आयुक्त, सीमा शुल्क का कार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS
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सत्यमेव जयते

DIN-20260371ML000000EFA1		
A	File No.	GEN/ADJ/COMM/431/2025-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-33-2025-26
C	Passed by	Nitin Saini, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	26-03-2026
E	Date of Issue	26-03-2026
F	SCN No. & Date	**F.no. S/43-13/SIIB/2015-16 dated 26.05.2016 read with its corrigendum F. No. S/43-13/SIIB/2015-16 dated 08.09.201**
G	Noticee / Party / Importer / Exporter	M/s. LM Wind Power Blades (India) P. Ltd., Halol Industrial Area (Phase III), Plot No. 1/B, Village Chandrapura, Taluka Halol, District Panchmahal, Gujarat-389350

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

2. 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:

Customs Excise &ServiceTaxAppellateTribunal, West Zonal Bench,

2ndFloor, Bahumali Bhavan Asarwa,

Nr.Girdhar Nagar Bridge,GirdharNagar,Ahmedabad-380004

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

4. 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.

5. 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 CourtFees Act, 1870.

6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

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

8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise if penalty alone is in dispute

1. BACKGROUND AND PROCEDURAL HISTORY

1.1 M/s. LM Wind Power Blades (India) P. Ltd., Bangalore (hereinafter also referred to as **"the noticee"**), situated at Halol Industrial Area (Phase III), Plot No. 1/B, Village Chandrapura, Taluka Halol, District Panchmahal, Gujarat-389350 is engaged in manufacturing of Wind Mill Blades. A case was booked by SIIB Section of Custom House, Kandla in November 2015 against them in respect of undervaluing imported Turning Cradle LM 47.6 P#02 along with accessories and Blade Shell Lifting Device LM 46.7/56.0P (hereinafter also referred to as **"the imported cradle"**) by mis-declaring its description as "used".

1.2 The noticee filed Bill of Entry No. 3272004 dated 17.11.2015 through Customs Broker M/s. Aditya Marine Ltd., Gandhidham (hereinafter also referred to as **"the Customs Broker"**) for clearance of the imported cradle at Custom House, Kandla, declaring it as 'used' and its value as Rs. 16.05 Crore (round figure). The officers of Customs examined the same in the presence of representative of the Customs Broker appointed by the noticee, on 18.11.2015. During examination, the imported cradle appeared to be new and unused against the declaration as 'used'. To ascertain the factual position, Shri N. J. Lalwani, Government panel approved Chartered Engineer (hereinafter also referred to as **"the Chartered Engineer"**) was called on 19.11.2015 and the said imported cradle was examined in the presence of representative of the Customs Broker. After examination, the Chartered Engineer submitted his self-statement dated 19.11.2015 certifying the imported cradle to be unused and new.

1.3 Statements of Shri Anand S. R., Senior Manager (Sourcing & Logistics) of the noticee, were recorded under Section 108 of the Customs Act, 1962 on 30.11.2015, 01.12.2015 and 02.12.2015. During recording of the statements, he submitted a list of 150 blades produced in China from the imported cradle, photographs claimed to be of installation and dismantling process done in China, copies of visa related to the visit of their engineers to supervise the dismantling process and photographs of the imported cradle taken at Kandla port. He was asked to corroborate the above documents with any evidence, like evidence to show that the photos were taken during installation and dismantling of the imported cradle. However, he failed to prove and stated that he did not have any evidence. Further, he stated that the shipper M/s. LM Wind Power Blades (Qinhuangdao) P. Ltd and the noticee are related parties and the shipper is a part of the noticee; that the imported cradle was

manufactured in December 2014 and its value at the time of manufacturing was US $ 21,60,507.2; that the value declared before Customs was US $ 21,60,258.2; that the shipper applied a mark-up of 5% on the turning cradle and 2% on the blade lifting beam; that they did not have copy of invoice of new cradle; that dismantling cost of the imported cradle was US $ 64,878. He submitted a copy of invoice and further stated that the said invoice mentioned only packing charges and not dismantling charges as it was included in the packing charges; that he would submit documentary evidence showing that the packing charges were including dismantling charges; that installation of the imported cradle commenced on 23.03.2015 in China and was completed on 03.04.2015, production from the imported cradle started on 03.04.2015 and the Site Acceptance Test (SAT) was completed on 21.04.2015; that 07 blades were manufactured during 03.04.2015 to 21.04.2015; that dismantling of the imported cradle started in China on 31.08.2015 and was completed on 10.09.2015; that no inspection was done prior to dismantling of the imported cradle.

1.4 Statement of Ms. Chandanashree D., Engineer in M/s LM Wind Power Blades (India) P. Ltd., who had claimed to have travelled to China plant for dismantling of the said unit, was recorded on 02.12.2015 under Section 108 of the Customs Act, 1962 wherein she stated, inter alia, that she visited China with her inspection team. She admitted that she did not see the unit in running (functional) condition. She stated that she along with her inspection team reached China on 01.09.2015 and the dismantling process had already started before their arrival. She admitted that she did not see the said cradle functional and her opinion of the imported cradle being a used unit was based only on the data provided by their China based plant.

1.5 The noticee was given full opportunity to prove their stand that the imported cradle was a 'used' unit but they did not supply any corroborative evidence in support of their claim. After failing to provide any documentary evidence, vide letters dated 03.12.2015 and 08.12.2015, the noticee requested to re-examine the imported goods in their presence. Considering their request, a panel consisting of a Chartered Engineer, three Deputy Commissioners of Customs and one Appraising Officer was formed. During examination of the machine by the panel, Shri Rajesh Aithal, Shri Zbigniew Kowalczyk and Shri Hari Chand Tharwani also remained present as representatives of the noticee.

1.6 The said panel examined the subject import consignment and submitted its report on 10.12.2015 which stated:

a) It was noticed that the noticee declared main control system and other parts of the imported cradle as accessories whereas the same were major and high technological parts of the cradle.

b) There was no evidence/sign of any nature to suggest that the equipment was even taken out for installation. All the connecting points, sockets, wires etc. also did not show any sign of installation of the same.

c) Physical condition of hooks and hydraulic cylinder of the shell lifting device, control system as well as other parts which should come in contact with the final product, did not show any sign of use thereof and the devices were new and unused as per the physical condition.

d) Turning Cradle Down Wind Open Root & Tip of the imported cradle was also examined. The noticee's engineer claimed that all their equipment were run on trial basis before they were delivered to the buyer. However, on examination, there was no sign/evidence that the imported cradle was used even for trial purpose.

e) Further, after examination Shri N. J. Lalwani, Government approved Chartered Engineer certified in his report dated 09.12.2015 the above said unit as unused and new.

1.7 In view of above facts, the investigating officers found that the imported cradle was mis-declared in respect of its declaration in the Bill of Entry and thus the same was liable for confiscation under Section 111(m) of Customs Act, 1962. Therefore, on a reasonable belief, the imported cradle was placed under seizure vide seizure memo dated 11.12.2015.

1.8 It was observed that the noticee had suo moto debited duty payment against Status Holder Incentive Scrip (SHIS scrips) and sought clearance of the imported cradle under Notification No. 104/2009 dated 14.09.2009. Para 3.16.3 of the FTP 2009-14 states that the Status Holder Incentive Scrips (SHIS scrips) shall be issued with actual user condition, however, transferability shall be permitted subject to the condition that the transferee shall (a) be a status holder and (b) be a manufacturer in terms of Para 3.16.3 of the FTP 2009-14. The noticee purchased following 03 duty credit SHIS scrips from M/s Essar Steel India Ltd. in terms of Para 3.16.3 of the FTP 2009-14:

Sr. No.	SHIS Scrip No. and date of issuance	Amount (in Rs.)
1	0510389681 dated 15.07.2014	50,00,000/-
2	0310786279 dated 02.07.2014	2,00,00,000/-
3	0310786280 dated 02.07.2014	2,00,00,000/-

The Para 3.16.3 of the FTP 2009-14 provides:

"The Status Holders Incentive Scrip shall be with Actual User Condition and shall be used for imports of capital goods (as defined in FTP) relating to the sectors specified in 3.16.4 of FTP which are as under:

1. Leather Sector (excluding finished leather);

2. Textiles and Jute Sector;

3. Handicrafts;

4. Engineering Sector (excluding Iron & Steel, Nonferrous Metals in primary or intermediate forms, Automobiles & two wheelers, nuclear reactors & parts and Ships, Boats and Floating Structures);

5. Plastics; and

6. Basic Chemicals (excluding Pharma Products).

*The Status Holders of the additional sectors listed in the Para 3.10.8 of HBP v1 2009-14 (RE-2010) shall be eligible for this Status Holders Incentive Scrip on exports made during 2010-11 and 2011-*12".

1.9 The noticee informed that they had claimed benefit for the imported cradle under plastic sector but it appeared that the final product to be manufactured from the imported cradle was Wind Mill Blade which was not covered under plastic sector as specified in Chapter 39 of the Customs Tariff Act, 1975 (hereinafter also referred to as **"the CTA, 1975"**) but was covered only under tariff Item 84129090. Relevant chapter notes of Chapter 84 of the CTA, 1975 reads:

Chapter Note 2: "Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate.

Chapter Note 4: "Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function."

Since the wind blade is a part of windmill, the same is classifiable under tariff item

84129090 of CTA, 1975, as part of Wind Operated Electricity Generator, which is not covered under the plastic sector.

