कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा,
सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:
CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421.
PHONE : 02838-271426/271163 FAX :02838-271425
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A	**FILE NO.** फ़ाइल संख्या	GEN/ADJ/ADC/1185/2024-Adjn-O/o Pr Commr-Cus-Mundra
B	**OIO NO.** आदेश संख्या	MCH/ ADC/ ZDC/545/2025-26
C	**PASSED BY** जारीकर्ता	Dipak Zala, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुंद्रा।
D	**DATE OF ORDER** आदेश की तारीख	15.01.2026
E	**DATE OF ISSUE** जारी करने की तिथि	15.01.2026
F	**SCN No. & Date** कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/1185/2024-Adjn-O/o Pr Commr-Cus-Mundra dated 23.01.2025
G	**NOTICEE/ PARTY/ IMPORTER** नोटिसकर्ता/पार्टी/आयातक	M/s. GE India Industrial Private Limited (IEC code 0393001962)
H	**DIN/**दस्तावेज़ पहचान संख्या	20260171MO0000800989

1. यह आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

"सीमाशुल्क आयुक्त (अपील)
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा,अहमदाबाद 380 009"
"THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN

ROAD,
NAVRANGPURA, AHMEDABAD-380 009."

3. उक्त अपील यह आदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

i. उक्त अपील की एक प्रति और A copy of the appeal, and
ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम 1870 के मद सं° 6 में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटि/ब्याज/दण्ड/जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

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

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982और सीमाशुल्क अधिनियम,1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

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

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Brief facts of the case

Whereas, M/s. GE India Industrial Private Limited, (IEC code 0393001962), having its address at Plot No. 1/B, Halol Industrial Area, Phase-II, Village Chandrapura, Taluka Halol, Gujarat-389350 (hereinafter referred to as 'the said importer') has imported the **"Casting for Wind Operated**

Electricity Generators falling under CTH No. 85030090," (hereinafter referred to as 'the said goods') at Mundra Port. The said importer is regularly importing the said goods from Mundra Port on payment of Customs duty.

2. During the course of Post Clearance Audit, it is noticed that M/s. GE India Industrial Private Limited, has filed the BoE, through the Customs brokers M/s. Agility Logistic Pvt.Ltd., for the import of **"Casting for Wind Operated Electricity Genertors",** classifying the same under Customs Tariff item **85030090**, on payment of BCD @7.5%/6% (20% Sapta notif no. 50/2018-CUS), SWS @10% & IGST @5%, imported from China (Country of origin), Supplier Names are listed in the Table-A in this Show Cause Notice. However, **no Countervailing Duty and/or Anti-dumping duty is paid** in view of Notification No.01/2016(CVD) dated 19.01.2016 and Notification No. 42/2017-CUS(ADD) dated 30.08.2017.

3. <u>Countervailing Duty (CVD)</u>

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

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

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

"…… in exercise of the powers conferred by sub-sections (1) and (6) of section 9 of the Customs Tariff Act, read with rules 20 and 22 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff items of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India, ***countervailing duty at the rate to be worked out as percentage of the landed value of imports of the subject goods as specified in the corresponding entry in column (8)*** *of the said Table, namely:-*

Table

S. No.	*Tariff*	*Description of*	*Country*	*Country*	*Producer*	*Exporter*	*Percentage*

	item	*goods*	*of origin*	*of export*			*of landed value*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*
.....							
2.	*8483 40 00, 8503 00 10 or 8503 00 90*	*Castings for wind operated electricity generators, whether or not machined, in raw, finished or sub-assembled form, or* ***as a part of a subassembly, or as a part of an equipment/ component meant for wind-operated electricity generators***	*People's Republic of China*	*People's Republic Of China*	*Any*	*Any*	*13.44*

.....

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

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

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

3.6 Whereas, Non-payment of the Countervailing Duty**,** in respect of the Bill of Entry, tabulated in Table "A", has resulted in short-payment of customs duty (CVD) @13.44% of the landed value of the said goods imported from China, which amounts to **Rs. 8,59,209/-**, (Sr. No. 12 of Table-A) for the Bill of entry No. 7579375 dated 04.05.2020 as calculated in Table-A mentioned below**.**

4. Anti-Dumping duty (ADD)

4.1 Whereas, it further appears that the above imported goods as specified in sr. No. 16 of Table "A" which are the parts of **"WOEG"** do fall under the implied

meaning of **Casting for Wind Operated Electricity Generators** as per the Note (i) of the Table under **Notification No. 42/2017-CUS (ADD**) dated 30.08.2017 and accordingly, the said goods imported from China are liable for **Anti-dumping duty @ 35.92%** of the landed value of the said goods imported from China.

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

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

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

Table

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

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

.....

Explanation. – Landed value of imports for the purpose of this notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act."

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

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

4.6 Whereas, Non-payment of the Anti-Dumping Duty, in respect of the BoE, as tabulated in the Table "A", has resulted in short-payment of Customs duty (ADD) @35.92% of the landed value of the said goods imported from China, which amounts to Rs. 22,96,337/- (Sr. No.11 of Table-A) with respect to Bill of entry no 7579375 dated 04.05.2020, as calculated as per **Table- A mentioned below**:-

Table-A

Details of CVD & ADD not paid		
Sr.no.		
1.	Custom Site	INMUN1
2.	B/E no.	759375
3.	B/E date	04.05.2020
4.	CTH Code	85030090
5.	Exporter/Supplier	Ficont Industry (Beijing) Co. Ltd.
6.	Assessable Value	59,97,112
7.	BCD paid (@7.5 %)	3,59,827
8.	SWS paid (@10%)	35,983
9.	IGST paid (5%)	3,19,646
10.	Landed Value(6+7+8)	63,92,921
11.	ADD payable on landed value (@35.92%)	22,96,337
12.	CVD payable on landed value (@13.44%)	8,59,209
13.	IGST Payable (@5%)	4,77,423

14.	Differential IGST payable	1,57,777
15.	Total Differential duty	33,13,323
16.	Item Description	Service Lift, 130M HH, 50 HZ(Parts of Wind operated Electric Generator)

5. Integrated GST (IGST)

5.1 Whereas, it appears that Non-payment of the Countervailing Duty and the Anti-Dumping Duty, as discussed hereinabove, has also resulted in short-payment of customs duty (IGST) on the total assessable value arrived at by way of adding CVD and ADD in the landed value, for the purpose of calculation of IGST on imported goods and the differential amount of customs duty (IGST) thus short-paid comes to Rs. 1,57,777/- with respect of Bill of entry no 7579375 dated 04.05.2020, as calculated as per Table A (Sr. No.14 of Table-A) mentioned above.

6. Thus, total amount of customs duty due to be recovered, comes to **Rs.33,13,323/-**, as calculated as under:-

Sr.No.	Customs Duty	Amount
1	BCD short-paid	-
2	SWS short-paid	-
3	CVD @13.44% **(NOT PAID)**	**8,59,209/-**
4	ADD @35.92%-13.44% **(NOT PAID)**	**22,96,337/-**
5	**Differential IGST not paid**	**1,57,777/-**
6	**Total customs Duty Short-paid**	**33,13,323/-**

7. Whereas, in response to letter F.No. S/01-45/PCA/ADD/2023-24 dated 11.05.2023**,** the said importer has not replied till issuance of Show Cause Notice.

8. Further, it is observed that the import items do include casting parts which house various other parts and non-declaration of such parts by way of weight and value while being given an opportunity to do so shows disinclination on part of the Importer to provide critical information to the department. The basic function of a casting is in a wind turbine, to be used in a wind mill along with some other non-casting parts and components like tower, blades, etc. which leads to the generation of electricity. Further, a large number of castings are collectively used in a windmill. Some of these castings are assembled along with other products to prepare a sub- assembly. Eventually, a windmill comprises of a number of these sub-assemblies. It is appropriate to consider castings that may be imported as a part of equipment/component within the scope of the product under consideration so long as the scope of the measures is limited to casting portions of these equipment's/components used for wind mills or wind turbines or wind-operated electricity generators. It appears that Importer had intentionally furnished documents such as the Bills of Entry and its invoices, packing lists containing incorrect/in-sufficient material particular with respect to the value and weight of casting parts in the imported items. The items imported undeniably consisted of casting parts and such casting parts were manufactured by simple machining and polishing process and the

component weight of these casting parts were significant. It is therefore a matter of fact that the items of import in question do have castings as a component and it is incumbent on the Importer to make a complete and correct declaration. Having failed to do so despite opportunities given to them, there is little option but to demand CVD and ADD on the entire value of the imported items to protect revenue interest. The Importer even if contesting the applicability of the CVD and ADD should have been more forthright and put forth the costing of the casting components which are part of the imported items which was not a difficult exercise.

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

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

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

12. VIOLATION OF STATUTORY PROVISIONS:-

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

12.2 Whereas, it appears that the importer has failed to pay Countervailing duty as leviable under sub-section (1) and (6) of Section 9 of the Customs Tariff Act, 1975, read with rules 20 and 22 of the Customs Tariff (IACCDSADI) Rules, 1995 and Notification No. 01/2016(CVD) dated 19.01.2016, by way of wrongly self-assessing the Bill of entries filed under Section 46 of the Customs Act,

1962.

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

12.4 The imported goods, namely, **"Service Lift, 130M HH, 50HZ (parts of WOEG)"**, imported from China, include parts falling under the description of goods as described in Column (3) of the Table under Notification 01/2016(CVD) dated 19.01.2016 and in the implied meaning of **Casting for Wind Operated Electricity Generators** as per the Note (i) of the Table under **Notification No. 42/2017-CUS (ADD**) dated 30.08.2017.

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

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

12.7 As per sub-section (4) and (4A) of Section 46 of the Customs Act, 1962, the importer, while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall ensure the accuracy and completeness of the information given therein. However, by way of improper self-assessment in the Bills of entries filed under Section 46 of the Customs Act, 1962, the importer has indulged in evasion of duties of customs, amounting to **Rs.33,13,323/-,** as discussed above.

12.8 Thus, the importer has contravened the provisions of Section 12 of the Customs Act, 1962 read with Section 9 of the Customs Tariff Act, 1975 and Rules 20 and 22 of the Customs Tariff (IACCDSADI) Rules, 1995 read with Notification 01/2016(CVD) dated 19.01.2016 and Section 9A of the Customs Tariff Act, 1975 read with Rules 18 and 20 of the Customs Tariff (IACADDDDADI) Rules, 1995, read with Notification No. 42/2017-CUS (ADD) dated 30.08.2017. The importer has also contravened the provisions of Section 46 of the Customs Act, 1962 and evaded payment of duties of customs amounting to Rs.33,13,323/-, as discussed above by way of improper self-assessment in the Bills of entries filed under Section 46 of the Customs Act, 1962, thus resorting to willful mis-statement and suppression of facts and rendered themselves liable for action as envisaged under Section 28(4) of the Customs Act, 1962 for recovery of duties short-paid amounting to Rs.33,13,323/-, extended period upto five years is applicable.

12.9 Whereas, the importer has contravened the provisions of Section 12 of the Customs Act, 1962 read with Section 9 of the Customs Tariff Act, 1975 and Rules 20 and 22 of the Customs Tariff (IACCDSADI) Rules, 1995 read with Notification No. 01/2016(CVD) dated 19.01.2016 and Section 9 of the Customs Tariff Act, 1975 read with Rules 18 and 20 of the Customs Tariff (IACADDDDADI) Rules, 1995, read with Notification No. 42/2017-CUS (ADD) dated 30.08.2017. The importer has also contravened the provisions of Section 46 of the Customs Act, 1962 and evaded payment of duties of customs amounting to Rs.33,13,323/-, as discussed above and rendered themselves liable for action as envisaged under Section 28(4) of the Customs Act, 1962 for recovery of duties short-paid as discussed above along with interest as stipulated under section 28AA of the Customs Act, 1962 and the importer has rendered themselves liable to penalty under Section 117 of the Customs Act,1962.

12.10 The importer has evaded payment of duties of customs amounting to **Rs. 33,13,323/-**, as discussed above, by way of improper self-assessment in the Bills of entries filed under Section 46 of the Customs Act, 1962, thus resorting to wilfulmis-statement and suppression of facts, the importer has rendered themselves liable to pay penalty under Section 114A of the Customs Act, 1962.

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

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

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to

pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

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

12.13 **Section 28(5) of the Customs Act, 1962** states that 'Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section(4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under Section 28AA and the penalty equal to fifteen percent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing'.

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

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

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

provisions of the Self-Assessment procedures.

13. Accordingly, Show cause Notice F.no. Gen/ADJ/ADC/1185/2024-Adjn-O/o Pr Commr-Cus-Mundra dated 23.01.2025 issued to M/s. GE India Industrial Private Limited, (IEC code 0393001962), wherein they were called upon to show cause in writing to the Additional Commissioner of Customs, Customs House Mundra, as to why:-

i. Countervailing duty (CVD) at 13.44% under notification No.01/2016-Cus. (CVD) dated 19.01.2016 on the said goods namely parts of WOEG imported vide the Bill of Entry as detailed in the Table-A in this notice should not be applied;
ii. Anti-Dumping Duty (ADD) at applicable rate under notification No.42/2017-Cus. (ADD) dated 30.08.2017 on the said goods namely parts of WOEG imported vide the Bills of Entry as detailed in the Table-A in this notice should not be applied;
iii. Assessable Value for the purpose of calculation of IGST should not be recalculated so as to add the amount of the duties of customs of CVD and the ADD as discussed hereinabove to recalculate the amount of IGST payable;
iv. The differential Customs duties totally amounting to**Rs. 33,13,323/-**(CVD-8,59,209**/- +** ADD – 22,96,337**/- + IGST- 1,57,777/-**), (Rupees Thirty Three Lakhs Thirteen Thousand Three Hundred and Twenty Three only), as discussed hereinabove, should not be demanded and recovered from them in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962;
v. The impugned goods with the total declared Assessable value of Rs. 59,97,112/- as detailed in Table-A in this notice, should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962, for short levy of duty by reason of willful misstatement & suppression of facts;
vi. Penalty should not be imposed upon them under the provision of Section 112(a) and/or 114A and/or 117 of the Customs Act, 1962.

