

DIN- 20250571ML0000419284



OFFICE OF THE COMMISSIONER
CUSTOM HOUSE, KANDLA
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A	File No.	GEN/ADJ/COMM/613/2023-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-03-2025-26
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla
D	Date of Order	21.05.2025
E	Date of Issue	21.05.2025
F	SCN No. & Date	GEN/ADJ/COMM/613/2023-Adjn-O/o Commr-Cus-Kandla dated 22.09.2023
G	Noticee / Party / Importer / Exporter	M/s. Envision Wind Power Technologies India Pvt. Ltd

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

Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,
2nd Floor, Bahumali Bhavan Asarwa,
Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004
3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/-in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise penalty alone is in dispute.

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BRIEF FACTS OF THE CASE-

M/s. Envision Wind Power Technologies India Pvt. Ltd. (IEC code 0316940275), having its address at Plot No.03/A/Phase-III, Panchmahalas, Halol, Gujarat-389350 (hereinafter referred to as 'M/s.EWPTIPL' or 'the importer') has imported the "Wind Tower with accessories (parts of WOEG)", "Wind Blade (parts of WOEG)", "Blade with accessories (parts of WOEG)", "Wind Mill Blade (parts of WOEG)", "Blade with Blade Frames (parts of WOEG)" and "Wind Tower with accessories & Frames (parts of WOEG)", (hereinafter referred to as 'the said goods') at Kandla Port.

2. During the course of Post Clearance Audit, it is noticed that M/s. Envision Wind Power Technologies India Pvt. Ltd, has filed the BoEs (RUD-1) (as listed in the Annexure A, B and C to the show cause notice), through the Customs broker M/s. Samudra Marine Services Pvt. Ltd. for the import of "Wind Tower with accessories (parts of WOEG)", "Wind Blade (parts of WOEG)", "Blade with accessories (parts of WOEG)", "Wind Mill Blade (parts of WOEG)", "Blade with Blade Frames (parts of WOEG)" and "Wind Tower with accessories & Frames (parts of WOEG)", classifying the same under Customs Tariff item 85030090, on payment of BCD @7.5%/5% (20% Sapta Notif no. 50/2018-CUS), SWS @10% & IGST @5%, imported from China (Country of origin), Supplier Name- M/s. Jiangyin Envision Asset Management Co Ltd. China. However, no Countervailing Duty and/or Anti-dumping duty is paid in view of Notification No. 01/2016 (CVD) dated 19.01.2016 and Notification No. 42/2017-CUS (ADD) dated 30.08.2017.

3. Countervailing Duty (CVD)

3.1 It appeared that the above said imported goods viz. "PARTS OF WOEG" like "Wind Tower with accessories", "Wind Blade", "Blade with accessories", "Wind Mill Blade", "Blade with Blade Frames" etc. 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 were 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

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

Table

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

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

3.5 It further appeared 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.

3.6 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).

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3.7 Non-payment of the **Countervailing Duty**, in respect of the BoEs, discussed hereinabove, 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.65,85,30,745/-**, for the period 03.10.2018 to 29.08.2019 as calculated as per Annexure A to the show cause notice.

4. **Anti-Dumping duty(ADD)**

4.1 It further appeared that the above said imported goods viz. **“PARTS OF WOEG” like “Wind Tower with accessories”, “Wind Blade”, “Blade with accessories”, “Wind Mill Blade”, “Blade with Blade Frames” etc.** 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-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.

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

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(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 combination S.No. 1 to 16	other than	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 appeared that both are identical to the product. In other words, the goods attract CVD vide Notification No. 01/2016- Customs (CVD) dated 19.01.2016 and 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 percolumn (8) and the quantum of anti-subsidy/countervailing duty payable, if any.

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

4.6 Non-payment of the **Anti-Dumping Duty**, in respect of the BoEs, discussed hereinabove, has resulted in short-payment of Customs duty(ADD) @35.92% minus CVD payable @13.44%, of the landed value of the said goods imported from China, which amounts to **Rs.1,10,14,71,071/-**for the period 03.10.2018 to 29.08.2019, as calculated as per **Annexure B** to the show cause notice.

5. Integrated GST (IGST)

5.1 It appeared that Non-payment of the Countervailing Duty and the Anti-Dumping Duty, as discussed hereinabove, has also resulted in short-payment of customs duty (IGST) on the total assessable value arrived at by way of adding CVD and ADD in the landed value, for the purpose of calculation of IGST on imported goods and the differential amount of customs duty (IGST) thus short-paid comes to

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Rs.8,80,00,089/- for the period 03.10.2018 to 29.08.2019,as calculated as per **Annexure C** to the show cause notice.

6. Thus, total amount of customs duty due to be recovered, comes to **Rs.1,84,80,01,805/-**, as calculated as under:-

SN	Customs Duty	Amount
1	BCD short-paid	-
2	SWS short-paid	-
3	CVD @13.44% (NOT PAID)	65,85,30,745/-
4	ADD @35.92%-13.44% (NOT PAID)	1,10,14,71,071/-
5	Differential IGST not paid	8,80,00,089/-
6	Total customs Duty Short-paid	1,84,80,01,805/-

7. The importer vide letter dated 03.05.2023 **(RUD-3)**, in response to ACL letter dated 27.04.2023& 28.04.2023**(RUD-2)**, it is stated that they have imported Towers which are used to affix the Nacelle and Rotor along with blades in their upright positions at the time of installation at project site, are made of fabricated steel structure by suitable steel plates by the process of Cutting, Welding, Rolling and Painting and it is not a casting part. However, they have not submitted documentary evidences to prove that the above said imported goods viz. “PARTS OF WOEG” like “Wind Tower with accessories”, “Wind Blade”, “Blade with accessories”, “Wind Mill Blade”, “Blade with Blade Frames” etc. do not fall under the description of goods in Column 3 of the Table under Notification No. 01/2016(CVD) dated 19.01.2016 or in the implied meaning of Casting for Wind Operated Electricity Generators as per the Note (i) of the Table under Notification 42/2017-CUS (ADD) dated 30.08.2017. Therefore, their reply dated 03/05/2023 appeared to be a case of suppression of pertinent information as envisaged under Section 28(4) of the Customs Act.

8. Further, the importer vide reply letter dated 07.07.2023 (RUD-5), in response to ACL letter dated 28.06.2023 (RUD-4), informed that the Goods imported against the referred 26 B/Es were not Castings and the above mentioned notifications were not applicable to their imports through captioned 26 B/Es, which were non castings and did not attract ADD andCVD during the relevant time of importation.However,again they failed to submit documentary evidences to prove that the above said imported goods viz. “PARTS OF WOEG” like “Wind Tower with accessories”, “Wind Blade”, “Blade with accessories”, “Wind Mill Blade”, “Blade with Blade Frames” etc. do not fall under the description of goods in Column 3 of the Table under Notification No.01/2016(CVD) dated 19.01.2016 or in the implied meaning of Casting for Wind Operated Electricity Generators as per the Note (i) of the Table under Notification 42/2017-CUS (ADD) dated 30.08.2017.All the import items do include casting parts which house various other parts and non-declaration of such parts by way of weight and value while being given an opportunity to do so shows disinclination on part of the Importer to provide critical information to the department. The basic function of a casting is in a wind

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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 appeared that Importer had intentionally furnished documents such as the Bills of Entry and its invoices, packing lists containing incorrect/in-sufficient material particular with respect to the value and weight of casting parts in the imported items. The items imported undeniably consisted of casting parts and such casting parts were manufactured by simple machining and polishing process and the component weight of these casting parts were significant. It is therefore a matter of fact that the items of import in question do have castings as a component and it is incumbent on the Importer to make a complete and correct declaration. Having failed to do so despite opportunities given to them, there is little option but to demand CVD and ADD on the entire value of the imported items to protect revenue interest. The Importer even if contesting the applicability of the CVD and ADD should have been more forthright and put forth the costing of the casting components which are part of the imported items which was not a difficult exercise.