1.10 On being pointed out this, the noticee submitted letters dated 03.12.2015 and 10.12.2015 stating that they were willing to make duty payment under merit assessment. Further, vide letter dated 16.12.2015 the noticee informed that in case the imported cradle was considered to be new unit then its value, as opined by the Chartered Engineer in its report could only be USD$ 23,50,000 against the value declared by them i.e. USD 22,25,136.72. They requested to calculate the differential duty as payable, after considering the aforesaid value for the imported cradle.

1.11 Statement of Shri Sandeep Shah, working with the noticee as Operation Controller, was recorded under Section 108 of the Customs Act, 1962. He agreed with the fact that noticee initially debited duty for the aforesaid goods against SHIS scrips for which they were not entitled. He admitted that the noticee had wrongly debited duty against SHIS scrips for payment of Customs duty and after being pointed out by Customs they had withdrawn their SHIS scrips immediately and paid the duty in cash. On being asked to specify the sector for which they got the SHIS scrips, he did not give any answer. He also stated that they paid the duty under merit and not under protest.

1.12 Vide letter dated 16.12.2015 the noticee requested for provisional release of the imported cradle but did not provide actual value of the imported cradle. Further, without waiting for action by Customs, the noticee filed Special Civil Application (SCA) No. 20487 of 2015 before the Hon'ble High Court of Gujarat at Ahmedabad on 14.12.2015, challenging the seizure of the consignment and praying for its release. Vide order dated 20.05.2013, the Hon'ble High Court of Gujarat directed the department to provisionally release the imported cradle on payment of entire admitted duty on its own declaration of valuation by the noticee. The Hon'ble Court also directed the noticee to deposit with the department 25% of the differential duty and furnish Bank Guarantee for the remaining 75% latest by 31.01.2016. It was an interim arrangement till the department, after hearing the noticee, finalised the assessment. In compliance of the order of Hon'ble High Court, the noticee produced Bank Guarantee No. IGT1600068 dated 11.01.2016 for Rs. 1,86,00,000/-, PD Bond dated 08.01.2016 of the amount equal to the enhanced assessable value i.e., Rs. 25,41,34,760/- and Demand Draft No. 119055 dated 11.01.2015 for Rs. 61,85,725/- against remaining 25% of the total differential duty on account of the value enhancement. After fulfilment of above conditions, the seized imported goods were provisionally released on 15.01.2016.

1.13 The documents submitted by the noticee indicated year of manufacture of the imported cradle as December 2014; date of commencement of installation of the imported

cradle in China as 23.03.2015, date of completion of installation there as 03.04.2015, date of starting of production in China as 21.04.2015, date of commencement of dismantling process in China as 31.08.2015 and that the imported cradle came to be dismantled on 10.09.2015. From the facts above, it appeared that the same remained functional only for nearly 04 months and thus the noticee's claim that they had produced 150 blades from the imported cradle does not seem possible in such short spell of time. The claim of the noticee that they had imported it after using the same in a very short spell created doubt of the imported cradle being a 'used' unit.

To ascertain the factual position, the examination of the imported cradle was got done by Shri N. J. Lalwani, Government panel approved Chartered Engineer on 19.11.2015. He, after examination, submitted his self statement dated 19.11.2015 wherein he certified that the above said unit is unused and new. The Chartered Engineer was requested to provide correct value of the impugned cradle to which he submitted his re-inspection report dated 30.12.2015. In the report, he submitted that on re-inspection of the imported goods, it was observed that the imported cradle seemed to be new & unused and the value to the best of his knowledge was approximately Rs. 24 Crore.

1.14 In spite of giving many opportunities to prove their stand that the imported goods were "used", the noticee failed to produce any corroborative evidence in support of their stand that the imported cradle was a 'used' unit. The Chartered Engineer also submitted his self-statement as well as report dated 19.11.2015 and dated 09.12.2015 respectively, certifying that the above said unit was unused and new.

Central Board of Excise and Customs has issued Circular No. 4/2008 dated 12.02.2008 providing guidelines for import of old & used goods. Para 8(c) of that circular reads:

“In the absence of proper Load Port Certificate, a local Chartered Engineer's Certificate may be accepted. Each Custom House may consider issuing Public Notices giving names and addresses of Chartered Engineers, whom the trade can contact for issuance of CE Certificate.”

Therefore, the Customs Department relied upon the report of the Chartered Engineer. Earlier the Chartered Engineer had issued a certificate informing the imported cradle to be new and unused but on enquiry about the same he submitted that the said certificate was already cancelled by him which was issued only on the basis of the documents produced before him by the Customs Broker authorized by the noticee, without seeing and inspecting the imported cradle. The Chartered Engineer was engaged by the noticee for examination of the imported cradle. The Chartered Engineer further submitted his self-statement as well as report dated 19.11.2015 and dated 09.12.2015 respectively, certifying that the imported

cradle to be new and unused, as discussed above. Further, before seizing the consignment, the Superintendent of Customs Officer (SIIB) issued summons under Section 108 of Customs Act, 1962 giving opportunity to the noticee to prove their stand but in compliance of the summons, they failed to produce any evidence in support of their stand.

1.15 Even if a machine is used for trial run, it cannot make the same old and used. Trial run is normally a pre-condition in the trade parlance to verify proper functionality of a machine and it cannot render the same as 'used' machine. New capital goods even if used for trial run will remain new only.

1.16 During examination by the panel as discussed above, it was found that the noticee declared the main control system and other parts of the imported cradle as accessories whereas those were major and high technological parts of the same. It clearly shows that the noticee deliberately mis-declared the main parts of the imported cradle as accessories for undervaluing the same to evade customs duty.

1.17 It is well settled law that once declared description is found to be mis-declared, the declared value or claimed transaction value has no sanctity. As observed by the Tribunal in CC, Bangalore Vs. H.M. Leisure, even if the circumstances particularized in Rule 4(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter also referred to as **'CVR, 2007'**) were not there, the transaction value can be rejected by the authorities in terms of Rule 12 of CVR, 2007. Further, the present case is also a case of related party transaction.

The noticee imported the impugned cradle from their related party. As per Rule 3(3)(a) of CVR, 2007, where the buyer and seller are related, the transaction value is to be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price. During investigation, Shri S. R. Anand, Senior Manager of the noticee submitted that the shipper and the noticee are related parties and the shipper is a part of noticee. Further, it was found that the noticee mis-declared the imported cradle in terms of description and value to evade Customs duty. Therefore, it is apparent that the declared value of the goods was manipulated by both the companies. Thus, on this ground too, the declared value cannot be accepted.

Once declared description is found to be mis-declared, the transaction value can be rejected by the authorities as held in various judgments of Tribunal. Some of which are as under:
In case of Tirupati Granites (P.) Ltd. Vs. CC – 1995 (78) ELT 301 (CEGAT), the Tribunal has held:
"when goods were mis-declared and there were found to be additional fittings, the invoice price cannot be relied upon"

In case of Pooja Circular Saw Vs. CC – 2003 (158) ELT 466 (CESTAT), the Tribunal has held:
"if goods are mis-declared, transaction value cannot be accepted"
In case of Raman Enterprises Vs. CC – 2003 (158) ELT 694 (CESTAT), the Tribunal has held:
"if goods are mis-declared, declared value can be rejected"

1.18 As per Section 14 of the Customs Act, 1962, imported goods are to be assessed on a value at which such goods are ordinarily sold for export to India in the course of international trade. The value of the imported cradle was found to be low in view of mis-declaration of description and hence the value of the imported cradle needs to be enhanced for the purpose of assessment.

As the declared description was found to be mis-declared in the Customs documents filed by the noticee under Section 46 of the Customs Act, 1962, the declared value or claimed transaction value cannot be accepted. As per Rule 12 of CVR, 2007, the declared value can be rejected when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods and it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3 of CVR, 2007 and where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9 of CVR, 2007.
In the instant case, it is not possible to ascertain value of imported cradle under the rules 4 to 9 of CVR, 2007 for the reasons discussed below:
1.18.1 Rule 3 cannot be used for re-determination of the value of the goods as the declared description was found to be mis-declared so the declared value or claimed transaction value has no sanctity.
1.18.2 Rule 4 & Rule 5 cannot be used for re-determination of the value of the goods in the absence of comparative value of similar or identical goods.
1.18.3 As per Rule 6, if the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or when the value cannot be determined under that rule, under rule 8.
1.18.4 In terms of Rule 7 the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India but as stated above comparative value for similar or identical goods were not available.
1.18.5 In terms of Rule 8, the value of imported goods is based on a computed value, consisting of the sum of:
(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India; and

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

As discussed above, the imported cradle was manufactured by M/s LM Wind Power Blades (QINHUANGDAO) Co. Ltd., 65 Long Hai Road, Economic & Technology Developing Area, He Bai, Province, China, which is the parent company or part of the noticee. Further, the noticee deliberately mis-declared the cradle as 'used' for undervaluing the same to evade Customs duty. Therefore, the declared value of the imported cradle was manipulated by both these companies. Hence, in the absence of correct data for computation of the cost of production for the imported cradle, its value cannot be re-determined under rule 8 of the CVR, 2007.

1.18.6 As per Rule 9, if the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

Once the invoice value is found to be false, the assessing authority can adopt any reasonable method in order to ascertain the assessable value as held by the Hon'ble CESTAT in the case of Atlas Castings & Metal Impregnation Vs. Commissioner of Customs, Hyderabad 2005 (186) E.L.T. 575 (Tri.Bang.), Hon'ble High Court of Allahabad also relied upon this case in the case of Kishan Lal Chawala Vs. Union of India 2011 (268) E.L.T. 480 (All.).