14. Written Submission

1 4 . 1 M/s. GE India Industrial Private Limited, submitted their reply dated 14.10.2025, wherein they have, *inter alia*, submitted that:

The Noticee submit that the impugned SCN is incorrect in law as well as on facts and it is therefore, the proceedings are liable to be dropped on this ground itself. The impugned SCN has been issued without any legal basis and the proceedings is liable to be dropped in its entirety.

14.2 The Noticee submitted that the imported goods are classifiable under CTH 8428 and therefore, question of levy of ADD and CVD does not arise.

14.2.1 In order to determine whether a product is subject to the levy of ADD and CVD it is necessary to analyse whether the said item falls under the “Product Under Consideration” mentioned in the ADD Notification and the CVD Notification. The Product Under Consideration (hereinafter referred to as **“PUC”**)

under CVD Notification and ADD Notification is same, therefore, the non-applicability of CVD and ADD is discussed together.

14.2.2 It is pertinent to refer to the relevant portions of the Notifications which describe the goods on which the levy has been proposed to be imposed. The relevant portions of the same are extracted below:

CVD Notification

"Whereas, in the matter of 'castings for wind-operated electricity generators whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators' (hereinafter referred to as the subject goods) falling under tariff items 8483 40 00, 8503 00 10 or 8503 00 90 of the first schedule to the customs tariff act, 1975 (51 of 1975), hereinafter referred to as the customs tariff act, originating in or exported from, people's republic of China (hereinafter referred to as the subject country), and imported into India, the designated authority in its final findings, published in the gazette of India, extraordinary, part I, section 1, vide notification no. 17/6/2013-dgad, dated the 27th November, 2015 has come to the conclusion that – …"

ADD Notification

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

…

Note -

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

…Emphasis Supplied

14.3 From the perusal of the two Notifications, it is evident that the terms of the Notification are clear inasmuch as these Notifications have proposed to levy CVD/ ADD on the ***castings for wind operated electricity generators classifiable under Tariff Item 8483 40 00, 8503 00 10 and 8503 00 90***. Therefore, it is necessary to examine the classification of the impugned goods in order to determine the levy of ADD and CVD.

14.4 It is humbly submitted that the imported goods are correctly classifiable under CTH 8428 which covers *Other Lifting, Handling, Loading Or Unloading Machinery (For Example, Lifts, Escalators, Conveyors, Teleferics).* The relevant extract of CTH 8428 is reproduced below:

8428		THER LIFTING, HANDLING, LOADING OR UNLOADING MACHINERY (FOR EXAMPLE, LIFTS, ESCALATORS, CONVEYORS, TELEFERICS)
842810	-	Lifts and skip Hosts
	---	Lifts:
84281011	----	Lifts of a kind used in buildings
84281019	----	Others
84281020	----	Skip Hoists

8431		PARTS SUITABLE FOR USE SOLELY OR PRINCIPALLY WITH THE MACHINERY OF HEADINGS 8425 TO 8430
	-	of machinery of heading 8428:
84313100	---	of lifts, skip hoists or escalators
843139	--	Other:
84313910	---	of elevators, conveyors and moving equipments
84313990	---	other

14.5 It is pertinent to note that classification of goods is done in accordance with the First Schedule to the CTA which provides for certain rules for tariff classification of the goods. The said rules are known as the GRI. The GRI rules have to be followed while classifying the goods.

GRI 1 states that goods under consideration should be classified in accordance with the terms of the heading/s or relevant Section and Chapter Notes. The Section Notes, Chapter Notes and Sub-Notes provide the scope and ambit of the respective Sections and Chapters. These Notes have been given statutory backing and have been incorporated at the top of each Section and Chapter. In the event that the goods cannot be classified solely on the basis of GRI 1, and the headings and legal notes do not otherwise require, then and only then the remaining GRIs may be applied.

14.6 The Noticee submitted that the Larger Bench of the Tribunal in the matter of **Saurashtra Chemical [1986 (23) ELT 283 (Tri-LB)]** has held that the Tariffs have to be interpreted in the light of relevant Section and Chapter Notes which have statutory backing like the headings themselves. Thus, the Section and Chapter Notes have an overriding force on the respective headings. The above cited decision of the Tribunal was upheld by the Hon'ble Supreme Court of India in **[1997 (95) ELT 455 (SC)]**.

14.7 Further, the Explanatory Notes to the Harmonized System Nomenclature (hereinafter referred to as "**HSN Explanatory Notes"**) constitute the official interpretation of the nomenclature at the international level. While not legally binding, they do represent the considered views of classification experts of the Harmonized System Committee. It is well settled that the Explanatory Notes have persuasive value and in the event of disputes, courts in number of cases have upheld seeking recourse to the Explanatory Notes. Reliance in this regard is placed on **O. K. Play (India) Ltd [2005 (180) E.L.T. 300 (S.C.)]**, wherein the Hon'ble Supreme Court made the following observations:

a. There cannot be a static parameter for correct classification.
b. HSN along with the explanatory notes provide a safe guide for interpretation of an Entry.
c. Functional utility, design, shape, and predominant usage have also got to be considered while determining the classification of an item.
d. Afore stated aids and assistance are more important than the names used in the trade or common parlance in the matter of correct classification.

14.8 The Noticee submitted that CTH 8428 covers lifts and elevators specifically. HSN Explanatory Notes to CTH 8428 states the said heading covers a wide range of machinery for the mechanical handling of materials, goods, etc. The heading essentially covers lifting or handling machines usually based on pulley, winch or jacking systems and often includes large portions of static structural steel work. According to the HSN explanatory Notes, the heading includes lifts which are operated by winch and cable, rack and pinion and skip hoists. Further, the Chapter Notes to Chapter 84 does not exclude the goods used with items falling under Chapter 85.

In the present case, the imported goods is a service lift used in the tower of the wind mill and works on a Wire Rope Mechanism. Classification is done in accordance to the functionality of the product and the chapter and section notes. Accordingly, it is submitted that since the nature of the product is that of lift it is covered within the ambit of Chapter 84.

The impugned goods are parts of the imported goods i.e., service lift used in WOEG. For classifying parts of articles of CTH 8428, it is relevant to refer to Section Note 2 of Section XVI, which specifies the rules to be followed for classification of parts of articles of this Section. The said Note is reproduced for ease of reference:

"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, 8485, 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. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517, and ***parts which are suitable for use solely or principally with the goods of heading 8524 are to be classified in heading 8529****;"Emphasis Supplied*

From a bare perusal of the above, it can be stated that in accordance with Section Note 2(a), parts which are specifically included in any of the heading of Chapter 84 will be classified therein, except for the specified headings. Thereafter, if a part cannot be classified as per Section Note 2(a), then the same would be classifiable as a part of an article of Chapter 84 as per Section Note 2(b). Section Note 2(b) has specified that parts of CTH 8428 would be classified under CTH 8431. Applying Section Note 2(a) to the present case, it can the impugned goods are correctly classifiable under CTH 8431.

14.9 The Noticee submitted that the ADD and the CVD Notification only cover goods made up of casting classifiable under tariff entry 8483 40 00, 8503 00 10 and 8503 00 90. Since the impugned goods are not covered under the said tariff entries, the question of levy of ADD and CVD does not arise. Therefore, it is submitted that the proceedings initiated vide the impugned SCN are liable to be dropped.

`Without prejudice to the above, CVD and ADD is leviable only on an 'Article' and not on the input/component incorporated in an imported article.

It is submitted that CVD and ADD is only leviable on the complete article and not on the input component. Section 9 and Section 9A of the CTA empowers the Central Government to impose CVD and ADD respectively on any article imported into India from a notified country. The relevant extract of Section 9 (1) and Section 9A(1) is reproduced below:

*" **SECTION 9. Countervailing duty on subsidized articles***

(1) Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy."

SECTION 9A. Anti-dumping duty on dumped articles. –

(1) Where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti- dumping duty not exceeding the margin of dumping in relation to such article".

From the bare reading of the aforesaid provisions, it can be seen that in order to impose CVD and ADD on any imported goods, such goods should fulfill the following criteria:

a. The article should be imported into India.
b. The import should be from the specified country or territory.

c. The exporting country must provide any subsidy for the manufacture or production of the said article.

14.10 Further, the taxability of the goods imported into India and exported out of India is governed by Section 12 of the Customs Act. Relevant extract of Section 12 of the Act, which is the charging section under the Act is reproduced below:

"12. Dutiable goods. *- (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force,* ***on goods imported into, or exported from, India."***

...Emphasis Supplied

Further, Rule 20 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as **"CVD Rules"**) deals with levy of CVD and Rule 22 of the CVD Rules deals with the date of commencement of duty i.e., the day from which the levy of CVD shall come into effect.

Similarly, Rule 18 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as **"ADD Rules"**) deals with levy of ADD and Rule 20 of the ADD Rules deals with the date of commencement of duty i.e., the day from which the levy of ADD shall come into effect.

It can be observed from the provision contained in the aforesaid section and rules that duty is leviable on the goods that are imported into India. Furthermore, the classification of goods for the purpose of levy of customs duty is governed by the General Rules for Interpretation (hereinafter referred to as "**GRI**").

*"**General rules for the interpretation of this Schedule:***

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; ***for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions...."***

...Emphasis Supplied

It is pertinent to note that in order to determine the classification of goods, for the purposes of levying customs duty, the form of the goods as presented has to be considered. In other words, the assembled or unassembled state or the ingredients/ inputs used in the imported goods, would not determine the liability or classification of the goods.

Our view finds support in the case of **Simplex Mills [2005 (181) ELT 345 (SC)]** wherein the Hon'ble Supreme Court has held that the classification of goods should be done in accordance with Rule 1 of the GRI unless otherwise required. Relevant extract of the said ruling is reproduced below for your perusal:

"1 1. The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule / 1 titles of sections and chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification "shall be determined according to the terms of the headings and any relevant sector or chapter Notes". ***If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule-I gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules.****"*
...Emphasis Supplied

The aforesaid decision was relied upon in the case of **Sony India Ltd. [2008 (9) TMI 19 - Supreme Court]** wherein the Hon'ble Supreme Court held as under:
"16. Our attention was invited to a very interesting decision reported in Modi Xerox Ltd. v. CCE, New Delhi (1998 (103) ELT 109] which was confirmed by this Court in 2001 (ELT) A 91 (it must be noted that the decisions in Woodcraft Products is specifically confirmed in this decision). In this case, the Tribunal had relied on Tara Chand's case as also the CC v. Mitsuny Electronics Works [1987 (13) ELT 345 (Cal. HC)] which we have made reference in the earlier part of this judgment. The Tribunal had held that the fax machine in completely knocked down condition imported by the appellant being not a fax machine but part thereof the benefit of exemption under notification No.59/88/Cus. Dated 1.3.1988 would not be available. Very interestingly, it was claimed by the importer that it had imported the fax machine and not the components obviously because the duty payable on the components was more. The Tribunal came to the conclusion that in view of Section Note 2 to Section XVI Rule 2(a) would not apply and confirmed the import of goods as components. ***While interpreting Explanatory Note to Rule 2(a), the Tribunal had held that this Rule would apply only when the imported articles presented in unassembled or disassembled can be put together by means of simple fixing device or riveting or welding.*** *It came to the conclusion that fax machines were not the type of goods which were normally traded or transported in knocked down condition and therefore, the imports were that of the components and not of fax machines. Shri Lakshmikumaran also invites our attention to the fact that Chapter 64 dealing with footwear does not have a note similar to Note 2 in Section XVI.* ***Thus, this position would render support to the proposition that Rule 2(a) would apply only when the imported articles presented unassembled or disassembled can be put together by means of simple fixing device or by riveting or welding.*** *We have already pointed out in the earlier part of our judgment that the complicated process would be required for the user of those parts.*
17. Lastly, we must take stock of the argument of Shri Lakshmikumaran that Section Interpretative Rule 2(a) would not be applicable at all in this case. For this he invited our attention to Rule 1 of Interpretative Rules as also to the decision in Simplex Mills v. Union of India [2005 (181) ELT 345 (SC)] wherein this Court had held in para 11 as under: ..."
...Emphasis Supplied

Further, the decision in the case of **Sony India Limited (Supra)** has also been followed in the case of **Advani Pleasure Cruise Co. Pvt. Ltd. [2020 (371) E.L.T. 408 (Tri. - Mumbai)]** whereby the Hon'ble Tribunal has

concluded that second hand / used Casino Ship should be classified as a complete 'casino vessel' and not as a 'passenger vessel' as it was to be used exclusively for gaming purposes. The said judgment was based on the rationale that the classification of the imported goods needs to be determined in accordance with the form in which they were presented for assessment to the customs authority, and not in the form they were designed or in the form in which they earlier existed. Relevant extract of the said ruling is reproduced below for reference:

"4.2 It is settled law that imported goods are to be assessed in the form and manner in which they are imported and presented for assessment/clearance to the Customs authority at the port of importation for the clearance.