9. It further appeared that the Castings for Wind Operated Electricity Generators for the purpose of the relevant notification *also includes a part of a sub-assembly or a part of an equipment/component meant for wind-operated electricity generators*, as described under column (3) of the Table under the said Notification No. 01/2016(CVD) dated 19.01.2016. Whereas, it further 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 mandated 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. Therefore, M/s. Envision Wind Power Technologies India Pvt. Ltd. (IEC code 0316940275), having its address at Plot No.03/A/Phase-III, Panchmahalas, Halol, Gujarat-389350, were called upon to show cause as to why:-

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

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- (iii) Anti-Dumping Duty (ADD) at applicable rate under notification No.42/2017-Cus. (ADD) dated 30.08.2017 on the said goods namely parts of WOEI imported vide the Bills of Entry as detailed in the Annexure-B to this notice should not be applied;
- (iv) Assessable Value for the purpose of calculation of IGST should not be recalculated so as to add the amount of the duties of customs of CVD and the ADD as discussed hereinabove to recalculate the amount of IGST payable;
- (v) The differential Customs duties totally amounting to Rs.1,84,80,01,805/- (CVD- 65,85,30,745/-+ ADD – 1,10,14,71,071/-+ IGST-8,80,00,089/--), (Rupees One hundred Eighty Four Crores, Eighty Lakh, One Thousand, Eight Hundred and Five only), should not be demanded and recovered from them in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962;
- (vi) The impugned goods with the total declared Assessable value of Rs. 463,17,74,245/- as detailed in Annexure-A to the notice, should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962, for short levy of duty by reason of willful misstatement & suppression of facts;
- (vii) Penalty should not be imposed upon them under the provision of Section 112(a) of the Customs Act, 1962 for rendering imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962;
- (viii) Penalty should not be imposed upon them under the provision of Section 114A of the Customs Act, 1962 for the reasons of willful misstatement & suppression of facts as detailed above.
- (ix) Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

EXTENSION OF ONE YEAR FOR ADJUDICATION UNDER SECTION 28(9)(b) OF THE CUSTOMS ACT, 1962-

10.1 The Show cause notice dated 22.09.2023 could not be adjudicated within one year from the date of Show cause notice under Section 28(4) of the Customs Act, 1962, therefore, the Chief Commissioner granted the extension of one year from 21.09.2024 as per proviso to Section 28(9)(b) of the Customs Act, 1962.

DEFENCE SUBMISSION-

11. The noticee in their submission dated 22.02.2024 and 19.05.2025 inter alia submitted the following-

- (i) The levy of CVD and ADD is allegedly claimed on the premise that the goods imported by them were included in the implied meaning of 'castings for wind operated electricity generators'.
- (ii) The SCN has been issued without considering their response dated 29.08.2023.
- (iii) The notice is in violation of Pre-Notice Consultations Regulations, 2018 in as much as despite a specific request for personal hearing vide letter

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dated 29.08.2023, no such opportunity of personal hearing has been provided.

- (iv) The notice is bad in law as the same has been issued without providing opportunity of pre-notice consultation as provided in the proviso to Section 28 of the Customs Act, 1962.
- (v) The impugned 26 Bills of Entry can be divided into the following categories of goods namely:-
 - a. Towers (2 Bs/E)
 - b. Tower and accessories (13 Bills of Entry)
 - c. Blade (9 Bills of Entry)
 - d. Blade with accessories (2 Bills of Entry)

Tower & its accessories

- (vi) Tower is a structure element of the wind turbine which gives elevation to the turbine thereby raising it to the desired heights to expose it to higher winds and also holding it throughout its lifetime. It also interfaces with the wind turbine generator and foundation. Such tower consists of flanges, shell plates, internals such as platforms, ladders and electrical cabinets etc. The shell plates which are used in the tower are exclusively made of rolled steel.
- (vii) The manufacturing process of the tower section begins with flanges. The flanges are made of steel which is forged at high temperatures and elongated to form circular rings and machined to required dimensions. The next step is preparation of the shell plates. The shell plates are, as stated above, made of rolled steel. The shell plates are cut to size and their edges are prepared by beveling them. The prepared shell plates are then rolled into the required thickness and subjected to long seam welding. The said product is then re-rolled to form tubular shells and welded to form tower sections. After such preparation, the tower sections are painted to provide corrosion protection. The last step concerns the internals of the tower section. The tower internals constitute of platforms, ladders, steel door and electrical cabinets. All such internal equipments are made of steel/aluminum sheets and drawn wires. The platforms, handrails, stairs, steel doors are made of steel plates which are bent and welded to form a structural platform as per the requirements. These platforms are hot dip galvanized to provide corrosion protection. Ladders on the other hand are made out of aluminum channels which are extruded, bent and formed to the shape of ladder. Cable trays are made of steel rods which are welded to each other to form a tray. The internal equipments also consist of power cable hangers which are made of PVC material, cable ladder which is made of steel channels, cable loop and brackets which are made of steel channels and lastly, electrical cabinets which are made of steel/aluminum sheet boxes which carries circuits, cables and wires.

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- (viii) All the aforesaid components are welded together thereby resulting in a Tower. The tower is shot blasted, painted, and internal tower parts are assembled inside the tower. The transport frames are made of steel and are fabricated and welded to form the assembly. These transport frames have since been re-exported.
- (ix) The above Towers have been manufactured by M/s Envision Energy Co Ltd. China and have been imported by us. Upon our request, the manufacturer has since provided the detailed Bill of materials ('BOM1') which go into the manufacture of these towers. The details of specific manufacturing process carried out on the respective input as detailed in the BOM 1 also goes to prove that none of the input materials or part or sub assembly thereof which go into the manufacture of these Towers, result in any Casting at any stage. Confirmation from the manufacturer of Tower to the effect that there is no casting/casting components /assemblies consisting casting etc involved in the impugned imported goods together with Bill of Materials (BOM 1) concerning the raw materials, components required to manufacture tower indicating that there is no casting/casting components /assemblies consisting casting etc and process of manufacture of Tower and its accessories are enclosed and marked as Annexure A-1, A-2, A-3 and A-4 respectively.