Therefore, in order to arrive at the correct value of the goods, the Chartered Engineer was requested to provide the correct value of the impugned goods. He submitted his re-inspection report dated 30.12.2015 stating that on re-inspection of the imported cradle, it seemed to be new & unused and the value to the best of his knowledge appeared to be approximately Rs. 24 Crore and he had no direct/indirect interest in the above mentioned material.

The valuation on basis of certificate obtained by department from Chartered Engineer was accepted by the Hon'ble CESTAT in the case of Rex Printing Press Vs. CC 2005 (184) ELT 73 (CESTAT). Similar view was taken in the case of Swan Press 2005 (184) ELT 93 (CESTAT). Further, it was also held by the Hon'ble CESTAT in the case Pooja Circular Saw Vs. CC 2003 (158) ELT 466 (CESTAT) that if adjudicating authority accepts one part of the expert's report, he should accept other part also.

Further, in terms of Para 8(c) of Central Board of Excise and Customs Circular No. 4/2008 dated 12.02.2008, providing guidelines for import of old & used goods, a local Chartered Engineer's Certificate may be accepted.

1.19 In view of above discussed facts, the noticee had mis-declared the imported cradle in respect of description in their import documents filed under Section 46 of the Customs Act,

1962 with intent to evade Customs duty and rendered the imported goods liable for confiscation under Section 111(m) of Customs Act, 1962.

1.20 In view of the aforesaid facts and circumstances, the noticee intentionally attempted to evade payment of Customs duty by showing the new goods as 'used' and also attempted to claim benefits of SHIS scheme, which they were not entitled to, by suppressing the facts from the Customs for evading Customs duty.

The exemption notification has to be construed strictly on its own wordings, as held in various judgments of Hon'ble Supreme Court. Some of which are:

In the Commissioner of Central Excise, Trichy Vs. Rukmani Pakkwell Traders [(2004) 11 SCC 801], the Supreme Court has held:

"5..... It is settled law that exemption notifications have to be strictly construed. They must be interpreted on their own wordings. Wordings of some other notification are of no benefit in construing a particular provision."

In Kohinoor Elastic (P) Ltd. Vs. Commissioner of Central Excise, Indore ((2005) 7 SCC 528), the Apex Court has held:

"7. When the wordings of the notifications are clear and unambiguous they must be given effect to. By a strained reasoning benefit cannot be given when it is clearly not available."

In the Commissioner of Central Excise, Chandigarh Vs. M/s Mahaan Dairies ((2004) 11 SCC 798), the Supreme Court has held:

"8. It is settled law that in order to claim benefit of a notification, a party must strictly comply with the terms of the notification. If on wordings of the notification the benefit is not available, then by stretching the words of the notification or by adding words to the notification benefit cannot be conferred...."

1.21 Section 46(4) of the Customs Act, 1962 reads, "The importer while presenting a bill of entry shall at the foot thereof 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, relating to the imported goods."

Thus, it is enjoined upon importer to make a truthful declaration in the Bill of Entry while affecting imports. Further, consequent upon amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' has been introduced in the Customs Act, 1962. Section 17 provides for self-assessment of duty on imported goods by the importer by filing a Bill of Entry in electronic form. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration.

1.22 Under the self-assessment scheme, the department has placed enormous faith on the importers so the importers have to ensure that they declare correct classification, applicable rate of duty, value, and correctly claim the benefit of exemption notifications, in respect of the imported goods while presenting Bill of Entry. Thus, with the introduction of self-assessment by changes in Section 17, it is responsibility of the importer to declare the correct description, classification, value, and correctly claim exemptions/pay the duty applicable in respect of imported goods.

In the subject Bill of Entry, the noticee declared wrong description and value of the goods and also claimed exemption under notification No. 104/2009 dated 14.09.2009. Further, the noticee made a declaration that the particulars were correct. However, the investigation revealed that the description was not correct and the condition of the said notification was not fulfilled. Thus, the noticee resorted to mis-declaration & suppression of vital information relevant for assessment of goods and eligibility of exemption and rendered themselves liable for penal action.

1.23 The Customs duty not-paid on account of mis-declaration is liable to be recovered from them under the provision of Section 28(4) of the Customs Act, 1962. Further, as the Customs duty was not paid and exemption under the aforesaid notification was claimed and availed by resorting to mis-declaration & suppression of facts, the noticee have rendered themselves liable to penal action under Section 114A of the Customs Act 1962.

1.24 Further, the correct value of the goods is liable to be re-determined to Rs. 24 Crore on the basis of valuation report submitted by the Chartered Engineer, as discussed above. Rules 4 to 8 of the Customs Valuation (Determination of Value of Import Goods) Rules, 2007 cannot be used for re-determination of the value of the goods for the reasons discussed above. It appears that the noticee mis-declared the imported cradle and attempted to avail undue benefit under notification No. 104/2009-Customs dated 14.09.2009. Therefore, the Customs duty amounting to Rs. 6,71,63,370/- is liable to be recovered from the noticee under Section 28(4) of the Customs Act, 1962. As the aforesaid acts of mis-declaration and suppression of facts committed by the noticee has led to non-payment of the Customs duty amounting to Rs. 6,71,63,370/- on the import of the imported goods, they are liable to penal action under Section 114A of the Customs Act, 1962. The details of the said non-paid duty of Rs. 6,71,63,370/- are as under:

Sl.	SHIS	License	Port, Bill of	Details of	Declared value of	Custom Duties against SHIS Customs	Re-determined	Total Customs Duties

NO.	License Nos, & date	Amount (Rs.)	Entry No. & date	goods Imported	the goods (in Rs.)	Duties debited wrongly Scrips (in Rs.	value of the goods (in Rs.)	liable to be recovered (in Rs.)
1	No. 05103896 81 dated 15.07.14	50 Lakh	Kandla Port, 3272004 dated 17.11.15	Turning Cradle LM 47.6 P#O2 along with accessories and Blade Shell Lifting Device LM 46.7/56. OP	160511851	42420473	240000000	67163370
2	0310786279 dated 02.07.14	2 Crore						
3	0310786280 dated 02.07.14	2 Crore						

1.25 In view of the above discussed facts, it appeared that the goods covered under subject Bill of Entry, collectively valued at Rs. 24 Crore, are liable for confiscation under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962 inasmuch as the noticee mis-declared the description of the goods and wrongly claimed exemption under notification No. 104/2009-Customs dated 14.09.2009 to which they were not entitled. By rendering the aforesaid goods liable to confiscation by their acts of omission and commission as discussed above, the noticee have rendered themselves liable to penal action under Section 112(a) of the Customs Act, 1962.

1.26 In view of above, show cause notice F. No. 8/43-13/SUB/2015-15 dated 26.05.2016 and its corrigendum F. No. 8/43-13/SI issued to the noticee calling upon them to show cause to the Principal Commissioner of Customs, Customs House, Kandla, as to why:-

(i) The declared FOB value of the imported goods covered under Bill of Entry No. 3272004 dated 17.11.2015 as Rs. 16,05,11,851/- should not be rejected in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and re-determined as Rs. 24,00,00,000/- on the basis of value determined by the Chartered Engineer;

(ii) The imported goods covered under Bill of Entry No. 3272004 dated 17.11.2015, valued at Rs. 24,00,00,000/-, should not be confiscated under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962 and as to why redemption fine in lieu of confiscation of goods should not be imposed on the said goods under Section 125 of the Customs Act, 1962;

(iii) Customs duty amounting to Rs. 6,71,63,370/- (Rupees Six Crore Seventy One Lakh Sixty Three Thousand Three Hundred Seventy), not-paid by them on the said goods, should

not be demanded and recovered from them under the provisions of Section 28(1) of the Customs Act, 1962;

(iv) The amount of Rs. 4,24,20,473/- and Rs. 61,85,725/- deposited during investigations and the B.G. amounting to Rs. 1,86,00,000/- executed on the directions of the Hon'ble High Court of Gujarat should not be adjusted and appropriated towards the liability arising on adjudication on account of duty, fine, penalty and interest;

(v) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962; and

(vi) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

1.27 The above proceedings initiated vide SCN dated 26.05.206 culminated in Order-in-Original No. KDL/COMMR/SKA/25/2017-18 dated 15.02.2018, passed by Ld. Commissioner of Customs, Kandla, wherein adjudicating authority confirmed the demand raised in the SCN and redetermined the assessable value as INR 24 crores based on the valuation done by the Chartered Engineer Report dated 30.12.2015 and passed following order.

(i) I reject declared assessable value of Rs. 16,05,11,851/-, under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. I also order to re-determine the assessable value of the same as Rs. 24,00,00,000/- under Section 14 of the Customs Act, 1962 for the goods covered under Bill of Entry No. 3272004 dated 17.11.2015.

(ii)I order confiscation of seized goods covered under Bill of Entry No. 3272004 dated 17.11.2015, which were cleared on provisional release, under Section 111(m) and Section 111(o) of the Customs Act, 1962. Since the goods were provisionally released on execution of bond and furnishing Bank Guarantee of Rs. 1,86,00,000/-, I impose redemption fine of Rs. 1,86,00,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962. I order to enforce the Bond and encash Bank Guarantee towards redemption fine.