Hence the classification of the imported goods needs to be determined in accordance with the form in which they were presented for assessment to the customs authority, and not in the form they were designed and in the form they earlier existed……"

...Emphasis Supplied

Further, the above rationale has also been corroborated by the Central Board of Excise & Customs (now CBIC) while issuing clarification with regards to the classification of printed sheets of plastics which are ready for being used in the manufacture of articles of plastics for conveyance or packing of goods like stoppers, lids, caps, and other closures of plastics. A doubt had been raised as to whether said sheets of plastics should be classified as presented i.e., plastic sheets (CTH 3920) or the classification should be as per the end use under the heading 'Articles for the conveyance or packing of goods of plastics' (CTH 3923). The issue was clarified vide **Circular No. 41/89, dated 13-7-1989.** Relevant extract of the said Circular is reproduced below for ready reference:

"3. *The Conference physically examined the samples brought by theCollector and the entries, namely, 39.20, 39.21 and 39.23 and held that such goods could not be treated as articles for conveyance or packaging of goods as they are not presented as such. The Member, while examining the classification of the concerned goods, sounded a note of caution regarding "essential character" type of identification.* ***He felt that while attempting the classification of goods it was advisable and necessary to observe and study the goods as they actually are; and to decide the classification according to the nature and characteristics of the goods, as presented for assessment. It would be advisable not to be influenced by ideas of what the goods might be changed into immediately after their clearance.*** *It was seen that the goods as presented for inspection were in the form of sheets of plastics and, deserved to be treated as such whatever their subsequent use. It was held that the appropriate classification would be under Heading No. 39.20 or 39.21, as the case may be.*

4. The Conference was, accordingly, of the view that the appropriate classification of printed plastic sheets ready to be used in the manufacture of articles for conveyance or packaging of goods would be under heading No. 39.20 or 39.21, as the case may be, and in the case of goods falling within Chapter 48 or 76, ***the approach to their classification should be similar i.e. the emphasis should be on the goods as presented for assessment rather than on what they would be turned into after their clearance.***"

...Emphasis Supplied

The above legal principle has also been enunciated in the following cases:

a. **Vareli Weaves Pvt. Ltd. v. Union of India, 1996 (83) ELT 255 (SC)**
b. **Commissioner of Cus (Import), Nhava Sheva, Raigad v. Jagat Malkani, 2020 (371) ELT 536 (Tri. - Mumbai).**

In view of the above, it is submitted that the classification of imported goods and their taxability is to be considered in the form in which the same are presented at the time of importation.

The impugned SCN at paragraphs 3.6, 4.1, 4.2, 12.5 and 12.9 alleged that the Noticee has contravened Section 12 of the Customs Act read with Section 9 of the CTA read with Rule 20 and Rule 22 of the CVD Rules read with Rule 18 and Rules 20 of the ADD Rules as the Noticee failed to pay CVD and ADD in terms of CVD Notification and ADD Notification on import of the imported goods.

In this regard, it is submitted that in the present case, the Legislature intended to impose CVD and ADD on the 'Casting Parts for WOEG' vide CVD Notification and ADD Notification, respectively. In accordance with the Notifications, Casting for WOEG means castings for wind operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished, or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators and not components used within the items.

It is pertinent to note that the Customs Act and the CTA is based on similar principles and therefore, the taxability of CVD and ADD under both the acts is based on the form in which the goods are presented and not on the inputs used in the imported goods. In other words, it can be said that 'levy of duty on an article' would imply levy on the whole of the article or good imported in its entirety and not on the partial component or part of the article which is imported. In the present case, the impugned goods imported by the Noticee are not casting parts, instead the casting parts are used as inputs in the imported goods.

At this juncture, it is pertinent to discuss the meaning of the term 'Castings for Wind Operated Electricity Generators'. The said term is defined under the Notification as follows:
"Castings for wind operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub-assembled form, or as a part of a. sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators."

In the present case, the impugned goods are used in a WOEG but are classifiable under Chapter 84 and have been imported along with the imported goods. The said impugned goods containing the casting component have not been imported individually and therefore, the impugned goods cannot be said to castings for WOEG which are subject to the levy of ADD and CVD.

The impugned SCN at paragraph 8 has alleged that the imported goods include casting components which are present under various parts of the

windmill. The basic function of casting in a windmill is to be used along with other non-casting components like tower blades to generate electricity. It is submitted that the imported goods i.e., service lift contains certain casting components but the same do not fall within the scope of levy of ADD and CVD.

In view of the above, there is no contravention of Section 12 of the Customs Act read with Section 9 of the CTA read with CVD Rules and ADD Rules and demand of CVD and ADD on the imported goods is incorrect and liable to be dropped. CVD and ADD cannot be levied on the imported goods in the present case.

CVD and ADD are not leviable on parts other than castings for WOEG.

14.11 The Noticee submits that impugned SCN proposing to levy of ADD and CVD on the entire value of imports is without considering the fact CVD and ADD under CVD Notification and ADD Notification is only leviable on castings. The imported goods, namely the service lift, is not a product of casting and therefore, ADD and CVD is not leviable on the same. The same is certified by a Chartered Engineer vide Certificate dated 04.07.2025 and also confirmed by the supplier of the Noticee. The said Certificate and Declaration are already marked and enclosed above as ***Annexure-6*** and ***Annexure-7*** respectively.

It is further submitted that the Product Under Consideration (hereinafter referred to as **"PUC"**) under CVD Notification and ADD Notification is same, therefore, the non-applicability of CVD and ADD is discussed together.

It is pertinent to refer to the relevant portions of the Notifications which describe the goods on which the levy has been proposed to be imposed. The relevant portions of the same are extracted below:

CVD Notification

"Whereas, in the matter of 'castings for wind-operated electricity generators whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators' (hereinafter referred to as the subject goods) falling under tariff items 8483 40 00, 8503 00 10 or 8503 00 90 of the first schedule to the customs tariff act, 1975 (51 of 1975), hereinafter referred to as the customs tariff act, originating in or exported from, people's republic of China (hereinafter referred to as the subject country), and imported into India, the designated authority in its final findings, published in the gazette of India, extraordinary, part i, section 1, vide notification no. 17/6/2013-dgad, dated the 27th November, 2015 has come to the conclusion that – …"

ADD Notification

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

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

From the perusal of the two Notifications, it is evident that the terms of the Notification are clear inasmuch as these Notifications have proposed to levy CVD/ ADD on the ***castings for wind operated electricity generators***. Thus, in case the parts imported are not castings, no demand for CVD/ ADD is sustainable.

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

Final Findings of the Designated Authority in respect of ADD propose levy only on castings.

It is submitted that in the Final Findings, the Designated Authority vide **Notification 14/28/2013-DGAF** dated 28.07.2017 has confirmed that the PUC on which ADD is levied is castings for WOEG. The relevant portion of the order is extracted below:
"11.
(v). In view of the above, the Authority holds that the scope of the product under consideration defined in the notice of initiation is appropriate and ***defines the scope of the product under consideration as follows****:*
Castings for wind-operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators.*"*
...Emphasis Supplied

Thus, it is clear from the findings of the Designated Authority that the scope of PUC cannot be extended to all components and the ADD was proposed only on the castings meant for WOEG used for generation of electricity. This position is further strengthened by the fact that even the ADD Notification which brought into effect the levy of ADD has only defined the scope of castings as mentioned above. From the above, it is apparent that the scope of levy contemplated under the Notification is same as the scope of the PUC in the Final Finding of the Designated Authority.

Further, it is humbly submitted that the Final Findings of the Designated Authorities has at multiple places discussed that a WOEG uses casting and non-casting parts together to create electricity. At paragraph 3 and 4, the Final Finding have listed the casting parts and the non-casting parts

used in a windmill. As enlisted by the Final Findings, a windmill used about 9 casting parts which does not include "service lift". The relevant extract of the Final Findings is reproduced below:

"A Windmill requires a number of casting parts, including the
i. Hub, Rotohub, Rotor Nabe,
ii. Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation,
iii. Bearing Housing, Bearing Support,
iv. Hollow Shaft,
v. Main Axle, Rotor Shaft, Main Shaft, Rotor Coupling, Axle Pin,
vi. Lateral Suspender,
vii. Pitch Stop, Stator,
viii. Generator castings, Part of Generators, Rotor,
ix. Torque Arm support, Gear Box.

4. The product scope includes only wind turbine casting within the scope of the PUC. Casting if imported in raw/unfinished/semi-finished or if imported as a part of subassembly equipments are within the scope of PUC. The basic function of a casting is in a wind turbine, to be used in a wind mill along with some other non-casting parts and components like blades, etc. which leads to the generation of electricity."

A similar observation has also been made by the Authority at paragraph 11 after consideration of all the points., the relevant extract of the same is reproduced below:

"11. Following are the observations made by the Authority in regard to the product under consideration:
i.…
ii. A Windmill requires a number of casting parts, including the Hub, Rotohub, Rotor Nabe, Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation, Bearing Housing, Bearing Support, Hollow Shaft, Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft, Lateral Suspender, Pitch Stop, Stator, Generator castings, Part of Generators, Rotor, Torque Arm support, etc. These castings are used in the wind turbines along ***with some other non-casting parts and components*** *like blades, etc. which leads to the generation of electricity. All such castings, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component, meant for wind-operated electricity generators are covered in the present investigation.*
…
iv. The product under consideration has also been collectively referred to as castings for wind operated electricity generators (WOEG). ***The basic function of a casting is to be used in a wind mill along with some other non-casting parts and components like tower, blades, etc. which leads to the generation of electricity****. A windmill requires a number of casting parts including Hub, Rotohub, Rotor Nabe, 11 Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation, Bearing Housing, Bearing Support, Hollow Shaft, Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft, Lateral Suspender, Pitch Stop, Stator, Generator castings, Part of Generators, Rotor, Torque Arm support, etc."*
…Emphasis Supplied

From the above reproduced extract, it is evident that the

Designated Authority has differentiated between casting and non-casting components used in a windmill. The Designated Authority has also categorically stated that the PUC is only casting for WOEG and not non-casting parts like service lift.

Therefore, in view of the above, it is humbly submitted that the service lift imported for WOEG does not fall under the category of casting components and the same shall be considered as non-casting components of the WOEG. Hence, ADD shall not be levy on the imported goods.

Further, it is submitted that in the present case, the imported goods are not made up of casting in their entirety and merely some components of the imported goods contain minimal casting components. It is submitted that merely because, these components are used to in the imported goods and the imported goods are further used in WOEG, ADD cannot be levied. Therefore, the impugned SCN is incorrect to this extent.

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

It is submitted that even in case of levy of CVD, the scope of the PUC was limited to castings. The Designated Authority under the Ministry of Commerce, after following the procedures prescribed under the CVD Rules, had recommended imposition of definitive countervailing duty on the import of subject goods from China after having come to a conclusion that, the subject goods have been exported to India from subject country at subsidized value. Thus, resulting in subsidization of the product, the domestic industry has suffered material injury due to subsidization of the subject goods and the material injury has been caused by the subsidized imports of the subject goods originating in or exported from the subject country.

It is submitted that in the present case, as per the final findings of the investigation conducted by the Directorate General of Anti-Dumping & Allied Duties, Ministry of Commerce and Industry, Department of Commerce and published under **Notification No. 17/6/2013-DGAD dated 27.11.2015**, the PUC is described as under:

"D. SCOPE OF PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE
D.4. Examination by the Authority

ix. *For the reasons similar to inclusion of sub-assemblies,**it is appropriate to consider castings that may be imported as a part of equipment/component within the scope of the product under consideration so long as the scope of the measures is limited to casting portions of these equipments/components** used for windmills or wind turbines or wind-operated electricity generators.*

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

"Castings for wind-operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub-

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

It is seen from the Final Findings that the Authority held categorically that the scope of PUC cannot be extended to a) parts which are not castings and b) should be limited only to the casting portion of a sub-assembly or a part/ equipment or component. It is pertinent to note that the Designated Authority has also observed at several places in their Final Findings that the CVD measure is **limited only to the casting portions of sub-assemblies used for the generation of electricity**. Therefore, it can be concluded that the scope of the levy was not on all parts imported for manufacturing of WOEGs, but only on the casting portion of the sub-assemblies/ parts/ components/ equipment meant for generation of electricity. The Final Findings Report has also observed that certain non-casting components are used with other casting components for a WOEG. The relevant extract of the Report is reproduced below:
"11. Following are the observations made by the Authority in regard to the product under consideration:
i.
ii. ***The basic function of a casting is in a wind turbine, to be used in a wind mill along with some other non-casting parts and components like tower, blades, etc. which leads to the generation of electricity.***
iii. The product under consideration is a casting for a wind-operated electricity generator (WOEG) which is popularly known as windmill. A windmill is a mill that converts the wind energy into mechanical energy by means of rotating blades, which in turn moves the turbine to generate electricity. A windmill comprises of various casting and non-casting parts such as fan ***or blades made of fibre glass****, tower made of steel structure etc."*
...Emphasis Supplied

In view of the above submissions, since the impugned goods imported for WOEG does not fall under the category of casting components as recognised by the Final Findings of the Designated Authorities. The imported goods are imported for use in WOEG and are essentially parts of a service lift classifiable under CTH 8428. therefore the proposal to levy CVD on all parts irrespective of whether or not these are castings is unsustainable and must be dropped in its entirety.

Once the impugned BOEs are assessed, the onus to establish that the same need to be reassessed is on the Department.

It is humbly submitted that the onus to establish that the imported goods are liable for reassessment and payment of ADD and CVD is on the Department and not on the Noticee. In this regard, it is submitted that it is a well settled position of law that when the customs authorities propose a change

in the assessed BOE and the applicability of ADD or CVD, the onus is on the Department to produce evidence to prove the same, which has not been discharged in the present case. Reliance is placed on the decision of the Hon'ble Tribunal in the case of **RA Castings Pvt. Ltd v Commissioner of C. Ex., Meerut-I [2009 (237 ELT 674 (Tri.- Del.)** as affirmed by the Hon'ble Allahabad High Court **2011(269) ELT 337** wherein it was held that the onus is on the Department to prove whatever it alleges with concrete proof. The relevant extract of the judgement is reproduced below:

"24. The law is well settled that in every case of alleged clandestine removal, the onus is on the Revenue to prove what it alleges with positive and concrete evidence. In the absence of any positive evidence brought by the Revenue to discharge its onus, the impugned order cannot be sustained."