Blades & its accessories

- (x) Blade is a main component of windmill that converts wind energy into lift force thereby rotating main shaft in mechanical rotation and provide sufficient torque for generation of power. Such Blade consists of shell, webs, LPS cable, root inserts/bolts, bulkhead/root closeout and rain deflector.
- (xi) The shell required for the blade is made up of glass fibre, PET/Balsa infused with epoxy resin and adhesive. The glass fabric layers or glass fiber with core materials are placed in the mould in sequential order as per design and these are then infused by passing epoxy resin and cured to form blade outer shell. Wind Blade Webs are also made up of glass fibre, PET/Balsa foam material. The layers along with core material are placed in the web mould and infused with epoxy resin. The finished web is then placed into the shell mould and bonded using epoxy. The next step in the process is preparation of root insert. Root inserts are metallic bushings machined and are a part of blade root layup and are co-infused with the blade shell. LPS cable is on the other hand prepared from copper/aluminum sheet material which is manufactured by drawing wires. The manufacturing process of the blade then requires addition epoxy bond followed by closure of the shell mould and bonding both the shells using this adhesive. Subsequently, the finished blade is de-moulded after curing. In the next step, the blade is surface finished, painted and required visual graphics are added. The next and the last component is the bulkhead and rain deflector which are made of glass

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fibre which is bonded to the blade using epoxy glue. In addition to the above referred component, the blade also consists of certain accessories such as root bolts, tip protection and transport frame as are required. Root Bolt and Tip protections are also accessories and made of steel and aluminum respectively wherein no casting is involved. The transport frames are made of steel and are fabricated and welded to form the assembly. These transport frames have since been re-exported. Details of Re-export alongwith corresponding B/E No and Re export Bond furnished at the time of import, are given below:

(xii) The above Blades and its accessories have been manufactured by M/s Zhuzhou Times New Material Technology Co. Ltd, Hunan, China and have been imported by us. Upon our request, the manufacturer has since provided the detailed Bill of materials ('BOM 2') giving details of various inputs which go into the manufacture of these Blades and the processes carried out on those inputs. By its very nature, use of metal in Blades, so as to keep it lighter to the extent possible, is avoided. Various inputs including resins and fabric are infused and not cast. The details of specific manufacturing process carried out on the respective input as detailed in the BOM 2 also goes to prove that none of the input materials or part or sub assembly which go into the manufacture of these Blades result in Casting at any stage. The fact that there is no casting involved in the impugned imported goods is also clarified by the manufacturer of the impugned imported goods to the shipper abroad and is enclosed and marked as Annexure B-1. The Bill of materials ('BOM 2') concerning the raw materials, components required to manufacture blade also indicate that there is no casting/casting components /assemblies consisting casting etc involved, is also enclosed and marked as Annexure B-2. The process of manufacture of Blade and its accessories is enclosed and marked as Annexure B-3.

(xiii) As stated above, such goods were imported by us for manufacture of wind turbines. There is no allegation in the show cause notice that the goods have been wrongly classified by us or that the goods have been mis declared in any manner. It is, however, the case of the department that the goods being in the nature of 'parts of WOE' were perceivably casting products and were amenable to levy of CVD and Anti-dumping duty as also consequential differential IGST payable on such amounts. The said allegation, however, is fundamentally incorrect and without appreciating the true and correct scope of the notifications in question. The levy of CVD is covered under Notification No. 1/2016 (CVD) dated 19.01.2016; whereas Anti-dumping duty is levied under Notification No. 42/2017-Cus (ADD) dated 30.08.2017. Relevant portion of Notification dated 19.01.2016 has been reproduced at paragraph 3.3 of SCN, wherein at sr. no. 2, goods in the nature of 'Castings for wind operated electricity generators, whether or not machined, in raw, finished or sub-assembled

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form, or as a part of a subassembly, or as a part of an equipment/component meant for wind-operated electricity generators' are covered and levy to the extent of 13.44% of landed value of the goods is imposed. As can be seen, the goods sought to be covered under the said sr. no. is "Castings for wind operated electricity generators". The description of the goods further clarifies that such castings would also be included within the scope of the said sr. no. even in the following forms namely: -

- (xiv) 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.
- (xv) It can thus be appreciated that the focus under the said sr. no. is to ensure that castings, in any of the forms as stated above, is amenable to levy of CVD imposed therein. The said sr. no. can however, not be read to understand that any part of an equipment/component meant for wind operated electricity generators, which is not casting, is also included within the scope of the said sr. no. This is an important distinction as perusal of the show cause notice would reveal that the department has erroneously proceeded on a 'implied' definition of the term 'casting' by interpreting reference to 'a part of sub assembly or a part of an equipment/component meant for wind operated electricity generators', as used in the respective notification, in isolation and completely ignoring the fact that the above expression is qualified by the words "Castings as". The erroneous reading of the above description has resulted in expanding the scope of levy so as to include the non-casting part/equipment/component/sub assembly itself as well as non-casting portion of an equipment/subassembly/component etc which may contain any castings in any form at any stage in the manufacture, also within the scope of the term 'castings' for the purposes of above levy.

11.2 The notice in their submission dated 19.07.2024 has interalia, submitted the following-

Relevant extract from the Findings of Designated Authority ('DA') vide Notification No. 17/6/2013-DGAD dated 27th November, 2015 (Final Findings of CVD) have been reproduced below to explain the scope of levy defined by the DA,-

- a. Para 11(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**

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the scope of the PUC cannot be extended to entirety of sub assemblies, 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.”

- b. Para 11 (ix) –“For the reasons similar to inclusion of sub-assemblies, it is appropriate to consider castings that may be imported as a part of equipment/component within the scope of the product under consideration so long as the scope of the measures is limited to casting portions of these equipments/components used for wind mills or wind turbines or wind-operated electricity generators.”
- c. Para 13 (iv) –“The Authority notes that the PUC can be broadly categorized into different types of castings produced for different end applications in a wind mill. For example, a Hub is one of wind turbine’s heaviest components, weighing 8 to 10 tons for a 2-MW turbine. The hub is produced and designed to be rigid yet able to absorb a high level of vibration. Whereas Rotor Nabe is the component which, with the help of the rotor blades, converts the energy in the wind into rotary mechanical movement. And, Base Frame is used to give base to the blades or in which the blades are fitted in. Different types of castings produced and sold in this industry are listed below along with their end application:

SN	TYPE OF CASTING	APPLICATION
1	A - Hub, Rotohub, Rotor Nabe	Connects the Three Blades and transmits the rotational Movement to the Gear Box. The hub is also connected to the pitch mechanism of the Machine.
2	B – Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation	Sits on the tower and supports the load of Hub, Rotorshaft, Gear box, Generator, the nacelle cover and other smaller assemblies. The Framesa Yaws also is connected to the Yaw mechanism of the machine.
3	C - Bearing Housing with or without the use of Front & Rear, Bearing Support.	The Bearing Housing houses the bearings and supports the Rotor shaft which rotates on the bearing housing.
4	D - Hollow Shaft	Hollow Shaft Houses the Main