(iii) I confirm Customs duty of Rs. 6,71,63,370/- (Rupees Six Crore Seventy One Lakh Sixty Three Thousand Six Hundred Seventy) in respect of goods covered under Bill of Entry No. 3272004 dated 17.11.2015, on the re-determined assessable value of Rs. 24,00,00,000/- from M/s. LM Wind Power Blades (India) P. Ltd., under Section 28(1) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962. I also order to adjust and appropriate the amount of Rs. 4,86,06,198/- (Rs. 4,24,20,473/- calculated on their declared value & Rs. 61,85,725/- being 25% of the differential duty, as per Hon'ble High Court's order), already deposited by M/s. LM Wind

Power Blades (India) P. Ltd. towards their duty liability under the Bill of Entry No. 3272004 dated 17.11.2015.

(iv) I impose penalty of Rs. 6,71,63,370/- plus an amount of interest payable on confirmed duty, upon M/s. LM Wind Power Blades (India) P. Ltd., under Section 112(a) of the Customs Act, 1962.

1.28 . Thereafter, aggrieved by the Order-in-Original No. KDL/COMMR/SKA/25/2017-18 dated 15.02.2018 the M/s. L M Wind Power (Noticee) filed an appeal before Hon'ble CESTAT, Ahmedabad vide AppealNo. C/11588/2018.

1.29. The Hon'ble CESTAT vide Final Order No. 10531/2024 dated 29.02.2024 allowed theappeal filed by the Appellants by way of remand. The Hon'ble CESTAT, Ahmedabad,directed the Ld. Commissioner to grant a date for cross-examination of Mr. N.J. Lalwani.

The relevant part of the decision is extracted as under:

"9. We have examined the facts stated in para 3.2 of the impugned order. We hold that all necessary documents have been provided to the appellant. In the interest of justice, we give one last opportunity to the appellant to cross-examine Shri N J Lalwani. From the record, it is apparent that there was a deliberate delay on the part of the appellant to cross-examine the Shri N J Lalwani. The reasons why shri N J Lalwani change his strance will be helpful in reaching proper conclusion in this case. In this background, in the interest of justice we set aside the order and remand the matter back to the Commissioner. The commissioner will give two dates for cross-examination of Shri N J Lalwani and the appellant can avail any one of the dates. The Commissioner will follow the principle of natural justice and grant personal hearing to the appellants." The Copy of the order dated 29.02.2024 is marked and enclosed as Annexure-24..

1.30 In pursuance of the directions of the Hon'ble CESTAT, Ahmedabad, the date for cross-examination of Shri N.J. Lalwani was fixed as 26.09.2025. Accordingly, the cross-examination of Shri N.J. Lalwani was conducted on the said date through virtual mode by Shri Manish Jain, Advocate and authorised representative of M/s L M Wind Power Blades India Pvt. Ltd., in the presence of the Commissioner of Customs, Custom House, Mundra. The proceedings of the said cross-examination are recorded hereunder.

CROSS EXAMINATION OF CHARTERED ENGINEER SHRI N.J. LALWANI IN VIRTUAL MODE THORUGH WEBEX BY SHRI MANISH JAIN, ADVOCATE OF M/S L M WIND POWER BLADES INDIA PVT. LTD. IN RESEPCT OF SHOW CAUSE NOTICE F.NO. S/43-13/SIIB/2015-12, DATED 26.05.2016 ISSUED BY THE COMMISSIONER, CUSTOM HOUSE, KANDLA IN THE PRESENCE OF HON'BLE COMMISSIONER, CUSTOM HOUSE, KANDLA

DATE OF CROSS EXAMINATION- 26.09.2025 **TIME- 05:30 PM**

Q 1 (Mr. Jain, Advocate): Please inform about your academy qualifications.

A (Mr. Lalwani): I am a Graduate Mechanical Engineer, Fellow of the Institute of Engineers, Fellow of the Institute of Marine Engineers and Fellow of the Institute of Valuers. I am also a Certified Valuer. I have professional experience in shipping, marine engineering, and valuation work.

Q 2: Are you aware of CBEC Circular No. 25/2015 - Customs dated 15th October, 2015, which provides for valuation of second-hand machinery?

A: At present, I am not aware. But when I was working and fully operational, I was fully aware of the various circulars issued from time to time by the Customs Authorities and guidelines issued by the Customs Authorities.

Q 3: During that time, you followed all the required circulars which were issued by the Customs Authorities?

A: Yes, naturally we are expected to. Being the Chartered Engineer, we are supposed to follow the guidelines and various circulars subjected to the technical verification of this work.

Q 4: When you issue a certificate, do you physically verify the goods?

A: Yes, naturally, it is our duty to do the 100 % inspection. We are appointed by the authorities for that purpose only. However, depending on circumstances—like the way cargo is stored or handled, practical limitations may arise.

Q5: Have you ever issued a certificate without physical verification of goods?

A5: Generally, no. But if the cargo is not fully accessible or cannot be unloaded, we rely on documents in good faith. In such cases, re-inspection and revised certification may follow.

Q6: When you do not inspect physically, do you mention that in your certificate?

(Manish Jain)
Advocate and representative of
M/s LM Wind Power Blades India Pvt. Ltd.

(N. J. Lalwani)
Chartered Engineer (Mech.)

A6: I do not remember the exact wording or format used in such cases, as I have not conducted inspections in recent years. I am 83 years old and have health limitations.

Q7: Is physical verification an essential condition for issuing a certificate?

A7: Yes. It is expected of every Chartered Engineer, but it may not be technically feasible to perform 100% physical verification every time. In such cases, re-examination or expert consultation is done.

Q8: Do you issue a certificate only after being fully satisfied?

A8: Yes. But the importer is equally responsible to provide correct documentation and full cooperation. The Chartered Engineer can re-examine the goods until fully satisfied.

Q9: Do you have expertise in windmill manufacturing machinery and its parts?

A9: I am a Mechanical Engineer. By training, I have general mechanical expertise but not specialized experience in windmill manufacturing machinery.

Q10: Can a single mechanical engineer inspect such complex machinery?

A10: No. Modern machinery includes electrical, electronic, and hydraulic components. It is not possible for one engineer to inspect every technical aspect in depth.

Q11: Are you familiar with the equipment called "Turning Cradle"?

A11: It is a highly technical and specialized machine used in the wind energy sector. However, I am not updated on recent developments as I retired after COVID-19.

Q12: How do you assess the value of such machinery?

A12: By studying the literature, technical documents, and available data; examining efficiency, design, and cost elements; and conducting market research. Valuation is complex and not purely mathematical.

Q13: Is costing an important factor in valuation?

A13: Yes. Costing includes the cost of material, design, manufacturing, and technological inputs. It is a key component in determining value.

Q14: Is the cost of customized machinery different from general machinery?

A14: Yes. Made-to-order or tailor-made machinery is costlier. When machines are produced in bulk, costs are divided, reducing per-unit value.

Q15: If a foreign supplier provides a complete cost sheet for customized machinery, should it be accepted?

A15: It should be considered, as customized machinery has distinct cost parameters compared to standard ones.

Q16: How do you determine the value in such cases?

A16: We review the Bill of Entry, invoices, technical literature, and conduct data and market analysis. Competitor pricing and technological factors are also examined.

Q17: How many manufacturers of windmill machinery exist globally?

A17: I cannot comment precisely now. Earlier, there were very few manufacturers, but with the expansion of renewable energy, the number has increased.

Q18: Have you previously issued certificates for windmill machinery?

A18: Possibly yes—during my tenure at Kandla and Mundra ports—but I do not recall specific cases. It depended on the availability of Chartered Engineers at the time.

Q19: Any final remark?

A19: I have answered to the best of my ability considering my age and limitations. I thank the officers for their patience and understanding.

(Manish Jain)
Advocate and representative of
M/s LM Wind Power Blades India Pvt. Ltd.

(N. J. Lalwani)
Chartered Engineer (Mech.)

2. THE SHOW CAUSE NOTICE: ALLEGATIONS IN BRIEF

2.1 The Show Cause Notice raises six substantive issues for adjudication: (i) rejection of the declared transaction value of Rs. 16,05,11,851/- under Rule 12 read with Section 14 of the Customs Act and re-determination thereof as Rs. 24,00,00,000/- under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ("Valuation Rules"); (ii) confiscation of goods for mis-declaration under Sections 111(m) and 111(o) of the Customs Act; (iii) recovery of short-paid Customs duty of Rs. 6,71,63,370/- under Section 28(1) read with Section 28(4); (iv) appropriation of amounts deposited during investigation; (v) penalty under Section 112(a) for rendering goods liable to confiscation; and (vi) penalty under Section 114A for duty short-payment arising from wilful mis-statement or suppression.

2.2 The gravamen of the case is that the Noticee declared technologically sophisticated and physically new industrial machinery as "old and used" in the Bill of Entry, availed unwarranted duty concessions under SHIS Scrips restricted to the Plastic Sector, and significantly under-assessed the value of imported goods — resulting in non-payment of substantial Customs duty.

3. SUBMISSIONS OF THE NOTICEE: A SUMMARY

3.1 The Noticee, through its written submissions dated 28.11.2025 and during cross-examination, broadly advances the following contentions:

(a) That Shri N.J. Lalwani is not an expert in windmill manufacturing machinery, as he himself admitted during cross-examination that he does not have specialized experience in windmill machinery and that a single mechanical engineer cannot inspect such complex equipment.