From the above reproduced extract, it is evident that the onus to establish an error on the part of an assessee either for levy or any other allegation is on the Department and not on the assessee. Reliance can also be placed on the following cases:

a. **Standard Metal Works (P) Ltd. v. Commissioner of C. Ex., Mumbai 2004 (167) E.L.T. 297 (Tri. - Mumbai)**
b. **M.P. Dyechem Industries v. Commissioner of Central Excise, Bhopal 2002 (139) E.L.T. 656 (Tri. - Del.) approved in 2002 (144) E.L.T. A199 (S.C.)**
c. **Hindustan lever Ltd., Bombay s. Collector of Central Excise, Bombay 1985 (19) E.L.T. 562 (Tribunal)**
d. **Sindhu Ganesh Bali and others Vs. Collector of Central Excise, Poona1985 (22) E.L.T. 242 (Tribunal)**
e. **Bhilai Engineering Corp. Ltd. Commissioner of C. EX., Raipur 2016 (344) E.L.T. 649 (Tri. – Del).**

Further, the Department has failed to provide any basis to allege that the imported goods are made up of castings or have casting components or identify the exact casting component. Therefore, it is submitted that the impugned SCN is based on the presumptions and assumptions which is violative of principles of natural justice and the demand is liable to be dropped. It is submitted that the SCN is the foundation of any proceedings, and such notice must clearly indicate and provide an impression of the basis on which liability is alleged, so as to provide him an opportunity of contesting the assertion and submitting his defense, if any. A show cause notice is not an empty formality or a ritual without a purpose. In the present case, the infirmity is account of substantial failure of natural justice resulting in transgression of due process.

While deciding the impropriety of a show cause notice, the Hon'ble Calcutta High Court in the case of **Delta International Limited v. CC 2012 (281) E.L.T. 400 (Cal.)** held in Para 16 as follows:

"16. In our opinion, whether they have the power to do so or not is very secondary. No case has prima facie been made out against the appellant/writ petitioner which he can be required to answer. Under well settled principles if a show cause notice does not disclose any contravention or infraction of any provision of law the person or such show cause notice is a nullity. But, here, it is not such a case. The grounds made in the show cause notice allege that customs

duty of ₹ 7,08,98,160/- is due but the reasons in support of such claim in the show cause notice are very ambiguous so much so it is impossible to understand anything else by reasonably any prudent person. Therefore, the appellant/writ petitioner, in our opinion, is not in a position to answer such show cause notice, which is against the rules of natural justice."

In the present case, the impugned SCN has failed to establish by means of any expert opinion or physical examination that the imported goods are made up of casting and are subject to the levy of ADD and CVD. Therefore, the Department has failed to discharge its onus and the proceedings initiated by the impugned SCN is liable to be dropped.

Without prejudice to the above, levy of ADD and CVD is confined to castings only and does not extend to other parts.

As submitted above, the CVD Notification and ADD Notification seek to impose CVD and ADD respectively only on the "*Castings for wind operated electricity generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a subassembly, or as a part of an equipment/component meant for wind-operated electricity generators*."

The abovementioned applicability of the Notifications clearly signifies that the castings for WOEG constitutes the 'casting portion' involved in the equipment and not the entire equipment/goods. Further, castings' would imply only the external/ machined/ unmachined casting component/ input material used to cast a final product and not the whole final product in its entirety which has also been agreed upon by the impugned SCN.

Furthermore, in accordance with Rule 4(b) of the CVD Rules, one of the duties of the Designated Authority is to identify the article liable for CVD and ADD. The article/s under investigation are termed as PUC. It is pertinent to note that CVD and ADD is levied only on the articles that are under investigation.

The impugned SCN at paragraph 8 alleged that a large number of castings are collectively used in a windmill. In this regard, it is submitted that in the present case, the impugned goods are not a casting component of WOEG. Further, it is submitted that the certain inputs used in the imported goods have components made by casting. The casting component in the said inputs is merely 1.88% in weight. Though the windmill has various components which are majorly made up of casting, the imported goods are not made up of casting and only contain certain casting component.

Thus, without prejudice to the above, even if it is presumed that the casting components present in inputs of the imported goods shall be considered for the purpose of levy of CVD and ADD, then also CVD and ADD shall be levied to the extent of the value of the casting component present and not on the entire value of the imported goods.

The impugned SCN at paragraph 8 observed the demand proposed is on the entire value of the imported goods merely because it was difficult for the Department to ascertain the costing of the casting component as the Noticee

had failed to provide the same despite being given opportunities. In this regard, it is submitted that though the Noticee had submitted to the Customs Authorities that the imported goods have only 1.88% of casting, however, the same has not been accepted or acknowledged by the Department vide letter dated 24.07.2023. Since the impugned SCN has also acknowledged that the ADD and CVD is only leviable to the extent of the casting component, therefore, it is submitted that the demand of ADD and CVD on the entire value of the imported goods is liable to be dropped.

It is further submitted that ADD and CVD is leviable on the "Landed Value" of the goods subject to the levy. As per the ADD Notification and the CVD Notification, the "landed value" for the purpose of levy of the ADD and CVD would be determined by the Customs Authorities. Therefore, the allegation that the CVD and ADD has been levied on the entire value of the imported goods because the percentage composition of the casting component is not available, is incorrect. It was the responsibility of the Department to determine the value of the casting component and then issue the impugned SCN seeking to demand of duty. The impugned SCN has therefore, been issued in contravention of the provisions of law and therefore, the proceedings are liable to be dropped.

The impugned SCN is vague and non-speaking and has been issued in gross violation of the principles of natural justice.

14.12 It is submitted that the impugned SCN has sought to levy ADD and CVD on the imported goods merely based on the classification adopted by the Noticee and without considering or evaluating whether the said goods have any casting component whatsoever. It is further submitted that the impugned SCN has alleged suppression and malafide intent on the Noticee only on the reasoning that the Noticee has failed to provide a reply to the Audit Consultative Letter dated 11.05.2023. In this regard, it is submitted that the Noticee vide letter dated 24.07.2023 has explained to the Department that the imported goods are classifiable under CTH 8428. Further, vide the said letter, the Noticee submitted that the imported goods contain only 1.88% of the total weight of the imported is made up of casting. Therefore, if at all leviable, the ADD and CVD should be levied only to that extent. The impugned SCN has failed to take the said submission on record and blatantly alleged that the Noticee has failed to provide a response to the Audit Consultative Letter.

14.13 Further, the impugned SCN has merely reproduced Section 112(a), 114A and 117 and Section 28AA of the Customs Act and imposed penalty and interest on the Noticee, without providing any reasoning for imposing the penalty under all the three sections. It is therefore, submitted that the impugned SCN is vague, non-speaking and without appreciating the facts on record and has been issued in contravention to provisions of natural justice. Reliance is also placed on the case of **CCE v. Brindavan Beverages (P) Ltd**. reported at **2007 (213) E.L.T. 487 (S.C.)**, wherein the Hon'ble Supreme Court held that a show cause notice is foundation on which the Department builds up its case. If allegations in show cause notice are not specific and on the contrary vague, lack details and/or unintelligible, then it is sufficient to hold that assessee has not been given proper opportunity to meet allegations indicated in show cause notice.

It is submitted that a show cause notice is not merely an empty formality. The opportunity to show cause must be the real and substantive

which means the assessee concerned must know as to why the issuing authority is holding the view that assessee's reasoning is liable to be rejected. It will enable the assessee to meet the case sought to be made out against him. When an obligation is cast upon the authority to give notice to show cause before reaching the conclusion against the person affected by its action, the purpose and requirement to issue show cause notice is two-fold:

a. That the person must get an opportunity to meet the case against him and
b. That he must have an opportunity to set forth his own case to show as to why an adverse order should not be passed against him.

Thus, unless and until prima-facie reasons and materials are recorded in the SCN, no opportunity can even be given to the Noticee to meet his case.

It is, therefore, an indispensable requirement of the show cause notice that the exact allegation must be put forth so as to give an opportunity to the assessee to show cause against the same and the same has not been followed in the Noticee's case.

Therefore, in view of the above, it is submitted that the impugned SCN is vague, non-speaking and in violation to the principles of natural justice and the proceeding initiated vide the impugned SCN is liable to be dropped on this ground alone.

14.14 Extended period of limitation is not invocable in the present case, and therefore, the demand proposed in the impugned SCN is liable to be dropped.

The invocation of Section 28(4) of the Customs Act is incorrect.

The impugned SCN at paragraph 12.11 has sought to recover the alleged differential duty under Section 28(4) of the Customs Act. In this regard, attention is drawn to the provisions of Section 28(1) of the Customs Act, where Show Cause Notice for recovery of duty not paid or short paid or erroneously refunded with regards to the goods imported, can be issued only within two years from the date on which the proper officer makes an order for the clearance of the imported goods. Relevant extract of Section 28(1) of the Customs Act is reproduced below for reference:

"Section 28. *Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.*

(1) Where any duty has not been levied or not paid or has been short-levied or short- paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful misstatement or suppression of facts,-

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been 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;

Explanation I. - For the purposes of this section, "relevant date" means,-

a. ***in a case where duty is not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;***
b. *in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or reassessment, as the case may be;*
c. *in a case where duty or interest has been erroneously refunded, the date of*

refund;

d. *in any other case, the date of payment of duty or interest."*

...Emphasis Supplied

In terms of Section 28(4) of the Customs Act, the period of limitation for issuing Show Cause Notice can be extended to five years in cases where the customs duty has not been paid or short paid or erroneously refunded on account of collusion, willful misstatement, or suppression of facts. Section 28(4) of the Customs Act is extracted below for your reference:

"Section 28 (4) *Where any duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of -*

a. *collusion; or*
b. *any wilful misstatement; or*
c. *suppression of facts,*

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

...Emphasis Supplied

It is submitted that the extended period of limitation can be invoked only if there is non-payment or short payment of duty on account of fraud, collusion, suppression of facts, wilful misstatement with an intention to evade duty. In all other cases, customs duty can be demanded only for the limited time period of two years from the date on which the proper officer makes an order for the clearance of imported goods.

In the present case, as it has been explained in the above submissions that the demand of ADD and CVD along with differential IGST is not maintainable. Since, there is no short payment of duty by the Noticee, the extended period cannot be invoked and the proceedings initiated vide the impugned SCN is liable to be dropped.

No suppression or misstatement of facts by the Noticee.

The impugned SCN at paragraph 8 has alleged that the Noticee has intentionally furnished the impugned BoE, invoice and packing list with insufficient information w.r.t value and weight of casting components in the imported goods. The impugned SCN has alleged that it was the responsibility of the Noticee to make a complete and correct declaration while importing the imported goods. Further, the Noticee is liable to disclose the casting and the non-casting component in the goods, irrespective of whether the Noticee is contesting the applicability of CVD and ADD on the imported goods.

In this regard, it is submitted that as explained in above paragraph that the levy of CVD and ADD shall be on the goods imported in the form in which they are imported and not on the partial component or part of the article which is imported. Similarly, the requirement to declare whether an item is casting or not is for the entire goods in the as imported state and not for the inputs of the . Since the imported goods are not casting components of WOEG, and the casting components are used as inputs in the imported goods, therefore the mandate for declaration of the casting component is not applicable in the

present case.

Further, when the Post Clearance Audit was conducted the Noticee, the Noticee submitted to the Department that the imported goods contained only 1.88%. The Noticee also submitted a declaration from the Supplier confirming the casting component of the imported goods. Therefore, it is submitted that there was no suppression of facts.

Further, the impugned SCN at paragraph 11 alleged that despite the Noticee being a regular importer and was well aware of the rules and regulations of the Customs Act and has accordingly sought to evade tax by not disclosing that the imported goods were made up of casting. Further the impugned SCN has also alleged that the Noticee was under the obligation to correctly self-assess the duty liability, which the Noticee failed to do and therefore, sought to evade tax. In this regard, it is submitted that merely being a regular importer does not make the Noticee an expert in the application of tax laws. It is further submitted that the "landed value" for the purposes of levy of ADD and CVD for the goods imported is to be determined by the Customs Authorities. Therefore, the Noticee cannot be said to have violated a provision by not doing something that it was not meant to do. Without prejudice to the above, mere non-payment of duty cannot be said to amount to willful misstatement or suppression.

It is humbly submitted that the Proviso to Section 11A of Central Excise Act, 1944 and Section 28(4) of the Customs Act are *pari materia* and therefore, the judicial precedence in respect of Proviso to Section 11A of the Central Excise Act, 1944 would equally be applicable in respect of Section 28(4) of the Customs Act. Reliance is placed on the judgement of the Hon'ble Supreme Court in the case of **Dye Chemical (Supra),** wherein the Apex Court held that the intention to evade duty must be proved for invoking the Proviso to Section 11A (1) for extended period of limitation. It has been further held that intent to evade duty is built into the expression "fraud and collusion", but misstatement and suppression is qualified by the preceding word "willful". Therefore, it is not correct to say that there can be suppression or misstatement of fact, which is not willful and yet constitutes permissible ground for invoking Proviso to Section 11A. The relevant extract of the decision is reproduced below:
"6. Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. ***So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "mis-statement or suppression of facts" which means with intent to evade duty.*** *The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty". It* ***is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not wilful and yet constitutes a permissible ground for. the purpose of the proviso to Section l IA. Mis-statement or suppression of fact must be wilful."***
...Emphasis Supplied

Further, the Supreme Court in the case of **Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay**, **1995 (78) ELT 401 SC**, while dealing with the meaning of the expression "suppression of facts" in Proviso to Section 11A of the Central Excise Act, 1944 held that the term must

be construed strictly. It does not mean any omission and the act must be deliberate and wilful to evade payment of duty. The relevant extract of the decision is reproduced below:

"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. ***But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate.*** *In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to* ***do what he might have done and not that*** *he must have done, does not render it suppression."*

...Emphasis Supplied

Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of **Continental Foundation JT Venture v. Commr of C.Ex. Chandigarh-I, 2007 (216) ELT 177 (SC)** wherein it was held that mere omission to give correct information cannot be said to be suppression unless it is established that the same is deliberate to stop the payment. The relevant extract of the judgement is reproduced below:

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

It is humbly submitted that the Noticee has been importing the imported goods by adopting the same description and having the same composition. It is further submitted that the entire investigation has been initiated against the Noticee based on the description and the classification adopted by the Noticee. Therefore, the Department were always aware of the transaction carried out by the Noticee and there was no suppression of facts.