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		Axle or the rotohaft and in this design the shaft is stationary and the hollow shaft connects the hub to the generator.
5	E - Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft (At times can be forged)	The main Axle is attached to the main frame and bears the load of the hub, and other stationary and rotating parts
6	F - Lateral Suspender, Pitch Stop	Lateral Suspensor suspends on to a Main Frame. Pitch Stop for the Pitching Mechanism.
7	G - Stator, Generator castings, Part of Generators, Rotor	The Stator and rotors are part of the generator.
8	H - Torque Arm Support, rear Frame	Torque arm and supports are meant for holding the gear box in position.
9	O - Others	Not Considered Elsewhere

d. Para 13 (v)- It is noted that different types of castings differ in terms of associated cost and price and therefore the type of casting has been considered as one of the parameters for comparison purposes. Further, the product can be sold in raw form or machined form. In view of significant difference in raw and machined form of the product, this factor has been used as a parameter for fair price comparison. On the basis of the above, the Authority has devised following model match criteria in order to ensure fair comparison:

PCN (Product Code Number) Terminology-castings for WOEG

Field Description	SN	Type of Casting
Product Type	Z	A-Hub, Rotohub, Rotor nabe
		B-Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation
		C-Bearing Housing with or without the use of words Front and Rear, Bearing Support
		D-Hollow Shaft
		E-main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, main Shaft (at times can be forged)
		F-Lateral Suspender, Pitch Stop
		G-Stator, Generator Castings, Parts of

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		Generators, Rotor
		H-Torque Arm Support, rear Frame
		O-Others
Processing	X	M=Machined C=As cast
Capacity	Y	As per table specified in Notification

4. Final Findings to impose Anti-Dumping Duty are accordingly, issued on the very same products i.e castings for wind operated electricity generators, whether or not machines, 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 were notified vide Notification No. 14/28/2013-DGAD dated 28th July, 2017. The relevant extract of final findings at **para 140** are reproduced below:

- a. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, from the date of notification to be issued in this regard by the Central Government, so as to remove the injury to the domestic industry. Since, the product under consideration is already attracting antisubsidy/ countervailing duty under other notifications of Central Government. Accordingly, an amount equivalent to the difference between the quantum of anti-dumping duty calculated as per Col No.8 below and the quantum of antisubsidy/ countervailing duty payable, if any, is recommended to be imposed on all imports of the subject goods originating in or exported from China.

Table (not reproduced for the sake of brevity)

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

5. Despite the clear findings of DA regarding the scope of Product Under Consideration (PUC) alongwith specifications of various types of Castings and the respective application of that casting which are covered in the scope of the levy of CVD and/or ADD including the finding regarding the inclusion of castings that may be

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imported as a part of equipment/component so long as the scope of measures i.e., levy is limited to casting portions of the sub-assemblies/ equipments/components used for wind mills or wind turbines or wind -operated electricity generators, the Revenue in the Show Cause Notice has proceeded on a completely erroneous premise that 'Castings for Wind Operated Electricity Generators', by virtue of its description in the Notification, also includes "a part of a sub-assembly or a part of an equipment/component meant for wind-operated electricity generators". [**Reference in this regard can be made to paragraph 3.5, 4.5 and 7 of the Show Cause Notice**]. On the basis of the said misreading of the Notification, the Revenue in the SCN has raised Demand on entire non-casting parts/components imported by the Company on the premise that parts of Wind Operated Electricity Generators were leviable to CVD/ADD and consequential IGST thereon irrespective of the fact whether they consist of casting or otherwise. [**Reference in this regard can be made to paragraph 8 of the Show Cause Notice**]. It is further alleged in the SCN that the Company has failed to show that the goods imported by the Company were not answerable or covered by such implied meaning of the term 'Castings for Wind Operated Electricity Generators' [**Reference in this regard can be made to paragraph 7 of the Show Cause Notice**].

6. It is submitted that the demand is totally in violation of the scope of levy of CVD and/or ADD as prescribed vide the respective notification of final finding as notified by DGAD and corresponding notifications issued by Customs. The said error on part of the Revenue to demand CVD and /or ADD on the Non-Casting goods of a windmill goes to the root of the matter concerning the validity and legality of the show cause notice itself. In view of the express recommendation of DA that no CVD and/or ADD on non-casting part of sub assembly or equipment including other non-casting parts is to be imposed, and express determination of the DA to impose CVD and /or ADD only on Casting/casting portion in sub-assemblies/casting portion in components/casting portion in equipments of wind mill, Customs has no jurisdiction to demand CVD and/or ADD on the above Non casting/Non casting portion in subassemblies/equipment/components of windmill.

7. The impugned SCN demanding CVD and/or ADD on Non casting parts etc. is even otherwise issued without jurisdiction in as much as quasi-judicial authorities under Customs Act have no jurisdiction to question the decision taken by DA not to levy CVD and/or ADD on Non casting parts/components etc. in as much as the DA giving negative opinion on imposition of duty must be interpreted as decision of Central Government. Decision of DA not to levy CVD and/or ADD on Non-Casting/ Non casting portion in a component thus is a decision of Central Government. Quasi-judicial authorities under Customs Act have no jurisdiction to question the decision of Central Government. Hence the SCN suffers from lack of jurisdiction. The impugned proceedings including the SCN need to be set aside on this ground alone. In this connection, *the decision of Hon'ble Delhi High Court in case of Jindal Polyfilm vs*

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Designated authority [2018(362) ELT 994 (Del)] relied. The *relevant extract from the same* is reproduced below for ease of reference:

‘21. *We would first reproduce the short order passed by the Supreme Court in the case of Saurashtra Chemicals Limited (supra), which is as under :*

“We see no reason whatsoever to entertain these special leave petitions. It is perfectly clear now that we have seen the provisions of the Act that the order of the Designated Authority is purely recommendatory. The appeal that lies is against the determination and that determination has to be made by the Central Government. For this reason, we decline to exercise jurisdiction under Article 136 of the Constitution of India and dismiss the special leave petitions.”

22. *We agree with the counsel for the third respondent that the aforesaid order proceeds and gives an answer to the specific situation in the said case, as the Designated Authority had in affirmative recommended imposition of Anti-dumping duty, which question had not attained finality and was pending consideration before the Central Government. The Central Government had not determined and decided whether or not to impose Anti-dumping duty, and hence, the order passed by the Designated Authority remained a mere recommendation and had not fructified into final determination. The situation would not be apposite, albeit entirely different when the Designated Authority holds and gives a final finding in negative i.e. no Anti-dumping duty is required to be imposed. In this eventuality, the order of the Designated Authority is final and no further examination is mandated and required. Negative finding in other words is binding on the Central Government and cannot be interfered with. Negative final finding order or termination order is determinative, and not a mere recommendation as in the case of positive finding proposing imposition of Anti-dumping duty.*

23. *.....*

24. *.....*

25. *.....*

26. *Now we will deal with the nature and the identity of the ‘Designated Authority’. For that purpose, we will refer to sub-section (8) to Section 3 of the General Clauses Act, 1897 which defines the expression “Central Government”. “Central Government” shall in relation to anything done or to be done after commencement of the Constitution means the President. Executive action of the Government of India is transacted in accordance with the Rules of Business which allocate amongst the Ministers the business of the Government, with all the executive actions, orders and instruments made and executed in the name of the President. The executive power of the Union of India under Article 73 of the Constitution extends to all matters in respect of which the Union Parliament can make laws.*