(b) That the Re-inspection Certificate dated 30.12.2015 is vague as it does not refer to market price or contemporaneous prices for similar goods; that the Certificate does not consider the Cost Production Report dated 10.12.2015 furnished by the foreign supplier, which the Chartered Engineer himself acknowledged should be considered.

(c) That the CE was not changed despite request; that the Panel Report dated 10.12.2015 is not signed by any authorized representative of the Noticee; and that the initial Form-B Certificate dated 16.10.2015 and the subsequent certificate contradict each other and both should therefore be ignored.

(d) That the Noticee has furnished substantial evidence — including photographs, visa documents, a list of 150 wind blades manufactured, a Service Engineer Report from PH Wind Solutions, the Cost Accountant Certificate, Site Acceptance Test records, and invoices showing dismantling charges — establishing that the goods were old and used.

(e) That the declared transaction value should be accepted under Rule 3 of the Valuation Rules, as the relationship between the Noticee and LM China did not influence the price; that the transaction value declared closely approximates the computed value as certified by the Cost Accountant; and that no contemporary import data for identical goods is available to reject the transaction value.

(f) That the Noticee is entitled to the benefit of SHIS Scrips since wind mill blades are predominantly made of plastic and the Noticee holds a Registration-cum-Membership Certificate (RCMC) from the Plastic Export Promotion Council.

(g) That the goods are not liable to confiscation under Sections 111(m) or 111(o) as no mis-declaration has been made; that mere value enhancement is not a ground for confiscation; and that no penalty under Sections 112(a) or 114A is imposable in the absence of fraud or wilful mis-statement.

4. DISCUSSION AND FINDINGS

I have carefully considered the Show Cause Notice, the first Order-in-Original dated

15.02.2018, the directions of the Hon'ble CESTAT, Ahmedabad vide Final Order No. 10531/2024 dated 29.02.2024, the cross-examination of Shri N.J. Lalwani conducted on 26.09.2025, the written submissions dated 28.11.2025, and all material on record. For reasons set out in detail hereinafter, I find that the case stands established on all material particulars and the allegations in the Show Cause Notice are confirmed.

4.1 ISSUE I: CONDITION OF GOODS — WHETHER NEW OR USED

(The Threshold Factual Question)

4.1.1 The fundamental question in this case is whether the subject goods — a Turning Cradle LM 47.6 P#02 and a Blade Shell Lifting Device LM 46.7/56.0P — were new and unused at the time of importation or were "old and used" as declared by the Noticee in the Bill of Entry. Everything else — the valuation, the applicability of SHIS Scrips, confiscation, and penalties — follows from the answer to this question.

4.1.2 The Department relies on a convergence of evidence: (i) initial examination by Customs officers on 18.11.2015 revealing the appearance of new and unused goods; (ii) physical inspection by Shri N.J. Lalwani on 19.11.2015 recording the goods as "Unused and New"; (iii) a multi-member Panel Report dated 10.12.2015 prepared in the presence of the Noticee's own representatives recording detailed findings of complete absence of installation and operational wear; (iv) Shri Lalwani's supplementary report dated 09.12.2015 confirming the Panel findings; and (v) the Re-inspection Certificate dated 30.12.2015 reaffirming the goods as new and unused at a value of Rs. 24 crore.

4.1.3 Against this, the Noticee relies on: (i) photographs and visa documents pertaining to travel of engineers to China; (ii) a self-prepared list of 150 wind blades allegedly manufactured using the subject goods in China; (iii) a report of Mr. Ashley, Service Engineer of PH Wind Solutions; (iv) an internal Cost Production Report dated 10.12.2015 from the related foreign supplier; (v) invoice showing 'packing charges' stated to include dismantling charges; (vi) statement of Ms. Chandanashree D.; and (vii) the initial Form-B Certificate dated 16.10.2015 of Shri Lalwani (later cancelled by him).

4.1.4 Having examined all the evidence, I find that the direct physical evidence overwhelmingly establishes the imported goods to be new and unused. The following findings are determinative:

(i) CHARTERED ENGINEER'S FINDING — PHYSICAL INSPECTION: Shri N.J. Lalwani physically inspected the subject goods on 19.11.2015 after they were uncovered. He unequivocally certified them as "Unused and New" and expressly cancelled his earlier Form-B Certificate dated 16.10.2015, acknowledging that the earlier certificate was document-based and issued without physical inspection. This revision, far from undermining his credibility, actually demonstrates his

professional integrity in correcting a certificate that he himself accepted was erroneous.

(ii) PANEL REPORT DATED 10.12.2015: This report carries special evidentiary weight. It was prepared at the Noticee's own request, by a multi-member panel constituted in the presence of the Noticee's Plant Director (Shri Rajesh Aithal), another representative (Shri Zbigniew Kowalczyk) and the Customs Broker (Shri H.C. Tharwani). The Panel made the following specific findings on physical examination: (a) the main control system and other parts declared as "accessories" were in fact major, high-technological components of the cradle; (b) there was no evidence or sign of any nature that the equipment had been taken out for installation; (c) all connecting points, sockets and wires showed no sign of installation; (d) hooks and hydraulic cylinders, the control system and all parts that would come in contact with products during use showed no sign of use; and (e) there was no sign or evidence that the cradle was used even for trial purposes. These are objective physical findings — not inference or suspicion — recorded contemporaneously by qualified officers and an expert in the presence of the Noticee's representatives.

(iii) ABSENCE OF INSTALLATION OR WEAR MARKERS IS DECISIVE: In industrial machinery of this nature — a specialised Turning Cradle and Blade Shell Lifting Device used in wind blade manufacturing — any meaningful operational use would inevitably leave physical traces: wear on contact surfaces, marks on hydraulic components, scratches on hooks, connections bearing signs of repeated use, and the kind of minor mechanical deterioration that characterises operated equipment. The Panel found none of these. This categorical absence of use-indicators is the most proximate, reliable and contemporaneous evidence of the condition of the goods.

(iv) NOTICEE'S OWN OFFICER FAILED TO ESTABLISH USE: Shri Anand S.R., the Noticee's own Senior Manager (Sourcing & Logistics), was repeatedly asked across three days of statement recording to produce corroborating evidence for the claimed use of the cradle in China. He admitted that he could not provide any such evidence. This is significant because the Noticee is the entity that claims prior use. If the cradle had indeed manufactured 150 wind blades in China, production logs, operational records, maintenance entries, or third-party certifications would be routine corporate documents readily available to a manufacturing entity of the Noticee's stature.

(v) MS. CHANDANASHREE D.'S ADMISSION: She admitted that she did not see the cradle in running or functional condition during her visit to China. Her opinion of the cradle being "used" was, by her own admission, entirely derived from

data provided by LM China — the related party seller — and not from personal observation.

(vi) PHOTOGRAPHS AND VISA DOCUMENTS: The CD containing approximately 70 JPEG files and two PDF files was examined. No video file establishing functional operation of the subject cradle was found. The photographs do not bear date stamps, precise location markers or technical captions that would conclusively correlate them to the specific cradle under import and to its operational use in China. As rightly observed in the earlier Order-in-Original, self-prepared documents and uncorroborated photographs cannot displace the findings of a multi-member physical inspection conducted in the Noticee's own presence.

(vii) MR. ASHLEY'S REPORT (PH WIND SOLUTIONS): The Noticee submits that a Service Engineer's report notes that certain minor parts required replacement — 60 clamp covers, stag-light plus 4 bulbs, an enable switch, seal-tite, and a battery — as indicative of the cradle being "old and used." This argument is not persuasive. The items noted are consumable and operational-maintenance components of the type that may require attention in newly installed equipment as part of commissioning. Replaceable consumables such as bulbs, batteries and seals do not establish that the primary machinery was used in production. This interpretation would be inconsistent with the finding of zero operational wear on structural and high-load-bearing components. Further, the Ashley report itself is a post-importation service document, not a pre-import inspection by a neutral party.

(viii) LIST OF 150 BLADES: This is a self-prepared internal document of the Noticee and is entirely unverified. There is no third-party production audit, no independent certification by Gamesa (the alleged buyer), no quality inspection records and no shipping documentation evidencing the transport of 150 blades. In the context of the cogent physical evidence on record, this uncorroborated internal document cannot be given probative weight.

4.1.5 I therefore hold, as a finding of fact, that the imported cradle was new and unused at the time of importation. The declaration in the Bill of Entry that the goods were "old and used" was factually incorrect.

4.2 ISSUE II: COMPETENCE OF SHRI N.J. LALWANI AND RELIABILITY OF HIS REPORTS

4.2.1 The Noticee's primary challenge to the departmental case, following cross-examination, is that Shri Lalwani is not an expert in windmill manufacturing machinery and that a single mechanical engineer cannot inspect such complex machinery. Reliance is

placed on answers given during cross-examination (Q9-A9, Q10-A10, Q11-A11) and on decisions in Sharu Steels Pvt. Ltd. v. Commissioner of Customs, Amritsar [2018 (362) ELT 497 (Tri.-Chan.)], Commissioner of Customs, Kolkata v. Bhawani Enterprise [2017 (353) ELT 234 (Tri.-Kolkata)], and Commissioner of Customs, Amritsar v. Neeldhara Transfers [2012 (284) ELT 673 (Tri.-Del.)].

