section)	Vestas Bulgaria Eood, Bulgaria	32	30,88,134	3,08,813.43	9,264	3,40,621	10,218.64	1,50,282.08	8,19,199.77
2	3191872 / 12.04.2011	Tower Frapping Brackets (8 Pcs/Section)	Vestas Bulgaria Eood, Bulgaria	128	23,49,765	2,34,976.50	7,049	2,59,179	7,775.37	1,14,349.81	6,23,330.06
3	3283891 / 21.04.2011	Low Hub Frame for 2 MW	Vestas Nacelles A/s, Denmark	1	1,29,978	12,997.76	390	14,337	430.10	6,325.27	34,479.58
4	3535370 / 18.05.2011	Tower Foot (2 Nos / Section)	Vestas Towers A/s, Denmark	104	90,75,303	9,07,530.32	27,226	10,01,006	30,030.18	4,41,643.82	24,07,436.18
4	3535370 / 18.05.2011	Tower Frapping Brackets (8 Pcs/Section)	Vestas Towers A/s, Denmark	416	69,05,402	6,90,540.16	20,716	7,61,666	22,849.97	3,36,046.95	18,31,819.09
4	3535370 / 18.05.2011	Double Stacker Frame	Vestas Towers A/s, Denmark	22	57,82,084	5,78,208.39	17,346	6,37,764	19,132.92	2,81,381.41	15,33,832.82
5	3574839 / 23.05.2011	Double Stacker Frame	Vestas Bulgaria Eood, Bulgaria	5	13,14,110	1,31,411.00	3,942	1,44,946	4,348.39	63,950.32	3,48,598.37
6	3578938 / 23.05.2011	Double Stacker Frame	Vestas Bulgaria Eood, Bulgaria	5	13,14,110	1,31,411.00	3,942	1,44,946	4,348.39	63,950.32	3,48,598.37
					3,28,18,391.94	SubTotal Value					87,05,845.10
7	4350577 / 12.08.2011	Tower Foot (2 Nos / Section)	Vestas Towers A/s, Denmark	48	41,60,677	4,16,067.75	12,482	4,58,923	13,767.68	2,02,476.71	11,03,716.90
7	4350577 / 12.08.2011	Tower Frapping Brackets (8 Pcs/Section)	Vestas Towers A/s, Denmark	208	34,29,683	3,42,968.28	10,289	3,78,294	11,348.82	1,66,903.32	9,09,803.48
					75,90,360.29	SubTotal Value					20,13,520.38
8	5331249 / 29.11.2011	Tower Foot (2 Nos / Section)	Vestas Towers A/s, Denmark	40	38,82,213	3,88,221.30	11,647	4,28,208	12,846.24	1,88,925.41	10,29,847.70
8	5331249 / 29.11.2011	Tower Frapping Brackets (8 Pcs/Section)	Vestas Towers A/s, Denmark	160	29,53,977	2,95,397.74	8,862	3,25,824	9,774.71	1,43,753.42	7,83,611.50
8	5331249 / 29.11.2011	Double Stacker Frame	Vestas Towers A/s, Denmark	2	5,84,633	58,463.29	1,754	64,485	1,934.55	28,450.79	1,55,087.54
					74,20,823.34	SubTotal Value					19,68,546.74
9	5501986 / 19.12.2011	Tower Foot (2 Nos / Section)	Vestas Towers A/s, Denmark	64	65,28,013	6,52,801.30	19,584	7,20,040	21,601.19	3,17,681.57	17,31,707.94
9	5501986 / 19.12.2011	Tower Frapping Brackets (8 Pcs/Section)	Vestas Towers A/s, Denmark	256	49,67,168	4,96,716.75	14,902	5,47,879	16,436.36	2,41,724.03	13,17,657.22
9	5501986 / 19.12.2011	Double Stacker Frame	Vestas Towers A/s, Denmark	8	24,57,678	2,45,767.77	7,373	2,71,082	8,132.46	1,19,601.31	6,51,956.41
10	5503883 / 19.12.2011	Tower Foot (2 Nos / Section)	Vestas Towers A/s, Denmark	16	16,32,003	1,63,200.32	4,896	1,80,010	5,400.30	79,420.39	4,32,926.98
10	5503883 / 19.12.2011	Tower Frapping Brackets (8 Pcs/Section)	Vestas Towers A/s, Denmark	64	12,41,792	1,24,179.19	3,725	1,36,970	4,109.09	60,431.01	3,29,414.31
10	5503883 / 19.12.2011	Double Stacker Frame	Vestas Towers A/s, Denmark	2	6,14,419	61,441.94	1,843	67,770	2,033.11	29,900.33	1,62,989.10
					1,74,41,072.74	SubTotal Value					46,26,651.97
11	5503884 / 19.12.2011	Tower Foot (2 Nos / Section)	Vestas Towers A/s, Denmark	48	48,96,010	4,89,600.97	14,688	5,40,030	16,200.90	2,38,261.18	12,98,780.95
11	5503884 / 19.12.2011	Tower Frapping Brackets (8 Pcs/Section)	Vestas Towers A/s, Denmark	192	37,25,376	3,72,537.56	11,176	4,10,909	12,327.27	1,81,293.02	9,88,242.92
11	5503884 / 19.12.2011	Double Stacker Frame	Vestas Towers A/s, Denmark	6	18,43,258	1,84,325.83	5,530	2,03,311	6,099.34	89,700.98	4,88,967.31
12	5705765 / 11.01.2012	Tower Foot (2 Nos / Section)	Vestas Towers A/s, Denmark	64	66,08,682	6,60,868.24	19,826	7,28,938	21,868.13	3,21,607.30	17,53,107.37
12	5705765 / 11.01.2012	Tower Frapping Brackets (8 Pcs/Section)	Vestas Towers A/s, Denmark	256	50,28,549	5,02,854.89	15,086	5,54,649	16,639.47	2,44,711.11	13,33,940.06
12	5705765 / 11.01.2012	Double Stacker Frame	Vestas Towers A/s, Denmark	4	12,44,024	1,24,402.41	3,732	1,37,216	4,116.48	60,539.64	3,30,006.45
					2,33,45,898.98	SubTotal Value					61,93,045.07
13	5708781 / 11.01.2012	Tower Foot (2 Nos / Section)	Vestas Towers A/s, Denmark	24	24,78,256	2,47,825.59	7,435	2,73,352	8,200.55	1,20,602.74	6,57,415.26
13	5708781 / 11.01.2012	Tower Frapping Brackets (8 Pcs/Section)	Vestas Towers A/s, Denmark	96	18,85,706	1,88,570.58	5,657	2,07,993	6,239.80	91,766.67	5,00,227.52
					43,63,961.71	SubTotal Value					11,57,642.79
					10,91,60,287.00	TOTAL					2,89,57,316.11