27. *The CT Act uses the expression “Central Government” and does not use the expression “Designated Authority”. The term “Designated Authority” is not defined in the CT Act and not referred to in the Sections to CT Act. The expression “Designated Authority” is to be found and*

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defined in the Rules. As noticed above, the Designated Authority is a person not below the rank of the Joint Secretary to the Government of India or such other person as Government thinks fit and designated as a “Designated Authority” by notification in the Official Gazette. No doubt, the Rules do postulate and use the expression “Central Government” in contrast and to differentiate Central Government from the Designated Authority, albeit it is clear to us that the Designated Authority is nothing but part and parcel of the Central Government. The term “Designated Authority” has been used in the Rules for clarity in view of the two tier procedure in the form of objective and reasoned recommendation to be followed by further examination and issue of notification in the Gazette, an act of delegated legislation, which is necessary to impose and levy any tax including Anti-dumping duty. Designated Authority has been empowered to investigate as to the existence, degree and effect of any alleged dumping in relation to import of articles and recommend to the Central Government when required the quantum of Anti-dumping duty equal to the margin of the dumping or less, specific date of the commencement and to review continuance of Anti-dumping duty. The Designated Authority so appointed acts for and on behalf of the Central Government. It has been bestowed with the powers vested and conferred on the Central Government under the CT Act. The Designated Authority, when it performs the functions under the CT Act, it is acting for and on behalf of the Central Government and not as an independent and a distinct third party. Designated Authority is no different from the Central Government.

28. *If the aforesaid position is clear, then it is not difficult to appreciate and interpret the provisions for appeal under Section 9C, which refers to the “order of determination” as to existence, degree and effect of any alleged dumping in relation to import of an article, which are exactly the areas of investigation and form the essence of the duties performed and the order passed by the Designated Authority. The role of the Designated Authority can, therefore, clearly be connected with the power and role of the Central Government under the main enactment i.e. CT Act read with the mandate of the Rules. In case of negative opinion or termination of proceedings, the order passed is the “order of determination”, as it is the final order passed by the Central Government and no further “determination” is required and necessary, except consequential order of withdrawal of provisional duty if imposed within 45 days of the final findings by the Designated Authority in terms of sub-rule (4) to Rule 18 of the Rules.*

29.

30.

31. *On difference between legislative act and quasi-judicial act, reference can be made to the judgment of the Supreme Court in Mangalam Organics Limited v. Union of India, (2017) 7 SCC 221 = [2017 \(349\) E.L.T. 369](#) (S.C.), which draws clear distinction between administrative orders and quasi-judicial orders and also quasi-judicial orders and acts of subordinate legislation. The scope of judicial review in the case of subordinate legislation and administrative orders is different. Most importantly, legislative powers cannot be sub-delegated unless specifically permitted but administrative powers can be sub-delegated. The scheme of the Rules as understood postulates a quasi-judicial determination by the Designated Authority, which gives and submits its final finding report. The said report is binding and becomes final for the Central*

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Government in case of negative determination not to impose Anti-dumping duty. In that sense, this is the final opinion i.e. “order of determination” of the Central Government. The position is different in case the Designated Authority proposes and recommends imposition of duty, in which event there is further examination and then final determination. While doing so, the Central Government can reduce the rate of Anti-dumping duty as recommended by the Designated Authority or even not impose Anti-dumping duty. We would observe and hold, that the statutory provisions i.e. Section 9A of the CT Act and the Rules, require a quasi-judicial determination at the first stage, which subsequently when implemented requires passing of a subordinate legislation, vide a notification for Anti-dumping duty to be imposed.

32.

33.

34.

35.

36. *Section 9C does not state and provide that an appeal is maintainable against customs notification. However, it refers to and states that an appeal would lie against the “order of determination” regarding existence, degree and effect of dumping. The words “existence, degree and effect of dumping” are significant. The final finding of the Designated Authority in the said aspect can be in positive i.e. when it recommends imposition of Anti-dumping duty or may be in negative when it finds and holds that no Anti-dumping [duty] should be imposed. Upon negative finding by the Designated Authority no further action is contemplated and required by the Central Government. Contention of the petitioner that the “order of determination” would mean notification imposing Anti-dumping [duty] and not a negative final finding of the Designated Authority under Rule 17, which is not recommendatory but the final determination, is erroneous and bad in law. In case of negative determination the finding of the Designated Authority is binding, it gives no discretion to the Central Government. Thereupon, the determination becomes the determinative order in the sense that no Anti-dumping duty can be imposed.*

37. *Negative finding of the Designated Authority does not require a notification, a legislative act, ergo the said final finding gets stamped and approved by the Statute itself as binding decision of the Central Government.*

38. *Therefore, in this context of the statutory provisions we would reject the argument of the petitioner that Section 9C postulates an appeal only against “order of determination” in the form of notification imposing Anti-dumping duty and not against the negative final finding of the Designated Authority. To say that in case of negative findings the Designated Authority in its order of determination goes into the question of existence, degree and effect of dumping, yet no appeal would lie, would be incongruous and clearly contradictory.*

39.

40. *The aforesaid reasoning would also take care and negate the argument that the “order of determination” referred to in Section 9C must be interpreted as the determination made by the*

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Central Government on the question of imposition of duty and not the determination or decision of the Designated Authority which has given a negative opinion on imposition of duty. The Designated Authority when it acts and performs functions of the Central Government, is no different and distinct from the Central Government.

8. It is also important to note that while taking the said stand regarding inclusion of part of WOEK in the term 'Castings for Wind Operated Electricity Generators', the Revenue has, simultaneously, taken a contradictory stand that: -

"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." **[Reference may be made to paragraph 8 of the Show Cause Notice]**

The above observation of Revenue is not only contradictory to the stand of the Revenue in SCN regarding inclusion of the impugned products i.e. Non casting parts/components of WOEK under the CVD and/or ADD Notification but is even otherwise factually incorrect and overlooks the explanation tendered by the Company during the course of investigation itself in as much as the goods imported by the Company are neither 'Castings' nor being 'Castings as a part of a sub-assembly or a part of an equipment/component meant for wind-operated electricity generators'. Thus, no CVD and/or ADD was leviable and/or paid. The SCN therefore needs to be withdrawn.