Further, the Noticee has clearly described the purpose and the use of the imported goods in the impugned BOE. The only obligation cast upon the taxpayer under the self-assessment is to declare all the information applicable correctly and assess the duty liability to the best of its knowledge. Non-payment on account of an error or misunderstanding cannot be said to be a breach or failure to meet the requirements enlisted under Section 46. Therefore, it is

submitted that Noticee has clearly declared all the information to the best of its knowledge and cannot be said to have suppressed any facts.

Therefore, extended period of limitation cannot be invoked and the impugned SCN is time barred and the demand is liable to be dropped.

Suppression of facts cannot be alleged when the Department is aware of the facts.

It is humbly submitted that the Noticee has been importing the imported goods by adopting the same description and the Department was well aware of the said imports. The Department had issued Letter dated 11.05.2023 to the Noticee for providing explanation for the non-payment of CVD and ADD on import of the imported goods to which the Noticee had submitted a response stating that ADD and CVD is not imposable in the present case. It is submitted that it was on the basis of the declaration made by the Noticee in the impugned BOE, that the entire proceedings have been initiated. The Noticee had clearly disclosed in the impugned BOE that the imported goods are meant for use in WOEG, which is the basis of the entire demand. Therefore, the allegation that the Noticee has suppressed facts or wilfully misstated the facts is incorrect.

Further, the Department is well aware of the business of the Noticee and that the Noticee is engaged in the business of manufacturing and supplying WOEG. Further, the Customs Authorities have initiated various proceedings regarding levy of ADD and CVD on other components of the WOEG. Since the Department is well aware of the components of the WOEG and the imports made by the Noticee, the Noticee cannot be said to have suppressed any facts. Further, the Nhava Sheva Port and the Kandla Port have in the past initiated two independent proceedings against the Noticee proposing to demand ADD and CVD on certain imports made by the Noticee. Therefore, it is submitted that the Department had all the opportunity and the power to investigate the other imports made by the Noticee at the time of the initial investigations, which the Department failed to do. Therefore, the Noticee cannot be penalized for the failure of the Department to take action. It is humbly submitted that extended period of limitation cannot be invoked in the present case, and the demand proposed in the impugned SCN is liable to be dropped.

Further, if the Department had an issue with the valuation adopted by the Noticee, or the duty paid by the Noticee on the imported goods, the Department should have initiated an investigation earlier and sought for a clarification. Reliance is placed on the case of **Abhan Loyd Chiles Offshore Limited v Commr of Customs Maharashtra [2006 (200) ELT 0370 (SC)],** wherein it was held as under:

"24. Tribunal in its order while accepting the appeals filed by Aban Loyd Chiles Offshore Limited and Essar Oil Limited (two of the appellants) and dealing with the point regarding confiscation of goods has held that the ONGC had intimated the department of its operations from the Nhava Base. That the Department would in any case have been aware of the general nature of the activities at Nhava base from the fact that the goods which were imported as ship stores were escorted by the preventive officers of the customs. That Commissioner himself in his order has recorded that the Department was aware of this fact and fault lies with the ONGC and the Department. If that be the case, the appellants who were working on behalf of ONGC and as per its directions cannot be accused of willful suppression of facts. All these facts were already to the knowledge of the Department. If all these facts were to the knowledge of the Department, then the

Department was not justified in invoking the extended period of limitation. Accordingly, it is held that the Department would not be entitled to invoke the proviso to Section 28 of the Customs Act and avail of extended period of limitation."

Reliance is also placed on the following judgments:

a. **CCE v. Bell Granito Ceramica Limited, 2006 (198) ELT 161 (SC)**
b. **Pahwa Chemicals Private Limited v. CCE, 2005 (189) ELT 257 (SC)**
c. **Pushpam Pharmaceuticals Company v. CCE, Bombay, 1995 (78) E.L.T. 401 (S.C.)**
d. **Anand Nishikawa Co. Limited v. CCE, Meerut, 2005 (188) E.L.T. 149 (S.C.)**
e. **CCE, Mumbai-IV v. Damnet Chemicals Limited, 2007 (216) E.L.T. 3 (S.C.)**
f. **Continental Foundation Jt. Venture v. CCE, Chandigarh-I, 2007 (216) E.L.T. 177 (S.C.)**
g. **Accurate Chemicals Industries v. CCE, Noida, 2014 (300) E.L.T. 451 (Tri. – Del.)** as upheld by the Hon'ble Allahabad High Court in the case of**2014 (310) E.L.T. 441 (All.)**

The Noticee has no intention to evade payment of duty.

The Noticee has no intention to evade payment of duty and acted in a bona fide manner, in as much as everything was on record and nothing was done without any record or complying with the legal provisions, wherever the same was required.

The Noticee has taken no active steps to alter the description of the imported goods with an intention to non-payment of CVD and ADD on the import of the imported goods. Therefore, it cannot be alleged that the Noticee wilfully made short payment of duty.

Without prejudice to the above, it is submitted that the short payment, if any, was not on account of fraud, misstatement but due to bonafide belief on the part of the Noticee.

Reliance is placed on the following case laws in support of its contention that extended period of limitation is not invokable in such a scenario:

a. **Cosmic Dye Chemical v. CCE, Bombay, 1995 (75) E.L.T. 721 (S.C.)**
b. **Padmini Products v. CCE, 1989 (43) E.L.T. 195 (S.C.)**
c. **Pee Jay Apparels (P) Ltd. v. CCE, 2001 (135) ELT 842 (Tri. - Del.)**
d. **CCE, Meerut v. Rishabh Velveleen (P) Limited, 1999 (114) E.L.T. 839 (Tri.)**

14.15 No penalty can be imposed under section 114A of the Customs Act.

The impugned SCN at paragraph 12.19 has proposed to impose penalty under Section 114A of the Customs Act. The impugned SCN has merely cited Section 114A of the Customs Act without explaining as to how the penalty under the said section is imposable.

It is submitted that the Noticee has already submitted in the above foregoing paragraphs that the demand of ADD, CVD and IGST is not sustainable in law. Once the demand of duty is found to be non-sustainable, the question of levy of penalty does not arise as per the settled law.

In this regard, reliance is placed on **H.M.M. Limited [1995 (76) ELT 497 (SC)],** wherein the Hon'ble Supreme Court held that, the question of penalty would arise only if the Department is able to sustain the demand. Similarly, in **Balakrishna Industries [2006 (201) ELT 325 (SC)]**, the Hon'ble Supreme Court held that, penalty is not imposable when differential duty is not payable.

The above judgment of the Hon'ble Supreme Court has been followed in several cases by the Hon'ble High Courts and Tribunals, including in the judgment of the Hon'ble Bombay High Court in the case of **Nakoda Textile Industries Limited, 2009 (240) ELT 199 (Bom.).**

Further, it is submitted that the penalty under Section 114A is imposed in cases where the duty has not been paid by reason of collusion or any wilful misstatement or suppression of fact. The relevant extract of the said Section is reproduced below:

"Where the duty has not been levied or has been short-levied or the interest has not *been* ***charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful 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."***
...Emphasis Supplied

Reliance in this regard is placed in the case of **CC Vs. Videomax Electronics, [2011 (264) ELT 0466 (Tri. -Bom.]** wherein it was held that the legal requirements to invoke Section 114A penalty is the same as extended period of limitation under Section 28 of the Customs Act. In essence, if the extended period of limitation under Section 28 is not invokable, penalty under Section 114A of the Customs Act cannot be imposed.

This view has also been confirmed in the case of **Union of India Vs. Rajasthan Spinning & Weaving Mills, [2009 (238) E.L.T. 3 (S.C.)]** in the context of section 11A and 11AC of the Central Excise Act, 1944 (in pari materia with Section 28 and Section 114A of Customs Act).

Similarly, in the case of **Commissioner of Customs, Mumbai v. M.M.K. Jewellers, 2008 (225) E.L.T. 3 (S.C.)**, the Hon'ble Supreme Court held as under:

"42. Penalty under Section 114A is imposable only when the demand is confirmed under the proviso to Section 28(1) of the Act. In view of the clear findings of the Commissioner that the respondent-assessees are not guilty of suppression of facts or are guilty of collusion or misstatement and, therefore, duty cannot be imposed by invoking the extended period of limitation. When the duty

itself cannot be imposed, no order of imposing the penalty under Section 114A of the Customs Act can be sustained."

As already submitted above in the Ground G , the Noticee had no intention to evade tax and there is no element of fraud, collusion, wilful-misstatement, or suppression of facts. Therefore, penalty under Section 114A cannot be imposed and the impugned SCN is liable to be dropped.

14.16 Confiscation of the imported goods is not warranted in the present case.

In any case the imported goods are not liable for confiscation under Section 111(m).

The impugned SCN at paragraph 12.16 has alleged that since the Noticee has failed to discharge the duty liability correctly and misdeclared the composition of the imported goods, the said goods are liable to be confiscated under Section 111(m) of the Customs Act. Section 111(m) of the Customs Act is reproduced for ready reference:

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

...

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"

It is not the case that the imported goods do not correspond with the description of goods as mentioned in the impugned BOE. Further, as explained in above paragraphs, the Noticee is of the view that there was no mis-declaration either in respect of value or in any other particular with the entry made under the Customs Act and therefore, the provisions of the said Section are not attracted in the present case.

Since, the Noticee has not violated any of the aforesaid provisions and neither mis-declared nor suppressed any of the value in the impugned BoE, therefore, the imported goods are not liable for confiscation under Section 111(m) of the Customs Act.

The Hon'ble Allahabad High Court in the case of **Shahnaz Ayurvedics v. Commissioner of Central Excise, Noida [2004 (173) ELT 337 (All).]** wherein it was held that whenever the Revenue alleges misdeclaration on the assessee, the burden of proving that the assessee deliberately acted with an intention to defraud the Revenue lies with the Revenue. Unless this burden is discharged, the assessee cannot be held guilty of misdeclaration. It is only after this burden has been discharged by the Revenue that the burden of disproving the misdeclaration shifts onto the assessee. The Hon'ble High Court further held that the evidence led by the assessee which proves the bona fide of the assessee cannot be brushed aside by the Revenue. The Hon'ble High Court in this regard held as under:

"79. ***The onus to prove fraud, misstatement is on the Revenue and not otherwise. It is only when the Revenue discharges its onus, the burden is shifted to the assessee to prove that he never intended to evade the liability****. Evidence led by the assesseecannot be brushed aside by the authority concerned rather it has to be dealt with in accordance with law. Nor it is permissible for the authority to ignore the relevant evidence/factors, taking into consideration irrelevant documents."*
...Emphasis Supplied

The above decision of the Hon'ble High Court has been affirmed by the Hon'ble Supreme court in the case of **CCE v. Shahnaz Ayurvedics, 2004 (174) ELT A34 (SC)**.

The Noticee further places reliance on the decision of the Hon'ble Tribunal in case of **Maruti Udyog Limited, 2002 (141) ELT 392** wherein the Hon'ble Tribunal observed as under:

"4. As regards the appeal by the Revenue, we find no merit. The facts in the present case clearly show that there is no mis-declaration on the part of the Appellant. Once all the required details of the goods imported are given the party cannot be held guilty of mis-declaration only for the reason they put forward an untenable claim for exemption from duty. The Commissioner (Appeals) has come to the correct conclusion on this point, and it was totally unnecessary on the part of the Revenue to have filed this appeal."

Therefore, it is submitted that the Noticee cannot be held guilty of willful misstatement or suppression merely because the alleged differential ADD and CVD is not paid. Moreover, it is submitted that the basis of issuing the impugned SCN by the Department was the declaration of the Noticee in the impugned BOE which shows that the same are going to be used in WOEG. Therefore, the allegation that the Noticee has willfully misstated or suppressed the facts is blatantly incorrect and baseless and hence, the imported goods are not liable for confiscation under Section 111(m) of the Customs Act.

Further, it is humbly submitted that the impugned SCN has alleged short payment of duty only on account that casting for WOEG includes part of the WOEG and since the imported goods are part of the WOEG, CVD and ADD shall be payable on them.

In this regard, it is humbly submitted that the impugned SCN too has failed to adduce any evidence to show that the imported goods are made up of casting or used as subassemblies to products made up of castings.

The impugned SCN has further alleged that the Noticee has failed to discharge its obligation of self-assessment under Section 17 and Section 46 of the Customs Act and considering the Noticee is a regular importer, the Noticee was well aware of the rules and regulations and the failure to discharge the applicable duty was with the intention to evade tax.

In this regard, it is submitted that the Noticee even though a regular importer is not an expert so as to be able to assess all the applicable duties and the right classification and can make mistakes in the same. Therefore, the Customs Act has provided the Department the power to reassess. Therefore, mistake in filing of the bill of entry cannot be assumed to be a misdeclaration. Reliance in this regard is placed on the decision of the Hon'ble Tribunal in the case of **Midas Fertchem Impex Private Limited v. Principal Commr of Customs, ACC (Import), New Delhi, 2023 (384) ELT 397 (Tr- Del).** The relevant extract of the decision is reproduced below:

"50. In practice, the importer makes an entry under Section 46 and also self-assesses duty under Section 17(1) by filing the Bill of Entry. There is no separate mechanism to self-assess duty. The columns pertaining to classification, valuation, rate of duty and exemption notifications which determine the duty liability are part of the Bill of Entry which is also an entry under Section 46. Thus, although the Bill of Entry requires the importer to make a true declaration and further to confirm that the contents of the Bill of Entry are true and correct, the columns pertaining to classification, exemption notifications claimed and in some cases even the valuation are matters of self-assessment and are not matters of fact. Self-assessment is also a form of assessment but the importer is not an expert in assessment of duty and can make mistakes and it is for this reason, there is a provision for re-assessment of duty by the officer. ***Simply because the importer claimed a wrong classification or claimed an ineligible exemption notification or in some cases, has not done the valuation fully as per the law, it cannot be said that the importer misdeclared. As far as the description of the goods, quantity, etc. are concerned, the importer is bound to state the truth in the Bill of Entry. Thus, simply claiming a wrong classification or an ineligible exemption notification is not a mis-statement. Assessment, including self-assessment is a matter of considered judgment and remedies are available against them. While self-assessment may be modified by through re-assessment by the proper officer, both self-assessment and the assessment by the proper officer can be assailed in an appeal before the Commissioner (Appeals) or reviewed through an SCN under Section 28. Therefore, any wrong classification or claim of an ineligible notification or wrong self-assessment of duty by an importer will not amount to mis-statement or suppression****."*

...Emphasis Supplied

Further, the Noticee being a regular importer of the imported goods has imported the imported goods in the past also without paying CVD and ADD and the Department has never questioned the said importations. The Noticee has correctly provided the description and usage of the said goods in the impugned BOE. Further, the Noticee imports various parts of casting components through various ports across India. The Customs Department has initiated various investigations against the Noticee seeking clarifications regarding the composition of the imported goods. Since the Noticee had never been questioned for the imported goods, the Noticee was under a bonafide belief that no CVD and ADD were payable on the imported goods. Therefore, it cannot be alleged that the Noticee has failed to discharge its obligation of self-assessment of duty under Section 17 and Section 46 of the Customs Act on importation of the imported goods.