Rahul K. Sharma  
23.01.2014

PO SIIB

  
23/01/14  
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ANNEXURE-D		
LIST OF RELIED UPON DOCUMENTS FOR THE PURPOSE OF SHOW CAUSE NOTICE ISSUED TO M/s Vestas Wind Technology India Pvt. Ltd, 298, Rajiv Gandhi Salai, Sholinganallur, Chennai-600119		
Sr.No.	Description of document	Remarks
1	Statements of Shri R Kannan, Manager Logistics of M/s Vestas Wind Technology India Pvt. Ltd, Chennai recorded on 12.04.2012 & 22.08.2012 under Section 108 of the Customs Act, 1962.	Enclosed
2	Examination report of the goods covered under Shipping Bill No.F 003 dated 14.06.2012 filed by M/s Vestas Wind Technology India P. Ltd, Chennai	Enclosed
3	Seizure Memo dated 07.11.2013	Already supplied
4	Supratnama dtd.07.11.2013	Already supplied
5	Seizure Memo dated 09.01.2014	Already supplied
6	Supratnama dtd.09.01.2014	Already supplied
7	Letter dtd.07.11.2013 of M/s.Vestas requesting for release of goods	Available with the noticee
8	Letter dtd.07.11.2013 communicating M/s.Vestas regarding provisional release allowed by the Commissioner	Available with the noticee
9	Letter dtd.06.01.2014 of M/s.Vestas furnishing a provisional release bond, Bank Guarantee dtd.20.12.2013 for Rs.2,74,53,222/- & amendment to B.G. dtd.07.01.2014	Available with the noticee
10	Letter dtd.02.01.2014 of M/s.Vestas furnishing the details of imported goods, wherein benefit of Noti.No.104/94-Cus dtd.16.03.1994 was availed but duty was not paid and enclosing an Appendix I showing the latest detailed position of SOC containers	Available with the noticee
11	Letter dtd.02.01.2014 of M/s.Vestas requesting for release of goods seized under Seizure Memo dtd.09.01.2014	Available with the noticee
12	Letter dtd.15.01.2014 communicating M/s.Vestas regarding provisional release allowed by the Commissioner in response to their letter dtd.02.01.2014	Available with the noticee