9. It is a settled legal position that the case made out by the department has to be clear and unequivocal to give a fair opportunity to the noticee to respond and contest the allegations made therein. In the subject show cause notice, the department has taken contradictory stand wherein at one place, a case is made out that non-casting parts are also amenable to CVD/ADD as they are included in the 'implied meaning' of the product 'Castings' under the Notification in question; whereas, at the last part of the show cause notice, a bald and baseless allegation is raised that the products undeniably consisted of casting part and their value not being available, the entire value of the product is taken as such for the purpose of levy of ADD/CVD. Sir, such notice is blatantly illegal and contrary to such settled legal position and is therefore, required to be set aside on the said ground itself. Reference may be made to the decision of the Appellate Tribunal in the case of Digital Equipments (India) Ltd. vs. Collector of Cus, Bangalore reported in 2001 (135) ELT 962 wherein it is held that contradictory stand taken by the department in the show cause notice is clear

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violation of principles of natural justice. It would also be important to note that while upholding the said grievance on part of the assessee therein, the conclusion has been arrived at by the Appellate Tribunal by referring to various other judgments such as Charandas Malhotra v. A.C. Customs – AIR 1968 CAL 28, B. LAKSHMICHAND vs. Govt. of India reported in 1983 (12) ELT 322 and K.R. Steel Union Pvt. Ltd. vs. CCE reported in 1987 (31) ELT 924. Reference to these judgments would show that the Courts have time and again held that Show Cause Notice must contain specific allegation and any contradiction/absurdity/vagueness in such notice would be fatal to the case of the department. Referring to the facts of the present case, undoubtedly, the allegation that the ‘Castings for Wind Operated Electricity Generators’, by virtue of its description in the Notification, also includes “a part of a sub-assembly or a part of an equipment/component meant for wind-operated electricity generators”; is completely contrary to the allegation that the product of the noticee consisted of casting part. The noticee therefore, submits that the show cause notice suffers from a glaring defect and is required to be vacated on the said ground itself.

10. Sir, at this stage, without prejudice to the above submission, we may also emphasize that the show cause notice has been issued without verifying the necessary facts and on an evident preconceived mindset. As pointed out hereinabove, the department has alleged that the product of the noticee ‘undeniably’ consisted of casting parts. The said assertion in the show cause notice is completely bereft of merit. It has always been the case of the noticee that the product in question, did not contain any casting component. To counter the same, the department has not brought on record any evidence to show that the product consisted of any casting component whatsoever. The use of the word ‘undeniably’ is therefore, misleading, baseless and contrary to the stand of the noticee. It is thus clear and evident that the show cause notice has been issued without even verifying the necessary facts and to overcome the same, bald claim is made in the notice to prejudice the authority. The noticee on the other hand, has brought substantial evidence on record to show that the product in question did not contain any component of casting as alleged. We therefore, submit that the show cause notice not only suffers from vagueness/contradiction but also non-consideration of essential facts and misleading statements. The proposals in the show cause notice are therefore required to be dropped in the interest of justice.

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11. There is another fundamental error in the show cause notice. Perusal of the notice would show that department has alleged that product consisted of castings and only value to the said extent ought to have been taken; but as the figures were not shared by the noticee, the entire value of the product is taken for the levy of ADD/CVD. The noticee submits that the said course adopted by the department in the notice is ex-facie illegal. Assuming that the product consisted of casting and value thereof was not shared by the noticee, it was incumbent upon the department to ascertain the value of the casting in such product to determine the alleged short payment of duty. No rules of valuation permit the department to adopt the entire value of the product for determining the value of casting for the purpose of levy of CVD/ADD. The adoption of the entire value shows that it was never the understanding of the department that the product consisted of some casting component; on the contrary, the department has primarily proceeded on an erroneous understanding that even the non-casting parts were included in the implied meaning of castings.

12. **PERSONAL HEARING-**

Shri Tarun Govil appeared for personal hearing on 03.09.2024. He reiterated the submission filed on 22.02.2024 and 19.07.2024. He referred to CE Certificate and Bill of material for the product in question. He also relied on case law in Jindal Polyfin ELT 362/994 Del.

He opposed the Show cause notice on the following grounds-

- (i) It is without jurisdiction as it travelled beyond the scope of levy, which is only on castings.
- (ii) SCN did not explain the implied meaning to treat the goods as castings.
- (iii) Their goods are not castings. Reference is made to Bills of Material and CE Certificate.
- (iv) There is no case of suppression or grounds to invoke extended period and that they were not given opportunity of pre-consultation when they requested for it.
- (v) They have paid duties wherever casting is imported and subject Bills of Entry.

DISCUSSION AND FINDINGS-

13. I have carefully gone through the show cause notice, defence submission and all the evidences placed on record.

14. In the instant case, the issue to be decided before me is whether the imported goods fall within the definition or implied meaning of castings so as to attract Countervailing Duty (CVD) vide Noti. No. 01/2016-Cus dated 19.01.2016 and Anti Dumping Duty (ADD) vide Noti. No. 42/2017-Cus dated 30.08.2017.

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15. I find that the importer has imported Wind Tower with accessories (parts of WOEG), Wind Blade (parts of WOEG), Blade with accessories (parts of WOEG), Wind Mill Blade (parts of WOEG), Blade with Blade Frames (parts of WOEG) and Wind Tower with accessories and frames (parts of WOEG).

16. I find that the importer has imported the said goods by classifying the same under CTH 85030090 on payment of BCD @7.5%/5% (20% Sapta notification no. 50/2018-Cus), SWS @10% & IGST @5% from China (Country of Origin), Supplier Name- M/s. Jiangyin Envision Asset Management Co Ltd. China.

Relevant Notifications-

17. 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.

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

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

Table

S. No.	Tariff item	Description of goods	Country of origin	Country of export	Producer	Exporter	Percentage of landed value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
.....							
.....							

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2.	8483 00, 8503 10 or 8503 90	4000	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
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.....

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."

17.2 In terms of Notification No.42/2017- Cus (ADD) dated 30.08.2017, Anti-Dumping duty (ADD) is also leviabale 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.

17.3 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
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(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 combination S.No. 1 to 16	other than	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. In this regard, it is important to examine the meaning of **castings** for the purpose of Notification No. 01/2016-Cus dated 19.01.2016 (CVD) and Noti. No. 42/2017-Cus dated 30.08.2017 (ADD). 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". Therefore, it is essential to examine whether the importer was engaged in importing castings for WOEF or castings as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators (WOEG).

19. As per the definition of Casting on Wikipedia- Casting is a manufacturing process in which a liquid material is usually poured into a mold, which contains a hollow cavity of the desired shape, and then allowed to solidify. The solidified part is also known as a casting, which is ejected or broken out of the mold to complete the process.

20. As per the definition of Castings on sciencedirect.com- Casting processes involve the use of molten material, usually metal. This molten material is then poured into a mould cavity that takes the form of the finished part. The molten material then cools, with heat generally being extracted via the mould, until it solidifies into the desired shape.

21. Casting processes are of various types. One of such proceeses is Gravity die casting which employs re-usable mould made of sturdy materials like steel and graphite. In this process molten metal is poured directly into the mould cavity under

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the influence of gravity. It is ideal for manufacturing various parts like Gears, Gear Housing, Engine pistons etc.