Since there is no misdeclaration, therefore, the goods are not liable to be confiscated and the impugned SCN is liable to be dropped to this extent.

In any case the imported goods are not available for confiscation.

Without prejudice to the other submissions, it is submitted that confiscation of goods cannot be ordered when the goods are not available for confiscation. Reliance in this regard is placed on **Shiva Kripa Ispat Private Limited v. Commissioner of Central Excise and Customs, Nasik, 2009 (235) ELT 623 (Tri. - LB)**, wherein it was held that goods which have been cleared cannot be confiscated.

In the present case, the imported goods were cleared for home consumption and used in the finished goods i.e., windmill. Further, the finished manufactured goods using the imported goods have been already sold by the Noticee. Thus, the imported goods are not available for confiscation. Therefore, the imported goods which are not in the possession of the Noticee cannot be confiscated.

Further, it is submitted that the goods cannot be confiscated after clearance from the Customs Port. The imported goods, in the present case, have been cleared and are not available for confiscation. Thus, it is submitted that the proceeding initiated vide the impugned SCN is liable to be dropped on this ground alone.

14.17 No Penalty can be imposed under Section 112(a) of the Customs Act.

The impugned SCN at paragraph 12.18 has reproduced Section 112(a) of the Customs Act and imposed penalty under Section 112(a) of the Customs Act.

The impugned SCN has alleged that the imported goods are liable to be confiscated and therefore, penalty under Section 112(a) is imposable on the Noticee. It is submitted that as per the Section 112(a), a person would be liable to pay penalty in situations which are enumerated in the sub-sections. For the sake of convenience, Section 112(a) is reproduced below:

"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 or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty five per cent. of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest."
...Emphasis Supplied

On the bare reading of the aforesaid section, it is clear that the penalty under the said Section would be imposed only if it falls under any of the Sub-section of Section 111. However, as mentioned above, the Noticee has disclosed all the particulars in the impugned BoE and all the relevant documents were furnished to the customs authorities at the time of importation of the imported goods. Further, it is submitted that the case of the Noticee does not fall under any of the Sub-section of Section 111 as no goods are liable for confiscation, which is already established above and therefore, the proposed demand of penalty is liable to be dropped.

Without prejudice to anything stated above, penalty cannot be imposed under Section 112(a) and Section 114A at the same time. It is humbly submitted that Fifth Proviso to Section 114A clearly states that penalty cannot be imposed under Section 112 when penalty has been imposed under Section 114A of the Customs Act. The relevant extract of Section 114A is reproduced below:

"*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 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, the person who is liable to pay the duty or interest, as the case may be, as determined under 1[sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined :*

....
Provided also ***that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114."***
...Emphasis Supplied

Since the impugned SCN has already proposed to demand penalty under Section 114A of the Customs Act, therefore, no penalty should be imposed under Section 112(a) and the impugned SCN is liable to be dropped to this extent.

14.18 Penalty cannot be imposed on the Noticee under Section 117 of the Customs Act.

The impugned SCN at paragraph 12.9 has reproduced Section 117 of the Customs Act and imposed penalty under Section 117 as there are contravention of provisions of the Customs Act. It is submitted that as the Noticee has already explained in the foregoing paragraphs that there is no violation of any provisions of the Customs Act, therefore, penalty is not imposable on the Noticee.

Without prejudice to the above, it is humbly submitted that penalty under Section 117 is a residual provision and can only be imposed when the alleged default committed by the assessee is not covered elsewhere in the Customs Act. The provisions of Section 117 are extracted below for the ease of reference:

"SECTION 117. Penalties for contravention, etc., not expressly mentioned. – Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees."
1

From the above reproduced Section, it is evident that penalty under Section 117 can be imposed under three conditions:

a. When any person contravenes or abets any contravention of the provisions of the Customs Act;
b. When any person fails to comply with any provisions of the Customs Act;
c. When there is no express penalty provided elsewhere for such contravention.

The Noticee in this regard, wishes to rely on the Tribunal's decision in the case of **DHL Express India Private Limited v. Commissioner of Customs, 2016 (332) E.L.T. 169 (Tri. - Mumbai)** wherein it has been held that provisions of Section 117 get attracted only to a person who has contravened the provisions of the Customs Act or abets any such contravention or fails to comply with any provisions of the Customs Act which is his duty to comply. Relevant portion of the decision is reproduced below:

"4. After considering the submissions made by the learned Departmental Representative and on perusal of the records, I find that both the lower authorities erred in imposing penalty on the appellant under Section 117 of the Customs Act, 1962 for more than one reason. Firstly, the appellant is a courier and has filed courier bill of entry as per the declaration and authorization given to him by the importer. Appellant had filed courier bill of entry based upon the

proforma invoice provided to him by the importer and in my view, has not contravened any of the provisions of the Customs Act, 1962 to attract penalty. It was his duty to inform the importer to file the bill of entry and discharge duty liability, in response to which he was authorised to file the bill of entry with the value as being shown in the proforma invoice and cannot be considered as a dereliction of duty. Secondly, provisions of Section 117 gets attracted only to a person who has contravened the provisions of the Act or abets any such contravention or fails to comply with any provisions of the Act which is his duty to comply and where there was no express penalty provided is not at all present in this case. In my considered view, if the Revenue had strong case against the appellant they could have issued a show cause notice by invoking the various other provisions of the Act for imposition of penalties. Having not done so, the penalty under the provisions of Section 117 cannot be invoked against the appellant."

It is humbly submitted, in the present case that the impugned SCN has already proposed to levy penalty under Section 112(a) and Section 114A of the Customs Act. Therefore, it is safe to assume that the said penalty has been proposed only when there is violation of specific provisions. Since the impugned SCN has already invoked provisions imposing specific penalty, imposition of penalty under the residual entry is incorrect. Further, the impugned SCN has failed to explain as to how the alleged contravention of the Noticee is not covered under any of the provisions of the Customs Act and therefore, is vague to this extent.

It is a well-established principle of law that the assessee is to be put to notice of the exact nature of the contravention for which he is liable and the impugned SCN, having not done the same cannot lead to imposition of penalty under Section 117 of the Customs Act. Reliance in this regard is being placed on **Amrit Foods v. CCE, U.P., [2005 (190) ELT 433 (SC)].**

It is also submitted that as explained above, the Noticee had no mens rea to evade tax and once there is no mens rea, penalty cannot be imposed on the Noticee. Reliance in this regard is placed on:

i. **Hindustan Steel Limited v. State of Orissa, 1978 (2) E.L.T. (J159)**
ii. **Akbar Badruddin Jiwani v. Collector of Customs, 1990 (47) ELT 161**
iii. **K. K. Arora v. Commissioner of Customs, Mumbai, 2007 (212) E.L.T. 33 (Tri-Mumbai)**

In light of the above, it is submitted that penalty under Section 117 is not imposable in the present case and the impugned SCN is liable to be dropped to this extent.

14.19 In any case interest cannot be levied on the noticee.

The impugned SCN at paragraph 12.12 has proposed to demand interest at the applicable rate under Section 28AA of the Customs Act. The impugned SCN has alleged that the Noticee has misdeclared the content of casting component in the imported goods and thus short paid the customs duty. Therefore, the Noticee is liable to pay interest on the short paid amount.

Demand for interest is not sustainable, when demand is not sustainable.

In this regard, it has been explained in the above submissions that the demand of differential duty is not maintainable. As there is no liability to pay the differential duty, the Appellant is not liable to pay interest on the same. Reliance in this regard is placed on:

i. **Commissioner of C. Ex. & S.T., LTU, Bangalore v. Bill Forge Pvt. Ltd., 2012 (279) E.L.T. 209 (Kar.)**
ii. **In Re: Victor Pushin Cords Pvt. Limited, 2013 (297) E.L.T. 312 (Commr. Appl.)**

Without prejudice, interest cannot be demanded on short payment CVD, ADD and IGST

Without prejudice to the above, it is humbly submitted that there is no enabling provision under the Customs Tariff Act to demand interest on short payment or non-payment of CVD, ADD and IGST. In this regard, reliance is placed on the decision of the Hon'ble Bombay High Court in the case of **Mahindra and Mahindra Limited v Union of India**, **2022-TIOL-1319-HC-MUM-CUS**, wherein it was held that the enabling provision for imposing interest on duty under the Customs Act, 1962 cannot be used to impose penalty and interest under Customs Tariff Act, 1975. Further, the Hon'ble Supreme Court has rejected the SLP filed by the Department against the decision of Hon'ble Bombay High Court.

Reliance in this regard, is also placed on the decision in the case of **AR Sulphonates Private Limited v Union of India [2025 TIOL 592 HC Mum Cus]** wherein it has been categorically held that to assume that Section 3(12) of the Customs Tariff Act, incorporates the provisions of the Customs Act would not be correct and the statute does not expressly provide for interest and penalties to be imposed of IGST.

Considering that there is no enabling provision under the Customs Tariff Act to levy interest on ADD, CVD and IGST, the demand of interest is bad in law and deserves to be dropped.

Without prejudice to anything submitted above, the proper officer to enforce or demand interest for short payment of IGST duty would be an officer appointed under Section 3 and Section 4 of the Integrated Goods and Services Tax Act, 2017. In the present case, the impugned SCN is not issued by the Officer appointed under Section 3 and Section 4 of the Integrated Goods and Services Tax Act, 2017. Therefore, the alleged demand of interest is not sustainable and deserves to be dropped.

14.20 The noticee craves leave to refer and rely upon any case law and/or judgment, as and when produced. The noticee craves leave to rely upon any new evidence or document at the time of, before or after the personal hearing.

Personal Hearing

15. Shri Shankar Rochlani, Chartered Accountant appeared for personal hearing on 13.10.2025 in virtual mode on behalf of M/s GE India Industrial Private Limited. He further submitted the Noticee had imported service lifts which were correctly classifiable under CTH 8428 and ADD and CVD could only be levied on goods classifiable under Tariff Item 848340 00, 8503 00 10 or 8503 00 90. He relied on the Final Findings of the Designated Authority in respect of levy of ADD and CVD and submitted that the Final Findings had also observed and recognised that WOEG uses casting and non-casting components for generation of electricity. Merely because an item is used in a WOEG does not make it subject to the levy of ADD and CVD. He also submitted a Certificate of a Chartered Engincer and stated that the service lift had certain components which were made up of casting but the same only constituted 1.88% of the total weight of the service lift. He submitted that the levy of ADD and CVD is on the goods in the as imported form and not on the inputs used in the imported goods. However, if ADD and CVD is to be levied, the same must be levied to the extent of the casting component. It was also submitted that extended period of limitation cannot be invoked in the present case, as the Noticee had correctly made all disclosures in the bill of entry filed. Further, it was basis the description adopted by the Notice that the Department had issued a show cause notice in the present case. He also emphasised on the fact that proceedings regarding levy of ADD and CVD had been initiated against the Noticee at various ports and therefore, fraud and suppression could not be alleged as the Department was well aware of the goods imported by the Noticee. During the course of hearing, he submitted a compilation of relevant provisions and documets relied upon during the hearing. A period of one week has been granted for any further written submissions.

Discussion and Findings

16. I have carefully gone through the facts of the case, Show Cause Notice dated 23.01.2025 and the noticee submissions both, in written and in person. I find that in the present case principle of natural justice have been complied with and therefore, I proceed to decide the case on the basis of applicable laws/rules, written submissions and documentary evidences available on record.

17. I now proceed to decide the issues framed in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided at the stage of adjudication: -

(i) Whether the imported goods fall within the description of goods in column 3 of Noti. No. 01/2016-Cus dated 19.01.2016 or otherwise.

(ii) Whether the imported goods fall within the definition of implied meaning

of castings as given in Noti. No. 42/2017-Cus dated 30.08.2017 or otherwise.

(iii) Whether Assessable Value for the purpose of calculation of IGST be recalculated so as to add the amount of the duties of customs of CVD and the ADD as discussed hereinabove to recalculate the amount of IGST payable or otherwise.

(iv) Whether differential Customs duties totally amounting to Rs. 33,13,323/ (CVD- 8,59,209/- + ADD – 22,96,337/- + IGST- 1,57,777/-), (Rupees Thirty Three Lakhs Thirteen Thousand Three Hundred and Twenty Three only), as discussed hereinabove, should be demanded and recovered from them in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962 or otherwise.

(v) Whether the impugned goods with the total declared Assessable value of Rs. 59,97,112/- as detailed in Table-A of this notice, should be held liable to confiscation under Section 111(m) of the Customs Act, 1962, for short levy of duty by reason of willful misstatement & suppression of facts or otherwise.

(iv) Whether the noticee is liable for penalty under Sections 112(a) and/or 114A and/or 117 of the Customs Act, 1962 or otherwise.