4.2.2 I do not accept this contention for the following reasons.

(i) PURPOSE OF INSPECTION WAS CONDITION AND VALUATION, NOT DESIGN ENGINEERING: The engagement of a Chartered Engineer in Customs proceedings is for the purpose of assessing the physical condition, age and assessable value of imported machinery — functions that fall squarely within the competence of a practising Mechanical Engineer. Such an engineer is trained to identify structural integrity, operational wear, connection status, hydraulic component condition and mechanical configuration. No specialized expertise in the aerodynamics of wind blades or in the electronic control systems of wind turbines was required to determine whether the equipment had been installed, operated and dismantled. The observations were about surfaces, sockets, hydraulic fittings and mechanical joints — subjects firmly within mechanical engineering.

(ii) CROSS-EXAMINATION ANSWERS DO NOT ESTABLISH INCAPACITY: In response to Q10, Shri Lalwani stated that "Modern machinery includes electrical, electronic, and hydraulic components. It is not possible for one engineer to inspect every technical aspect in depth." This is a general observation about comprehensive technical inspection of complex modern machinery. It does not mean that a Mechanical Engineer cannot examine physical indicators of use — connecting points, hydraulic cylinders, hooks, sockets, surface wear — which is what was done here. The cross-examination answer acknowledges complexity; it does not constitute an admission of incapacity to assess the fundamental question of whether the goods were new or used.

(iii) THE INSPECTION WAS MULTI-LAYERED AND WITNESSED: Critically, the findings were not based solely on Shri Lalwani's individual opinion. The Panel Report dated 10.12.2015, prepared by three Deputy Commissioners, one Appraising Officer and Shri Lalwani, recorded identical findings in the presence of the Noticee's Plant Director and other representatives. If the findings were incompetent or erroneous, the Noticee's own senior engineers present during the inspection would have been expected to register specific objections. No such contemporaneous objection is on record.

(iv) CANCELLATION OF FORM-B AND SELF-STATEMENT: The Chartered Engineer himself submitted his self-statement dated 19.11.2015 explaining why his

initial Form-B certificate was erroneous — because he had not actually inspected the goods when he issued it. His subsequent inspection, twice confirmed (19.11.2015 and 09.12.2015), reached a consistent conclusion. A self-correction based on actual inspection enhances, not diminishes, the reliability of the subsequent finding.

(v) DISTINGUISHED FROM CITED CASES: The decisions in Sharu Steels, Bhawani Enterprise and Neeldhara Transfers address situations where transaction value was enhanced solely on the basis of a CE certificate without independent grounds for rejection and without regard to the physical condition and misdeclaration. In the present case, the foundation is not mere value enhancement but the physical findings of the Panel and the Chartered Engineer regarding the condition of goods, backed by the statements of the Noticee's own employees who could not corroborate their claims. The Chartered Engineer's certificate is not the sole evidence; it is part of a comprehensive body of evidence including the Panel Report, examination findings, and the admissions of the Noticee's own witnesses.

4.2.3 Accordingly, I hold that the competence of Shri N.J. Lalwani to assess the physical condition and value of the subject goods is established, and his reports are reliable evidence properly admissible in these proceedings.

4.3 ISSUE III: VALIDITY OF THE RE-INSPECTION CERTIFICATE DATED 30.12.2015

4.3.1 The Noticee contends that the Re-inspection Certificate dated 30.12.2015 is vague, does not cite market price or contemporaneous import data, does not reference the Cost Production Report dated 10.12.2015, and therefore cannot be relied upon for value enhancement. Reliance is placed on Iquira Inc. v. Commissioner of Customs, Chennai [2004 (170) ELT 583 (Tri.-Bang.)] and Sri Venkatesh Enterprises v. Commissioner of Customs, Tiruchirapalli [2005 (192) ELT 534 (Tri.-Del.)].

4.3.2 I do not accept this contention for the following reasons:

(i) THE CERTIFIED VALUE FOLLOWS PHYSICAL INSPECTION, NOT ASSUMPTION: The Re-inspection Certificate is not a bare-assertion certificate. It is issued following multiple physical inspections of identified machinery of known specifications and manufacture date. The machinery was manufactured in December 2014. Its acquisition cost was USD 21,60,507.2 — a figure admitted by the Noticee's own representative. The Chartered Engineer, in assessing the value at Rs. 24 crore, was dealing with a known quantity of new, uninstalled machinery of specific type, specification and manufacture year. This is fundamentally different from the situation in Iquira Inc. (dealing with second-hand colour monitors with no

identified brand, model or specific comparable) or Sri Venkatesh Enterprises (where goods were old photocopier parts without brand name, year of manufacture or model numbers).

(ii) RESIDUAL METHOD DOES NOT REQUIRE CONTEMPORANEOUS IMPORTS: In the sequential application of the Valuation Rules, Rules 4 and 5 require comparable imports of identical or similar goods. The present case involves unique, customised industrial equipment — a bespoke Turning Cradle and Blade Shell Lifting Device — for which no contemporaneous imports of identical or similar goods were or could be available. When it is inherently impossible to apply Rules 4 and 5 due to the uniqueness of the goods, the absence of such comparables in the CE certificate is not a defect; it is a reflection of the accurate factual position that justified proceeding to Rule 9. Under Rule 9 (the residual or fall-back method), the standard is "reasonable means consistent with the principles and general provisions of the Rules" — not comparative market data which does not exist.

(iii) COST PRODUCTION REPORT IS FROM A RELATED PARTY AND LACKS INDEPENDENT VERIFICATION: The Noticee argues that the Chartered Engineer should have considered the Cost Production Report dated 10.12.2015 furnished by LM China, the related foreign supplier. Under Rule 3(3) of the Valuation Rules, the entire problem with the transaction value is that the buyer and seller are related. In this context, accepting an internal cost sheet prepared by the related seller — without any independent corroboration, third-party audit or neutral agency verification — as the determinative basis of value would defeat the entire purpose of customs valuation law. The WTO Customs Valuation Agreement (Article 1.2) recognises that in related party transactions, the mere existence of a transaction price does not guarantee its reliability. Rule 3(3)(b) of the Valuation Rules mandates independently verifiable benchmark values. An internal cost sheet from the same related entity does not constitute such an independent benchmark.

(iv) CIRCULAR NO. 4/2008 EXPRESSLY PERMITS CE-BASED VALUATION UNDER RULE 9: CBEC Circular No. 4/2008-Customs dated 12.02.2008 specifically clarifies that in the absence of a load port certificate, valuation of second-hand (or, as in this case, ostensibly second-hand but physically new) machinery may be undertaken under Rule 9 on the basis of a Chartered Engineer's certificate issued by an empanelled Chartered Engineer. This practice is consistently upheld in Rex Printing Press v. Commissioner of Customs, Kolkata [2005 (184) ELT 73 (CESTAT)], Swan Press v. Commissioner of Customs [2005 (184) ELT 93 (CESTAT)], and Pooja Circular Law v. Commissioner of Customs [2003 (158) ELT 466 (CESTAT)].

4.3.3 Accordingly, the Re-inspection Certificate dated 30.12.2015 is held to be valid, reliable and fit for consideration as the basis of valuation under Rule 9.

4.4 ISSUE IV: PROCEDURAL OBJECTIONS — PANEL REPORT, CHANGE OF CE, FORMAT OF CERTIFICATE

4.4.1 PANEL REPORT WITHOUT NOTICEE'S SIGNATURE: The Noticee contends that the Panel Report dated 10.12.2015 is unreliable because it does not bear the signature of the Noticee's authorised representative. This objection is not sustainable. The Panel was constituted at the Noticee's own request. The examination was conducted in the presence of the Noticee's Plant Director and another representative, as well as the Customs Broker. The Noticee had full opportunity to object to any specific finding during or immediately after the examination. No such contemporaneous objection was raised. An official inspection report of a statutory body does not require the signature of the subject of the inquiry to be admissible as evidence; its evidentiary value derives from the official capacity and the physical examination conducted. The absence of the importer's signature does not affect the contents of the report or the integrity of the inspection.

4.4.2 NON-COMPLIANCE WITH CIRCULAR FORMAT: The contention that the reports do not conform to Circular No. 4/2008-Cus. or Circular No. 25/2015-Cus. formats does not render them void. Circulars are administrative instructions intended to bring uniformity; they do not override the statute or create substantive rights. What is legally relevant is whether inspection was conducted, whether the findings are based on actual examination, and whether they are technically supportable — all of which conditions are satisfied here. The evidentiary value of a report is determined by its substance and reliability, not by its format.

4.4.3 NON-REPLACEMENT OF CHARTERED ENGINEER: The Noticee submits that a fresh examination by a different independent Chartered Engineer was sought but denied. In the context of this case, the Chartered Engineer had already conducted multiple inspections and issued detailed findings. The Circular does not create an absolute right in the importer to insist on a replacement CE at the investigation stage, particularly absent any demonstrated bias or mala fide. The CESTAT's remand was specifically for cross-examination of Shri Lalwani — which was duly conducted. The cross-examination itself was the mechanism provided to test the findings, and it has been fully availed of.

4.4.4 CONTRADICTION BETWEEN TWO CERTIFICATES: The Noticee's argument that contradictory certificates require both to be ignored fails for a specific factual reason in this case: the earlier Form-B Certificate dated 16.10.2015 was not a "contradictory expert opinion" — it was expressly cancelled by the issuing Chartered Engineer himself, for a

stated reason (not being based on physical inspection), in his self-statement dated 19.11.2015. A formally withdrawn and cancelled certificate does not constitute a valid, subsisting expert opinion. There is therefore no genuine conflict between two simultaneously subsisting expert opinions. The subsequent certificates, based on physical inspection, stand alone.