Castings in WOEG (Wind operated electricity generators)

Casting Parts

22. A windmills comprises of various casting parts as per the Para D5.13(iv) of Final findings of Designated Authority vide Notification 17/6/2013-DGAD dated 27.11.2015 issued by Directorate General of Anti-Dumping & Allied Duties, Department of Commerce (subject-*CVD on imports of 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 authority noted that the product under consideration can be broadly categorized into different types of castings produced for different end applications in a wind mill, as given below-

Sr. No.	Type of Casting	Application
1.	A- Hub, Rotohub, Rotor Nabe	Connects the Three Blades and transmits the rotational Movement to the Gear Box. The hub is also connected to the pitch mechanism of the Machine.
2.	B-Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation	Sits on the tower and supports the load of Hub, Rotorshaft, Gear box, Generator, the Nacelle cover and other smaller assemblies. The Framesa Yaws also is connected to the Yaw mechanism of the machine.
3.	C-Bearing Housing with or without the use of Front & Rear, Bearing Support.	The Bearing Housing houses the bearings and supports the Rotor shaft which rotates on the bearing housing.
4.	D- Hollow Shaft	Hollow Shaft Houses the Main Axle or the rotohaft and in this design the shaft is stationary and the hollow shaft connects the hub to the generator.
5.	E- Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft (At times can be forged)	The main Axle is attached to the main frame and bears the load of the hub, and other stationary and rotating parts
6.	F-Lateral Suspender, Pitch Stop	Lateral Suspensor suspends on to a Main Frame. Pitch Stop for the Pitching Mechanism.
7.	G- Stator, Generator castings, Part of Generators, Rotor	The Stator and rotors are part of the generator.

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8.	H- Torque Arm Support, rear Frame	Torque arm and supports are meant for holding the gear box in position.
9.	O- Others	Not Considered Elsewhere

Non-casting parts

23. As per Para 11(iv) of the findings of Designated Authority vide Notification No. 14/28/2013-DGAD dated 28.07.2017 issued by Directorate General of Anti-Dumping & Allied Duties, Department of Commerce (subject- *CVD on imports of 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 basic function of a casting is to be used in a windmill alongwith some other non-casting parts and components like **tower, blades etc.** which leads to the generation of electricity.

Sub-assemblies in WOEg-

24. As per the Para D4.11 (vi) & (vii) of Final findings of Designated Authority vide Notification 17/6/2013-DGAD dated 27.11.2015 issued by Directorate General of Anti-Dumping & Allied Duties, Department of Commerce (subject- *CVD on imports of 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*), a large number of castings are collectively used in a windmill. Some of these castings are assembled alongwith other products to prepare a sub-assembly. Eventually a windmill comprises of a number of these sub-assemblies. Some of these sub-assemblies used in a wind mill include Gear Box, Nacelle assembly and a 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 and a pitch system. Further it is quite feasible for an eventual consumer to buy sub-assembled products instead of buying castings and other products separately.

25. Further the designated authority in Para D4.11(viii) has held that the scope of product under consideration (*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*) cannot be extended to the entirety of sub-assemblies, merely because it contains castings within the scope of the measures. The Authority therefore held that it was appropriate to consider sub-assemblies within the scope of the product under consideration so long as the scope of CVD measures, if any, is limited to casting portions of the sub-assemblies.

Castings as a part of equipment/component-

26. Further the designated authority in Para D4.11(ix) has held that similar to inclusion of sub-assemblies, it was appropriate to consider castings that may be

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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.

Whether imported goods fall under the meaning of castings-

27. I find that the impugned 26 Bills of Entry can be divided into the following categories of goods namely:-

- a. Towers (2 Bs/E)
- b. Tower and accessories (13 Bills of Entry)
- c. Blade (9 Bills of Entry)
- d. Blade with accessories (2 Bills of Entry)

28. While going through the submission of the noticee, I find that they have elaborated the manufacturing process of Towers and Blades and the respective accessories, as given below-

Tower & its accessories

Manufacturing process explained by the importer-

29. By relying on the CE certificate and Bill of Material and the manufacturing process, the noticee has argued that Tower is a structure element of the wind turbine which gives elevation to the turbine thereby raising it to the desired heights to expose it to higher winds and also holding it throughout its lifetime. It also interfaces with the wind turbine generator and foundation. Such tower consists of *flanges, shell plates, internals such as platforms, ladders and electrical cabinets etc.* The shell plates which are used in the tower are exclusively made of rolled steel. The manufacturing process of the tower section begins with flanges. The flanges are made of steel which is forged at high temperatures and elongated to form circular rings and machined to required dimensions. The next step is preparation of the shell plates. The shell plates are, as stated above, made of rolled steel. The shell plates are cut to size and their edges are prepared by beveling them. The prepared shell plates are then rolled into the required thickness and subjected to long seam welding. The said product is then re-rolled to form tubular shells and welded to form tower sections. After such preparation, the tower sections are painted to provide corrosion protection. The last step concerns the internals of the tower section. The tower internals constitute of platforms, ladders, steel door and electrical cabinets. All such internal equipments are made of steel/aluminum sheets and drawn wires. The platforms, handrails, stairs, steel doors are made of steel plates which are bent and welded to form a structural platform as per the requirements. These platforms are hot dip galvanized to provide corrosion protection. Ladders on the other hand are made out of

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aluminum channels which are extruded, bent and formed to the shape of ladder. Cable trays are made of steel rods which are welded to each other to form a tray. The internal equipments also consist of power cable hangers which are made of PVC material, cable ladder which is made of steel channels, cable loop and brackets which are made of steel channels and lastly, electrical cabinets which are made of steel/aluminum sheet boxes which carries circuits, cables and wires. All the aforesaid components are welded together thereby resulting in a Tower. The tower is shot blasted, painted, and internal tower parts are assembled inside the tower. The transport frames are made of steel and are fabricated and welded to form the assembly. They have further argued that these transport frames have since been re-exported. The above Towers have been manufactured by M/s Envision Energy Co Ltd. China and have been imported by them. Upon their request, the manufacturer has provided the Bill of materials ('BOM1') which go into the manufacture of these towers.

Blades & its accessories-

Manufacturing process of Blades and its accessories as explained by the importer-

30. Through the submission and CE Certificate, the importer has argued that Blade is a main component of windmill that converts wind energy into lift force thereby rotating main shaft in mechanical rotation and provide sufficient torque for generation of power. Such Blade consists of shell, webs, LPS cable, root inserts/bolts, bulkhead/root closeout and rain deflector. The shell required for the blade is made up of glass fibre, PET/Balsa infused with epoxy resin and adhesive. The glass fabric layers or glass fiber with core materials are placed in the mould in sequential order as per design and these are then infused by passing epoxy resin and cured to form blade outer shell. Wind Blade Webs are also made up of glass fibre, PET/Balsa foam material. The layers along with core material are placed in the web mould and infused with epoxy resin. The finished web is then placed into the shell mould and bonded using epoxy. The next step in the process is preparation of root insert. Root inserts are metallic bushings machined and are a part of blade root layup and are co-infused with the blade shell. LPS cable is on the other hand prepared from copper/aluminum sheet material which is manufactured by drawing wires. The manufacturing process of the blade then requires addition epoxy bond followed by closure of the shell mould and bonding both the shells using this adhesive. Subsequently, the finished blade is de-moulded after curing. In the next step, the blade is surface finished, painted and required visual graphics are added. The next and the last component is the bulkhead and rain deflector which are made of glass fibre which is bonded to the blade using epoxy glue. In addition to the above referred component, the blade also consists of certain accessories such as root bolts, tip protection and transport frame as are required. Root Bolt and Tip protections are also accessories and

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made of steel and aluminum respectively wherein no casting is involved. The transport frames are made of steel and are fabricated and welded to form the assembly. The above Blades and its accessories have been manufactured by M/s Zhuzhou Times New Material Technology Co. Ltd, Hunan, China and have been imported by them. Upon their request, the manufacturer has provided the detailed Bill of materials ('BOM 2') giving details of various inputs which go into the manufacture of these Blades and the processes carried out on those inputs. By its very nature, use of metal in Blades, so as to keep it lighter to the extent possible, is avoided. Various inputs including resins and fabric are infused and not cast.