18. Now, I have to decide the above mentioned issued one by one:- The goods imported vide Bill of Entry no. 7579375 dated 04.05.2020 fall within the description of goods in column 3 of Noti. No. 01/2016-Cus dated 19.01.2016 and fall in description of goods in Noti. No. 42/2017-Cus dated 30.08.2017:-

18.1 I observe that M/s. GE India Industrial Private Limited having address at Plot No. 1/B, Halol Industrial Area, Phase-II, Village Chandrapura, Taluka Halol, Gujarat-389350, were importing ""Casting for Wind Operated Electricity Genertors falling under CTH No. 85030090 of First Schedule to the Customs Tariff Act, 1975.

18.2 I find that during the course of Post Clearance Audit, it was noticed that M/s. GE India Industrial Private Limited, has filed the Bill of Entry no. 7579375 dated 04.05.2020, for the import of "Casting for Wind Operated Electricity Genertors", classifying the same under Customs Tariff item 85030090, on payment of BCD @7.5%/6% (20% Sapta notif no. 50/2018-CUS), SWS @10% & IGST @5%, imported from China (Country of origin). However, the show cause notice proposed that no Countervailing Duty and/or Anti-dumping duty had been paid in view of Notification No.01/2016(CVD) dated 19.01.2016 and Notification No. 42/2017-CUS (ADD) dated 30.08.2017.

18.3 I further find that the show cause notice has proposed that the above said imported goods were within the description of goods in Column 3 of the Table under Notification No.01/2016(CVD) dated 19.01.2016 and accordingly, the said goods imported from China were liable for Countervailing Duty @ 13.44% of the landed value of the said goods imported from China.

18.4 I further find that the show cause notice has proposed that the above said imported goods fall under the implied meaning of Casting for Wind Operated Electricity Generators as per the Note (i) of the Table under Notification No. 42/2017 CUS (ADD) dated 30.08.2017 and accordingly, the said goods imported from China were liable for Anti-Dumping duty @ 35.92% of the landed value of the said goods imported from China.

18.5 I find that as per Section 12 of the Customs Act, 1962 read with sub-section (7) of Section 3 of the Customs Tariff Act, 1975 the said tariff item, was liable to Integrated GST @ 5% ad valorem, during the period upto 29.09.2021, in view of the Entry at Sr. no. 234 of the SCHEDULE I under notification no. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended). The integrated GST is leviable on the value of the imported article as determined under sub-section (8) or sub-section (8A) of Section 3 of the Customs Tariff Act, 1975. Accordingly, all customs duties (including ADD), except IGST and GST Cess, are required to be added in the transaction value to arrive at the assessable value for calculation of the integrated tax. However, the show cause notice proposed that importer failed to properly self-assess and short-paid IGST.

18.6 **Relevant Notifications-**

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

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

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

27th November, 2015 has come to the conclusion that – …"

……

……

"…… in exercise of the powers conferred by sub-sections (1) and (6) of section 9 of the Customs Tariff Act, read with rules 20 and 22 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff items of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India, countervailing duty at the rate to be worked out as percentage of the landed value of imports of the subject goods as specified in the corresponding entry in column (8) of the said Table, namely:-

Table:-

S.no.	*Tariff item*	*Description of Goods*	*Country of Origin*	*Country of Export*	*Producers*	*Exporter*	*Percentage of Landed Value*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*
……...							
2.	*84834000,85030010 or 85030090*	Castings for wind operated electricity generators, whether or not machined, in raw, finished or sub assembled form, or as a part of a sub assembly, or as a part of an equipment/ component meant for wind-operated electricity generators	People's Republic of China	People's Republic of China	*Any*	*Any*	*13.44*

……

Explanation.- For the purposes of this notification, "landed value" shall be the

assessable value as determined under the Customs Act 1962, (52 of 1962) and all duties of customs except duties levied under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act.

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

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

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

……..

……..

"……. in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes definitive anti-dumping duty on the subject goods, the description of which is specified in column (3) of the Table below, falling under Chapter heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the country as specified in the corresponding entry in column (4), exported from the country as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding

entry in column (7), and imported into India, an anti dumping duty at the rate of an amount equivalent to the difference between the quantum of anti-dumping duty calculated as per column (8) and the quantum of anti-subsidy/countervailing duty payable, if any, of the said Table, namely:

Table:-

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

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

.....

Explanation. – Landed value of imports for the purpose of this notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

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

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

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

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

as follows:

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

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

18.8 Further, the Findings of the Designated Authority were notified vide Notification dated 27/10/2015 of the Ministry of Commerce and Industry, Department of Commerce (Directorate General of Anti-Dumping and Allied Duties). The relevant provisions of the said final findings relevant for the purposes of this issue are as under.:-

"Scope of the products covered under the investigation:

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

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

……

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

viii. The operations involved in preparing sub-assembly are almost a screw-driver technology and efforts involved are quite insignificant in proportion to overall operations carried out. Therefore, it is quite feasible for an eventual consumer to buy sub-assembled products instead of buying castings and other

products separately. The Authority, therefore, notes that ***if the scope of the PUC does not include the sub-assemblies, it shall defeat the very purpose of imposing any trade defense measure, if any. The Authority however appreciates that the scope of the PUC cannot be extended to entirety of subassemblies, merely because it contains castings within the scope of the measures. The Authority therefore holds that it is appropriate to consider sub- assemblies within the scope of the product under consideration so long as the scope of the CVD measures, if any, is limited to casting portions of the sub-assemblies.***

i x . ***For the reasons similar to inclusion of sub-assemblies, it is appropriate to consider castings that may be imported as a part of equipment/component within the scope of the product under consideration so long as the scope of the measures is limited to casting portions of these equipments/components used for wind mills or wind turbines or wind- operated electricity generators****."*

18.9 As per the definition of Service lift used in wind Turbine available on internet:- The service lift is erected inside the wind tower. The lift is pulled by the suspension wire rope, and moves up and down along the guide ladder or guide wire rope on the tower wall to deliver the operators, tools or materials from the starting surface to the ground. It is a kind of transport equipment.

The hoist, safety lock, and electrical control system are all set on the top of the elevator car. A beam is added at the top of the wind tower to hang the working wire rope and the safety wire rope. The working rope passes through the hoist to form a lifting system, and the safety rope passes through the safety lock to form a safety system. The two systems are relatively independent to ensure safety. Service lifts in wind-turbine towers are technically not elevators and approved by authorities.

There are various type of wind tower service lifts: Wire rope guided tower Lift, Ladder guide tower service lift, Large capacity tower lift, Rack and pinion ladder-guided tower lift etc.

The service lift in a wind turbine consists of both casting and non-casting (fabricated) parts.

Casting parts: Casting is used for parts that require high strength, complex shapes, and specific metallurgical properties, such as Brake discs, Counterweights, Specific housings (e.g., bearing or coupling), Anchors or inserts that are cast into concrete tower sections for attaching internals. These components are typically made of cast iron (grey or ductile) or cast steel and are engineered to handle significant mechanical and thermal loads.

Non-Casting Parts (Fabricated/Machined): Many other service lift

components are manufactured using non-casting methods, including fabrication, machining, and assembly:Structural frames and housing of the lift car itself are typically made from structural grade steel sheets that are welded or assembled together, Wire ropes are made of steel or phosphor bronze, Electronic control systems, sensors, and microprocessors are complex assemblies of various materials, Gears and shafts often involve precision forging and hardening processes followed by machining, Lifting beams and specialized lifting tools used during installation or major maintenance are often large, fabricated steel structures designed for specific load distribution.

18.10 I observed that the import items included casting parts with other parts. The basic function of a casting is in a wind turbine, to be used in a wind mill along with some other non-casting parts and components like tower, blades, etc. which leads to the generation of electricity. Further, a large number of castings are collectively used in a windmill. Some of these castings are assembled along with other products to prepare a sub- assembly. Eventually, a windmill comprises of a number of these sub-assemblies. It is appropriate to consider castings that may be imported as a part of equipment/component within the scope of the product under consideration so long as the scope of the measures is limited to casting portions of these equipment's/components used for wind mills or wind turbines or wind-operated electricity generators. In the instant case, the goods imported undeniably consisted of casting parts and such casting parts were manufactured by simple machining and polishing process.

18.11 Further, as per notifications nos. 01/2016(CVD) dated 19.01.2016 and notification no. 42/2017-Cus (ADD) dated 30.08.2017 discussed above, CVD and ADD are applibale on Castings used as a part of an equipment/component meant for WOEG.

In the instant case, the goods imported vide subject Bill of Entry i.e. service lifts (part of wind operated electricity generator) are used specifically in wind turbine tower. Service lifts in wind-turbine towers are technically not elevators as used elsewhere**.** Service lifts in WOEG are castings used as a part of an equipment/component meant for wind operated electricity generator only.

18.12 Further, the importer filed B/E no. 7579375 dated 04.05.2020 for the import of "Service lift (parts of Wind operated electric generator)" decalred them under HSN code 85030090.

Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Provisions of the Section 46 of the Customs

Act, 1962 makes it mandatory for the importer to make proper & correct entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

The CVD and ADD was applicable on "Castings for wind operated electricity generators" also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators" declared under HSN code 84834000, 85030010 or 85030090 as per relevant notifications nos. 01/2016(CVD) dated 19.01.2016 and notification no. 42/2017-Cus (ADD) dated 30.08.2017.

As per self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry and in the instant case, the importer in the subject Bill of Entry declared the goods under HSN code 85030090 by way of self assessment. Accordingly, I find that HSN code 85030090 decalred by the importer for the impugned goods correctly falls under the ambit of notifications nos. 01/2016(CVD) dated 19.01.2016 and notification no. 42/2017-Cus (ADD) dated 30.08.2017.

18.12 I also find that Castings for Wind Operated Electricity Generators for the purpose of the present notification *includes* a part of a sub-assembly or a part of an equipment/component meant for wind-operated electricity generators, as described under column (3) of the Table under the said Notification No. 01/2016(CVD) dated 19.01.2016. The importer has imported service lift as a part of WOEG from PR of China and classified them under HSN code 85030090. The service lift is consisted of casted and non-casted parts, accordingly such description of goods falls under the scope of "Casting parts" in terms of the Notification No.01/2016-Customs (CVD) dated 19.01.2016 and also fall under Note (i) of the Table of the said Notification No. 42/2017-Cus(ADD) dated 30.08.2017.

In view of above, I find that the goods imported vide B/E no. 7579375 dated 04.05.2020 attract CVD vide Notification No. 01/2016- Customs (CVD) dated 19.01.2016 also attracts ADD vide Notification No.42/2017- Cus (ADD) dated 30.08.2017 and the rate of ADD shall be an amount equivalent to the difference between the quantum of anti-dumping duty calculated as per column

(8) and the quantum of anti-subsidy/countervailing duty payable.

19. The Noticee submitted that the Department has failed to provide any basis to allege that the imported goods are made up of castings or have casting components or identify the exact casting component. Noticee submitted that the impugned SCN is based on the presumptions and assumptions which is violative of principles of natural justice and the demand is liable to be dropped. :-

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

19.2 Further, I also find that it is a fact that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011; 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Provisions of the Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make proper & correct entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962) the Bill of Entry shall be deemed to have been filed and after self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) 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. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

19.3 From the above, I find that the Noticee has violated Sub-Section (4) and 4(A) of Section 46 of the Customs Act as they have mis-declared and mis-classified the goods and evaded the payment of applicable duty. I find that the

Noticee was required to comply with Section 46 which mandates that the importer filing the Bill of Entry must make true and correct declarations and ensure the following:

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

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

2 0 . **Applicability of extended period under Section 28 (4) of the Customs Act, 1962.**

2 0 . 1 The Impugned Show Cause Notice has been issued under the provisions of Section 28(4), therefore it is imperative to examine whether the Section 28(4) of the Customs Act, 1962 has been rightly invoked or not. I find that after introduction of self-assessment and consequent upon amendment to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it is incumbent on the part of the Importer to declare the correct information about the impugned goods and make true and correct declaration in all aspects like classification, valuation, including calculation of duty and claim of benefit etc. Onus is on the noticee to comply with the various laws, determine his tax liability correctly and discharge the same. The Importers are required to declare the correct description, value, classification, notification number if any, on the imported goods. Self-Assessment is supported by section 17, 18 and 46 of the Customs Act 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011. The Importer is squarely responsible for Self-Assessment of the duty on the imported goods and filing all declaration and related documents and confirming these are true, correct and complete. Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent importers would face penal action on account of wrong Self-Assessment made with intent to evade

duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provisions under the Customs Act 1962 or the allied acts.

20.2 From the facts and evidences placed before me, I find that that Importer has not declared the goods as casting and non-casting, hence, the same lead to the incomplete declaration and evasion of duty. Therefore, it amounts to willful mis-statement on the part of importer leading to evasion of duty. There was no complex interpretation involved in determination of the casting and non-casting parts by the Noticee as the Noticee is dealing in the impugned goods from long time. On enquired by the department, Noticee has not submitted any acceptable clarification. Hence, the intent of Noticee to evade duty deliberately is apparently clear. The importer has suppressed the said facts from the Customs authorities during filing of the Bill of Entry at Mundra SEZ Port, Mundra. The act of suppression of facts was unearthed only during the course of Post clearance Audit. The Importer knowingly and deliberately had suppressed the material facts during the filing of the Bills of Entry with a clear intention to evade the CVD and ADD.

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

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

suppression has to be brought out to invoke the extended period. In the present case it is evident that the appellant was fully aware that the repair of CPTs did not amount to manufacture, it was also aware that the goods imported at .concessional rate of duty were to be used only for manufacture of excisable goods and still it used those goods for repair. Not only that when information was sought, it indulged in prevarication. Thus the said judgments do not come to the rescue of the appellant. As regards the judgment of CESTAT in the case of Tudor (I) Ltd. (supra) referred to by the appellant to advance the proposition that repair/remaking amounts to manufacture, suffice to say that in that case CESTAT held that the processes undertaken clearly supported the conclusion that they. Amounted to manufacture while in its own case, CESTAT had given a finding that repair of CPTs did not amount to manufacture."