4.5 ISSUE V: REJECTION OF DECLARED TRANSACTION VALUE AND RE-DETERMINATION OF VALUE

4.5.1 FRAMEWORK: Section 14 of the Customs Act, 1962 provides that the value of imported goods shall be the transaction value, i.e., the price actually paid or payable, as per the Customs Valuation Rules. Rule 3(1) of the Valuation Rules establishes transaction value as the primary basis. However, Rule 3(3) introduces a crucial qualification for related party transactions: where the buyer and seller are related, the transaction value shall be accepted only if (a) examination of the circumstances of sale indicates the relationship did not influence the price, or (b) the declared value closely approximates to independently verifiable benchmark values (transaction value of identical/similar goods to unrelated buyers, deductive value, or computed value). Rule 12 empowers the proper officer to reject the declared value upon reasonable doubt.

4.5.2 GROUNDS FOR REJECTION UNDER RULE 12: Rule 12, Explanation (iii)(d), specifically recognises mis-declaration of goods in parameters such as "description, quality, quantity, country of origin, year of manufacture or production" as a ground for doubting the truth or accuracy of the declared value. In the present case, the goods were declared as "old and used" machinery. They have been found to be new and unused. This constitutes a mis-declaration of the condition and description of the goods — a classic and well-recognized ground for invoking Rule 12.

4.5.3 RELATED PARTY TRANSACTION: The admittedly related party relationship between the Noticee and LM China (the foreign shipper) constitutes an independent ground for scrutinizing the declared value under Rule 3(3). Admission in the statement of Shri Anand S.R. that LM China is a related party, and indeed is "a part of the Noticee," imports the full rigour of Rule 3(3). The burden was on the Noticee to establish either (a) that the relationship did not influence the price, or (b) that the declared value closely approximates to the benchmark values in Rule 3(3)(b). Neither burden has been discharged: there is no evidence of comparable sales to unrelated buyers; no independently verified deductive value; and the computed value relied upon is derived from an internal cost sheet of the same related supplier.

4.5.4 NOTICEE'S DEPRECIATION ARGUMENT: The Noticee has attempted to justify the declared value by applying the depreciation schedule under Circular No. 493/124/86-Cus dated 19.11.1987 to an assumed original value of USD 23,50,000, arriving at an

assessable value of approximately USD 19,67,420 or USD 21,20,640. This exercise, while creative, is fundamentally flawed. The depreciation circular applies to second-hand goods that have actually been used. Since the imported cradle has been found to be new and unused, there is no basis to apply depreciation at all. The entire premise of the Noticee's depreciation computation is the very fact that is in dispute and has been found against the Noticee.

4.5.5 APPLICATION OF RULE 9 — RESIDUAL METHOD: Upon rejection of the declared value, Rules 4 and 5 are inapplicable due to the unique, customised nature of the equipment with no comparable contemporaneous imports. Rule 7 (deductive method) and Rule 8 (computed method) are similarly inapplicable for want of resale data and independent computational elements. Valuation therefore proceeds under Rule 9 — the residual or fall-back method — which permits determination using "reasonable means consistent with the principles and general provisions of the Rules and Section 14." An empanelled Chartered Engineer's certificate following physical inspection of the specific goods constitutes such a reasonable means, as affirmed in multiple decisions cited above and as permitted by Circular No. 4/2008.

4.5.6 Rs. 24 CRORE IS LEGALLY SUSTAINABLE: The Chartered Engineer assessed the value of the goods as Rs. 24,00,00,000/- following physical inspection of new, unused goods of known type and manufacture date (December 2014). The original manufacturing cost of USD 21,60,507.2 (approximately Rs. 14 crore) was for production of the equipment. The value of new, uninstalled equipment of this type at the time of import (November 2015), taking into account the sophisticated technology involved, customisation, and market conditions, was assessed at Rs. 24 crore. The Noticee has not placed any independent, third-party market data to contradict this valuation. In the absence of any credible counter-evidence, the CE certificate-based valuation is confirmed.

4.5.7 DECISIONS CITED BY NOTICEE DISTINGUISHED: The decisions in New Copier Syndicate v. Commissioner of Customs [2015 (320) ELT 620 (Tri.-Bang.)] and U.P. State Bridge Corporation Ltd. v. Collector of Customs, Allahabad [2015 (321) ELT 389 (S.C.)] are distinguishable. These decisions hold that in a straightforward second-hand machinery import where the transaction value is the price paid upon an arm's length sale, rejection cannot be based merely on the absence of contemporaneous import data. In the present case, rejection is based on mis-declaration of the fundamental condition of the goods (new vs. used) and on the failure to satisfy the related party test under Rule 3(3). The principle in New Copier Syndicate does not immunize a transaction value that has been declared on a false premise (used goods) when the goods are actually new.

4.5.8 In view of the above, I hold that: (a) the declared FOB value of Rs. 16,05,11,851/- is rejected under Rule 12 read with Rule 3 of the Valuation Rules and Section 14 of the

Customs Act; (b) the assessable value is re-determined at Rs. 24,00,00,000/- under Rule 9 of the Valuation Rules read with Section 14 of the Customs Act.

4.6 ISSUE VI: ELIGIBILITY TO BENEFIT OF SHIS SCRIPS UNDER NOTIFICATION NO. 104/2009-CUSTOMS

4.6.1 The Noticee debited three SHIS Scrips (No. 0510389681, 0310786279 and 0310786280) purchased from M/s. Essar Steel India Ltd. towards duty payment on the subject goods. These scrips were expressly issued under and endorsed to the "Plastic Sector" in terms of Para 3.16.3 of FTP 2009-14. Notification No. 104/2009-Customs dated 14.09.2009 permits the benefit of SHIS Scrips for import of capital goods relating to the specific sector for which the scrip is issued.

4.6.2 The Noticee's case is that wind mill blades are predominantly made of plastic/composite materials and that its manufacturing activity therefore falls within the "Plastic Sector." The Noticee also relies on its RCMC issued by the Plastic Export Promotion Council.

4.6.3 I do not accept this contention. Wind Mill Blades are engineering components forming an integral part of Wind Operated Electricity Generators — a capital goods product classifiable under the Customs Tariff under Chapter 84/85 and specifically under Tariff Item 84129090 of the Customs Tariff Act, 1975. The essential character and industrial identity of this product is as an engineering/energy sector component, not a plastic article. The fact that fibre-reinforced plastic (FRP) or composite material is used in manufacturing does not metamorphose the industrial identity of the product from "wind energy equipment" to "plastic industry product." By this logic, any product with a plastic housing or component would qualify for the Plastic Sector SHIS — an outcome that would wholly undermine the sectoral specificity of the scheme.

4.6.4 The SHIS Scheme under Para 3.16.3 is a sector-specific incentive for technological upgradation in identified sectors. The FTP sectorally classifies industries on the basis of the product manufactured and the industrial category, not solely on the input material. The CESTAT in Rayalaseema Hi-Strength Hypo Ltd. v. Commissioner of Customs (Exports), Chennai has confirmed that SHIS scrips cannot be used for import of capital goods outside the designated sector. The RCMC from the Plastic Export Promotion Council is a procedural document for export facilitation and does not determine eligibility for a different scheme (SHIS) under the FTP. Indeed, the admission of Shri Sandeep Shah, Operation Controller of the Noticee, that the Noticee was not entitled to SHIS Scrips for this import is significant corroborative evidence.

4.6.5 The argument that the SHIS debit was withdrawn under protest does not cure the

ineligibility, as the Noticee should have first established entitlement. Paying duty in cash subsequently, under protest or otherwise, does not retroactively validate an otherwise ineligible SHIS utilization.

4.6.6 I therefore hold that the Noticee was not entitled to avail the benefit of SHIS Scrips endorsed to the Plastic Sector for the import of capital goods used in wind mill blade manufacturing. The claimed duty exemption under Notification No. 104/2009-Customs was ineligible and incorrectly availed.

4.7 ISSUE VII: DEMAND OF CUSTOMS DUTY

4.7.1 The differential duty has been computed on the re-determined assessable value of Rs. 24,00,00,000/- vis-à-vis the declared value of Rs. 16,05,11,851/-. On the declared value, SHIS Scrips worth Rs. 4,24,20,473/- were wrongly debited. The total Customs duty properly leviable on the re-determined value of Rs. 24 crore under merit rate is Rs. 6,71,63,370/-.

4.7.2 The demand having been issued under Section 28(1) by way of a Show Cause Notice, the provisions of Section 28(4) of the Customs Act (extended period) are applicable given the mis-declaration and suppression involved, as discussed in Section 4.8 below.

4.7.3 I confirm the demand of Customs duty of Rs. 6,71,63,370/- (Rupees Six Crore Seventy-One Lakh Sixty-Three Thousand Three Hundred Seventy) on the re-determined assessable value of Rs. 24,00,00,000/-, leviable on the subject goods covered under Bill of Entry No. 3272004 dated 17.11.2015.

4.7.4 Against this demand, the Noticee has already deposited Rs. 4,24,20,473/- (representing duty at the declared value) and Rs. 61,85,725/- (being 25% of differential duty, as directed by the Hon'ble High Court of Gujarat). The total amount deposited of Rs. 4,86,06,198/- shall be adjusted and appropriated towards the confirmed demand.

4.8 ISSUE VIII: CONFISCATION UNDER SECTIONS 111(m) AND 111(o)

4.8.1 Section 111(m) of the Customs Act provides that goods "which do not correspond in respect of value or in any other particular with the entry made under this Act" shall be liable to confiscation. Section 111(o) provides that goods exempted from duty subject to any condition, where the condition is not observed, shall also be liable to confiscation.