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

21. **Demand of Differential duty and interest**: -

21.1 I observe that the Show Cause Notice proposed the demand and recovery of differential duty of amount Rs. Rs. 33,13,323/ (CVD- 8,59,209/- + ADD – 22,96,337/- + IGST- 1,57,777/-), based on non payment of applicable CVD and ADD applicable vide notification no. 01/2016-Customs(CVD) dated 19.01.2016 and notification no. 42/2017-Cus(ADD) dated 30.08.2017 under section 28(4) of the Customs Act, 1962 along with applicable interest under section 28AA of the Customs Act, 1962.

The relevant legal provision is as under:

SECTION 28(4) of the Customs Act 1962.

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

21.2 As discussed in above paras, wherein it has been undisputedly

established that the goods imported vide B/E no. 7579375 dated 04.05.2020 attract CVD vide Notification No. 01/2016- Customs (CVD) dated 19.01.2016 and also attracts ADD vide Notification No. 42/2017- Cus (ADD) dated 30.08.2017.

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

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

From the above, it is clear that ADD and CVD are simultaneously leviable in respect of the same goods, then the amount of ADD levied must be redetermined as follows:-

ADD Levaible in respect of the goods where CVD/Anti Subsidy is payable = ADD prescribed in ADD notification in Column (8) - CVD Prescribed in CVD notification in Column (8)

I find that the effective rate of ADD is 22.48% (ADD@35.92% - CVD@13.44%). Accordingly, the duty liability has been recalculated in Table-B mentioned below:-

Table-B

Re-calculation of CVD & ADD		
Sr.no.		
1.	Custom Site	INMUN1
2.	B/E no.	759375
3.	B/E date	04.05.2020
4.	CTH Code	85030090
5.	Exporter/Supplier	Ficont Industry (Beijing) Co. Ltd.
6.	Assessable Value	59,97,112
7.	BCD paid (@7.5 %)	3,59,827
8.	SWS paid (@10%)	35,983
9.	IGST paid (5%)	3,19,646
10.	Landed Value(6+7+8)	63,92,921
11.	**ADD payable on landed value @ 22.48% (ADD@35.92% - CVD@13.44%).**	**14,37,129**
12.	**CVD payable on landed value (@13.44%)**	**8,59,209**

13.	**IGST Payable (@5%)**	**4,34,463**
14.	**Differential IGST payable**	**1,14,817**
15.	**Total Differential duty**	**24,11,155**
16.	Item Description	Service Lift, 130M HH, 50 HZ(Parts of Wind operated Electric Generator)

From the above, it is seen that the total duty demand alleged in Show Cause Notice is Rs. 33,13,323/- but on recalculating the same, it is concluded that the total duty amount reduced by Rs. 9,02,168/- and the new total duty liability comes out to Rs. 24,11,155/-.

21.4 In view of above, I find that the short-payment of duty resulting therefrom has arisen on account of the importer's wilful misstatement and suppression of material facts. Therefore, the case squarely attracts the provisions of Section 28(4) and Section 28AA of the Customs Act, 1962, which provides for demand of duty and interest not levied or short-levied by reason of collusion, wilful misstatement, or suppression of facts.

In view of the above, I find that the differential customs duty amounting to Rs. 24,11,155/- (re-calculated in Table –B above) is recoverable from M/s GE India Industrial Private Limited under Section 28(4) of the Customs Act, 1962, being duty short-levied by reason of non payment of Countervailing Duty and/or Anti-dumping duty in view of Notification No.01/2016(CVD) dated 19.01.2016 and Notification No. 42/2017-CUS(ADD) dated 30.08.2017.

21.5 Further, the noticee is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962. The relevant provision as under:

Section 28AA.
Interest on delayed payment of duty—
(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, 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 the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

In this regard, the ratio laid down by Hon'ble Supreme Court in the case of CCE, Pune V/s. SKF India Ltd. [2009 (239) ELT 385 (SC)] wherein the Apex Court has upheld the applicability of interest on payment of differential duty at later date in the case of short payment of duty though completely unintended and without element of deceit. The Court has held that:-

"….It is thus to be seen that unlike penalty that, is attracted to the category of cases in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty", under the scheme of the four Sections (11A, 11AA, 11AB & 11AC) interest is leviable on delayed or deferred payment of duty for whatever reasons."

Thus, interest leviable on delayed or deferred payment of duty for whatever reasons, is aptly applicable in the instant case.

21.6 In view of the facts and findings in above paras, I hold that total differential duty of **Rs. 24,11,155**/- **(re-calculated in Table –B above)** should be demanded under Section 28 (4) of the Customs Act, 1962 and the same should be recovered from M/s. GE India Industrial Private Limited along with applicable interest in terms of section 28AA of the Customs Act, 1962.

22 **CONFISCATION OF GOODS:**

2 2 . 1 I find that it is alleged in the SCN that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 is reproduced below: -

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(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54]

22.2 I find that a large number of castings are collectively used in a windmill. Some of these castings are assembled along with other products to prepare a sub- assembly. Eventually, a windmill comprises a number of these sub-assemblies. It is appropriate to consider castings that may be imported as a

part of equipment/component within the scope of the product under consideration so long as the scope of the measures is limited to casting portions of these equipment's/components used for wind mills or wind turbines or wind-operated electricity generators. I find that Importer had intentionally furnished documents such as the Bills of Entry and its invoices, packing lists containing incorrect/in-sufficient material particular with respect to the casting parts in the imported items. The items imported undeniably consisted of casting parts and such casting parts were manufactured by simple machining and polishing process and the component weight of these casting parts were significant and it is incumbent on the Importer to make a complete and correct declaration. This act of Noticee of non submission of crucial information for quantification of applicable CVD & ADD amounts to ill intention of Noticee to avoid payment of government dues.

Accordingly, I find that imported items do include casting parts for Wind Operated Electricity Generators and present notifications *also includes* a part of a sub-assembly or a part of an equipment/component meant for wind-operated electricity generators, as described under column (3) of the Table under the said Notification No. 01/2016(CVD) dated 19.01.2016 and described in Notification No. 42/2017- Cus (ADD) dated 30.08.2017 also. Further, goods declared by the importer in the subject Bill of Entry under HSN code 85030090 correctly falls under the ambit of notifications nos. 01/2016(CVD) dated 19.01.2016 and notification no. 42/2017-Cus (ADD) dated 30.08.2017.

22.3 Section 17 of the Customs Act, 1962, gives an option to the importer, importing any goods for importation under section 46 ibid, to self-assess the duty, if any, leviable on such goods. In the self-assessment era, the importers have to act more responsibility manner and they are also required to build trust by filing the correct details & description of items along with correct classification of the goods. However, the importer, while filing the above mentioned bill of entry have willfully/intentionally not paid the CVD/ADD on their casting goods of Wind Operated Electricity Generators (WOEG), and also resultantly short-paid IGST, thereby causing the short payment of Customs Duty. This act of Noticee, of not declaring complete information intentionally at time of filing of BE and not furnishing the same on enquiry from department, held the goods valued at Rs. 59,97,112/- liable for confiscation under Section 111(m) of the Customs Act, 1962. The contention of the noticee that the goods are not liable to confiscation are not tenable.

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

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

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

22.5 Imposition of Redemption Fine:

As I have already held in previous paras, that the said imported goods are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962, as proposed in the Show Cause Notice. I find it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCNs. The Section 125 ibid reads as under:-

"Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit."

In the instant case, I find that the subject goods imported are not available for confiscation, I find that the goods in question which are proposed to be confiscated were already cleared and the same are not available physically for confiscation. Thus, I refrain from imposing redemption fine in respect of goods imported under subject Bill of Entry no. 7579375 dated 04.05.2020.

23. LIABILITY OF PENALTY ON IMPORTER UNDER SECTION 112 (a)/ 114A AND 117 OF THE CUSTOMS ACT, 1962.

23.1 As discussed in above paras, wherein it has been undisputedly established that the goods declared by the importer in the subject Bill of Entry under HSN code 85030090 correctly falls under the ambit of notifications nos. 01/2016(CVD) dated 19.01.2016 and notification no. 42/2017-Cus (ADD) dated 30.08.2017. The Goods imported by M/s. GE India Industrial Pvt Ltd are liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962 and differential duty of Rs. 24,11,155/- (re-calculated in Table –B above) should be demanded under Section 28 (4) of the Customs Act, 1962 and along with applicable interest in terms of section 28AA of the Customs Act, 1962. The penalty provisions under section 112,114A and 117 is reproduced as under:

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 or omission of such an act, or
(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher :

***Provided** that where such duty as determined under sub-section (8) ofsection 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;*

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not

exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

Section 114A of the Customs Act, 1962 read as :-

Penalty for short-levy or non-levy of duty in certain cases. –
Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful 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:

Provided *that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28], and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:*

Provided *further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :*

Provided *also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:*

Provided *also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:*

Provided *also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.*

Explanation *- For the removal of doubts, it is hereby declared that -*

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of

communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

Section 117 of the Customs Act, 1962 read as –

Penalties for contravention, etc., not expressly mentioned.—
Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees].

From the above, I find that Importer has not declared the combination of imported goods as casting and non-casting parts, hence, the same lead to the incomplete declaration and evasion of duty. The Importer is a regular importer of parts of WOEG (Casting / Non-casting items), and well aware of Notification No. 01/2016-Customs (CVD) dated 19.01.2016 and Notification No.42/2017- Cus (ADD) dated 30.08.2017, however importer had willfully/intentionally not paid the CVD and ADD in terms of Notification No. 01/2016

-Customs (CVD) dated 19.01.2016 and Notification No.42/2017- Cus (ADD) dated 30.08.2017, and also resultantly short-paid IGST, thereby causing the short payment of Customs Duty of the above said amount. Therefore, it amounts to willful mis-statement on the part of importer leading to evasion of duty. There was no complex interpretation involved in determination of the casting and non-casting parts by the Noticee as the Noticee is dealing in the impugned goods from a long time. Hence, the intent of Noticee to evade duty deliberately is apparently clear. I had already decided that the fact that the goods are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 for the reasons explained under foregoing paras. I find that the element of suppression of material facts and wilful mis-statement has been discussed in various para's above. It is apparently clear that Noticee's intent was to evade duty by suppression of material facts by way of incomplete declaration and keep the suppression. Hence, on the basis of the facts of the cases, I find that the penalty under section 114A of customs act, 1962 is applicable as the element of suppression of material facts and wilful mis-statement in this case has been found beyond doubt.

2 3 . 2 Now, I come to examine the penalty imposable on the Noticee under Section 112(a) and 114A of the Customs Act, 1962. I find that Section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28, is also liable to pay penalty under Section 114A. These acts and omissions

of the Importer rendered them liable for penal action under Section 114A of the Customs Act, 1962.

I find that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable. I find that there is a mandatory provision of penalty under Section 114A of the Customs Act, 1962 where duty is determined under section 28 of the Customs act, 1962. Therefore, I find that when penalty under Section 114A is imposed then penalty under Section 112 of Customs Act, 1962 cannot be imposed.

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

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

Order

(i) I hold that Countervailing duty (CVD) at 13.44% under notification No.01/2016 Cus. (CVD) dated 19.01.2016 on the said goods namely parts of WOEG imported vide the Bill of Entry no. 7579375 dated 04.05.2020 is applicable.

(ii) I hold that Anti-Dumping Duty (ADD) at 22.48% under notification No.42/2017-Cus. (ADD) dated 30.08.2017 on the said goods namely parts of WOEG imported vide the Bill of Entry no. 7579375 dated 04.05.2020 is applicable.

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

(iv) I confirm demand of differential Customs duties totally amounting to Rs. 24,11,155/- (Rupees Twenty Four Lakhs Eleven Thousand One Hundred and Fifty Five only) (CVD- 8,59,209/- + ADD– 14,37,129/-+ IGST- 1,14,817/-) (re-calculated in Table –B above), as discussed hereinabove and the same is to be recovered from M/s GE India Industrial Private Limited under Section 28(4)

of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962.

(v) I order for the confiscation of the impugned goods having total declared Assessable value of Rs. 59,97,112/- as detailed in Table-B under Section 111(m) of the Customs Act, 1962, for short levy of duty by reason of willful misstatement & suppression of facts. I refrain from imposing redemption fine in respect of the subject goods imported vide Bill of Entry no. 7579375 dated 04.05.2020 under Section 125(1) of the Customs Act, 1962.

(vi) I impose a penalty of Rs. 24,11,155/- (Rupees Twenty Four Lakhs Eleven Thousand One Hundred and Fifty Five only) on the Importer M/s. GE India Industrial Private Limited under Section 114A of Customs Act, 1962.

(vii) I refrain from imposing penalty under Section 112(a) and 117 of the Customs Act, 1962 on the Importer M/s. GE India Industrial Private Limited for the reasons as discussed above.

25. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

26. The Show Cause Notice issued vide F. No. GEN/ADJ/ADC/1185/2024-Adjn. dated 23.01.2025 is hereby disposed off on above terms.

Digitally signed by Dipakbhai Zala
Date: 13-01-2026 17:23:14

Zala Dipakbhai Chimanbhai
ADDITIONAL COMMISSIONER
ADC/JC-III-O/o Pr Commissioner-customs-mundra

फ़ाइल संख्या/F. No. GEN/ADJ/ADC/1185/2024

By Speed Post/ email

To,

M/s. GE India Industrial Private Limited,

Plot No. 1/B, Halol Industrial Area,

Phase-II, Village Chandrapura,

Taluka Halol, Gujarat-389350.

Copy to:-

1. The Deputy/Assistant Commissioner (RRA/TRC), Custom House, Mundra.
2. The Deputy/Assistant Commissioner (PCA Section), Custom House, Mundra.
3. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... *(with the direction to upload on the official website immediately).*
4. Guard File

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