4.8.2 In the present case, Section 111(m) is squarely attracted. The goods imported were declared as "old and used" machinery. They have been found — on the basis of comprehensive physical evidence examined in detail above — to be new and unused machinery. The mis-declaration is not one of mere value but pertains to the fundamental nature, description and condition of the goods. This is not a case of an adjudicating authority merely enhancing the value of admittedly second-hand goods; it is a case where

the basic description declared in the Bill of Entry is false. The decisions cited by the Noticee on the proposition that "mere value enhancement does not justify confiscation" (Nitish Tools v. CC, CC Visakhapatnam v. Sree Nakoda Impex, etc.) are therefore not applicable. Confiscation under Section 111(m) is confirmed.

4.8.3 Section 111(o) is also attracted. The Noticee availed the benefit of SHIS Scrips for duty payment under Notification No. 104/2009-Customs — a conditional exemption. It has been found above (para 4.6) that this benefit was ineligible as the goods were capital goods for the wind energy sector, not the Plastic Sector. The condition of sectoral eligibility, which is the essential prerequisite for the notification, was not observed. The non-observance was not sanctioned by the proper officer. Confiscation under Section 111(o) is accordingly confirmed.

4.8.4 Since the goods were provisionally released on execution of a bond and furnishing Bank Guarantee of Rs. 1,86,00,000/-, a redemption fine is imposed in lieu of confiscation under Section 125 of the Customs Act. Considering all circumstances, including the nature and value of the goods, the degree of mis-declaration and the extent of duty evaded, I impose a redemption fine of Rs. 1,86,00,000/- (Rupees One Crore Eighty-Six Lakh). The Bond shall be enforced and the Bank Guarantee shall be encashed towards payment of the redemption fine.

4.9 ISSUE IX: PENALTY UNDER SECTION 114A

4.9.1 Section 114A of the Customs Act, 1962 provides that where duty has been short-levied by reason of collusion, wilful mis-statement or suppression of facts, the person liable to pay duty shall also be liable to pay a penalty equal to the duty so determined.

4.9.2 In the present case, the following circumstances establish that the short-levy of duty arose from wilful mis-statement and suppression of material facts:

(i) The Noticee declared the goods as "old and used" when they were, in fact, new and unused — a mis-statement of the most material fact relevant to valuation and duty liability.

(ii) The Noticee sought and availed duty concession under SHIS Scrips for the Plastic Sector when the goods were manifestly not capital goods for the Plastic Sector — a mis-declaration of eligibility for exemption.

(iii) The Noticee is a sophisticated industrial entity with a Senior Manager specifically responsible for Sourcing & Logistics, whose function was the import of capital equipment. Declaring new machinery worth Rs. 24 crore as "old and used" cannot be a bona fide error of description by such an entity. The Noticee's own representative admitted in his statement that they lacked corroborating evidence of prior use — yet the goods were declared as used. This suggests that the declaration

was made with awareness of its inaccuracy.

(iv) The use of SHIS Scrips from a different company (M/s. Essar Steel India Ltd.) pertaining to a different sector (Plastic) for capital goods of the wind energy sector demonstrates a deliberate structuring of the transaction to minimise duty liability.

4.9.3 The Noticee's reliance on Hindustan Steel Ltd. v. State of Orissa [1978 (2) ELT (J159) (SC)] for the proposition that penalty is not imposable for bona fide breach is not applicable here. That principle applies where there is a genuine technical or bona fide error without fraudulent intent. The present case involves a false declaration of the condition of goods (used vs. new) by a company that manufactured and imported such goods professionally. This goes beyond a technical breach.

4.9.4 Since the Customs duty of Rs. 6,71,63,370/- is confirmed as recoverable by reason of wilful mis-statement and suppression, the legal ingredients for Section 114A penalty are satisfied. The penalty under Section 114A shall be equal to the duty confirmed, i.e., Rs. 6,71,63,370/-.

4.10 ISSUE X: PENALTY UNDER SECTION 112(a)

4.10.1 Section 112(a) of the Customs Act, 1962 provides that any person 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, shall be liable to a penalty. The first Order-in-Original had imposed a separate penalty under Section 112(a). However, in the present de novo adjudication, having confirmed the duty demand and imposed full penalty under Section 114A (which is the specific provision for duty short-levy cases), I find that imposing an additional separate penalty under Section 112(a) in respect of the same acts would result in a double penalty for the same conduct. Section 114A, being the more specific provision applicable to short-levy of duty through wilful mis-statement, is the appropriate penalty provision in the facts of this case. Accordingly, no separate penalty under Section 112(a) is imposed.

4.11 INTEREST UNDER SECTION 28AA

4.11.1 Interest under Section 28AA of the Customs Act, 1962 is leviable on delayed payment of duty. It is a statutory consequence of unpaid duty and is compensatory in nature. The Noticee's submission that interest is not payable if the duty demand itself is not sustainable is contingent upon the duty demand being set aside — which it is not, in this case. The Prathibha Processors v. Union of India [1996 (88) ELT 12 (SC)] principle (interest follows from duty) applies in favour of the Noticee only when the principal duty is found not payable. Since duty has been confirmed, interest accrues on the confirmed amount from the date it was due.

4.11.2 Interest under Section 28AA shall be charged on the confirmed differential duty

demand of Rs. 6,71,63,370/- at the applicable rate as notified by the Central Government, from the first day of the month succeeding the date of filing of the Bill of Entry (November 2015) until actual payment, after giving credit for amounts already deposited.

5. ORDER

In view of the above detailed findings, I pass the following Order:

(i) REJECTION OF DECLARED VALUE AND RE-DETERMINATION: I reject the declared FOB assessable value of **Rs. 16,05,11,851/-** (Rupees Sixteen Crore Five Lakh Eleven Thousand Eight Hundred Fifty-One) in respect of the goods covered under Bill of Entry No. 3272004 dated 17.11.2015, under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. I order re-determination of the assessable value of the said goods as **Rs. 24,00,00,000/-** (Rupees Twenty-Four Crore) under Rule 9 of the Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962.

(ii) CONFISCATION AND REDEMPTION FINE: I order confiscation of the seized goods covered under Bill of Entry No. 3272004 dated 17.11.2015, provisionally cleared against bond and Bank Guarantee, under Sections 111(m) and 111(o) of the Customs Act, 1962. Since the goods were provisionally released on execution of a Bond and Bank Guarantee of **Rs. 1,86,00,000/-**, I impose a Redemption Fine of **Rs. 1,86,00,000/- (Rupees One Crore Eighty-Six Lakh)** in lieu of confiscation under Section 125 of the Customs Act, 1962. I order enforcement of the Bond and encashment of the Bank Guarantee towards payment of the Redemption Fine.

(iii) CONFIRMATION OF CUSTOMS DUTY DEMAND: I confirm the Customs duty demand of **Rs. 6,71,63,370/- (Rupees Six Crore Seventy-One Lakh Sixty-Three Thousand Three Hundred Seventy)** in respect of goods covered under Bill of Entry No. 3272004 dated 17.11.2015, recoverable from M/s. LM Wind Power Blades (India) Private Limited under Section 28(1) read with Section 28(4) of the Customs Act, 1962, on the re-determined assessable value of **Rs. 24,00,00,000/-**. I also order adjustment and appropriation of **Rs. 4,86,06,198/-** [comprising Rs. 4,24,20,473/- (duty against declared value) and Rs. 61,85,725/- (25% of differential duty as per directions of the Hon'ble High Court of Gujarat)], already deposited by M/s. LM Wind Power Blades (India) Private Limited, towards their duty liability. The balance differential duty remaining payable shall be recovered accordingly.

(iv) INTEREST: Interest under Section 28AA of the Customs Act, 1962 shall be charged on the confirmed differential duty amount at the applicable rate as notified by the Central Government, from the first day of the month succeeding the month in which duty ought to have been paid (i.e., from 01.12.2015), up to the date of actual payment, after adjusting

amounts already deposited.

(v) PENALTY UNDER SECTION 114A: I impose a penalty of **Rs. 6,71,63,370/- (Rupees Six Crore Seventy-One Lakh Sixty-Three Thousand Three Hundred Seventy)** upon M/s. LM Wind Power Blades (India) Private Limited under Section 114A of the Customs Act, 1962, equal to the confirmed duty amount.

(vi) PENALTY UNDER SECTION 112(a): No separate penalty under Section 112(a) of the Customs Act, 1962 is imposed, as the penalty under Section 114A above covers the liability arising from the mis-declaration that rendered the goods liable to confiscation.

Digitally signed by
Nitin Saini
Date: 26-03-2026
16:38:19

(Nitin Saini)
Commissioner of Customs
Custom House, Kandla

File No.:- GEN/ADJ/COMM/431/2025-Adjn-O/o Commr-Cus-Kandla
Din:- 20260371ML000000EFA1

BY RPAD/SPEED POST:

To,
M/s. LM Wind Power Blades (India) P. Ltd.,
Halol Industrial Area (Phase III), Plot No. 1/B,
Village Chandrapura, Taluka Halol,
District Panchmahal, Gujarat 389350.

COPY TO:
(1) The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad..
(2) The Deputy/ Assistant Commissioner (Prosecution), CH, Kandia
(3) The Deputy/Assistant Commissioner (SIIB), Custom House, Kandia.
(4) Guard file