In the above backdrop of submissions of the importer, it is important to examine whether documentary evidences viz. Chartered Engineer Certificate, Supplier's certificate and Bills of Material submitted by the importer are admissible as an evidence to ascertain the issue involved in the matter-

31. In this regard, I find that the importer is relying on the Bills of Material, CE certificate and the manufacturing process alongwith the supplier's certificate to argue that the imported goods did not involve any castings i.e. the imported goods do not fall under the description of goods in Column 3 of the Table under Notification No. 01/2016(CVD) dated 19.01.2016 or in the implied meaning of Casting for Wind Operated Electricity Generators as per the Note (i) of the Table under Notification 42/2017-CUS (ADD) dated 30.08.2017.

BILLS OF MATERIAL AND SUPPLIER'S CERTIFICATE IS WITHOUT ANY SUPPORTING DOCUMENTARY EVIDENCE-

32. I find that the supplier's certificate and Bills of Material submitted by the importer after having taken the same from the overseas supplier are found to be mere undertaking and/or declaration provided by the overseas suppliers. The Bill of Material simply mentions the manufacturing process as Fabricated and steel assembly, Rolled and welded steel, Rolled steel, Extruded bar, Rolled, machined and welded steel etc. However, there is no documentary evidence to verify the genuineness of such declaration.
33. Further, from the Show cause notice, it is clear that the Bills of Material and supplier's certificate were not placed before the post clearance audit for verification.
34. In view of the same, the supplier's certificate and Bills of Material can not be admitted as evidence for the purpose of ascertaining that the imported goods contained castings or otherwise when the same are not backed by documentary evidences and were also not placed before the Post Clearance Audit for the purpose of verification.

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CHARTERED ENGINEER'S CERTIFICATE IS INCONCLUSIVE AS THE SAME IS ISSUED BELATEDLY, GOODS NOT INSPECTED IN PRESENCE OF CUSTOM OFFICER, SAMPLES INSPECTED NOT REPRESENTATIVE, NO EVIDENCE OF VISIT ETC.-

35. While going through the Chartered Engineer Certificate, I find that the CE Certificate is issued on 30.01.2024 by Shri Sanjay Dayal, B Tech Mechanical, registered Valuer and Chartered Engineer on 30.01.2024. The certificate was issued on the request of the importer. The said Chartered engineer has claimed to have inspected a couple of these tower and Blades on 09.01.2024. It is important to extract the Para 4 of the CE Certificate-

"4. The company has provided a complete set of import documents including Bills of Entry, Packing List, Bill of lading, Invoice etc. The company has also shared a complete list of Bill of Materials (BOM) for manufacturing a Tower as well as the Blade. Reportedly, the respective BOM for manufacture of Tower as well as Blade have been obtained by the company from the respective manufacturer in China. The manner of manufacture of each such part in WOEK has also been indicated in the respective row of BOM corresponding to Tower and Blade respectively. The company has also shared the technical specifications including manufacturing process involved in manufacturing a Tower with process Flow Chart and that for Blade for WOEK."

CHARTERED ENGINEER RELIED UPON THE TECHNICAL SPECIFICATIONS PROVIDED BY THE IMPORTER-

36. From the Para 4 of the certificate, it is forthcoming that the Chartered Engineer relied upon the documents submitted by the importer and the overseas supplier. It is clear that the BOM, incorporating the manner of manufacture, supplied by the overseas supplier, has been relied upon by the Chartered Engineer. However, the overseas supplier has not adduced any substantial evidence (documentary or other) to corroborate the same. Further, the Chartered Engineer has relied upon the technical specifications including manufacturing process provided by the importer.

NO EVIDENCE OF VISIT-

37. The chartered Engineer has submitted that he had visited the site on 09.01.2024 and inspected a couple of Blades and Towers. In this regard, I find that there is no evidence of visit of the Chartered Engineer at the said site where goods are installed.

NO EVIDENCE TO SUGGEST THAT THE SAMPLES INSPECTED WERE REPRESENTATIVE-

38. Without prejudice to the above findings, even if it is assumed that the CE visited and inspected the installed towers and blades, I find that the CE has stated that he inspected a couple of Towers and Blades, however, it is not forthcoming from the CE certificate how the samples taken for inspection can be considered as

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representative samples of all the imported goods as there is a gap of five years from the clearance of goods from customs.

VISIT AND INSPECTION BY CHARTERED ENGINEER IN ABSENCE OF CUSTOM OFFICER-

39. Further, the inspection of the imported goods has been carried out in absence of Customs officers and not by a Chartered Engineer appointed and or empanelled by the department.

NO EVIDENCE TO SUGGEST THAT THE GOODS INSPECTED WERE SAME AS IMPORTED AS THE VISIT AND INSPECTION TAKEN BELATEDLY-

40. Further, it is noted that the CE Certificate has been done after a gap of nearly five years from the clearance of goods from Customs, therefore, the certificate is not a valid document to establish that the goods inspected by the Chartered Engineer were exactly the same as imported by the importer. The CE certificate is also silent on how the Chartered Engineer ascertained that the goods installed in Jamnagar were the same as imported by the noticee vide the subject Bills of Entry.

THE CHARTERED ENGINEER'S CERTIFICATE WAS NOT PLACED BEFORE THE POST CLEARANCE AUDIT-

41. Further, the said Certificate was not placed before the Post Clearance Audit. The Chartered engineer Certificate has been issued on 30.01.2024 and the goods were cleared in 2018 and 2019. Thus the certificate has been issued much after the clearance of goods.
42. The Chartered Engineer has inspected couple of Tower and Blades, however, he has certified that all the imported goods (Towers and Blades with its accessories) did not have casting even though the accessories were not inspected by the Chartered Engineer.
43. It is clearly an afterthought and the Exercise carried out by chartered Engineer has been done without informing or consulting the customs department.
44. In view of the above, I hold that the Chartered Engineer's certificate can not be admitted as an evidence during the adjudication proceedings.
45. I find that the importer has explained the manufacturing process in order to argue that the manufacturing process of Tower is from forging, rolling and welding etc. However, there is no evidence to establish that these are the only processes for manufacturing of Towers, Blades and its accessories and the manufacturing by casting is not possible and feasible.
46. I find that the Notification No. 01/2016-Customs (CVD) dated 19.01.2016 and 42/2017-Cus dated 30.08.2017 and findings of Designated Authority vide Notification No. 14/28/2013-DGAD dated 28.07.2017 issued by Directorate General of Anti-Dumping & Allied Duties, Department of Commerce clearly specify that the Windmills are made up of casting as well as no casting goods. Since a Windmill require castings for functioning, the importer has not provided any documentary evidence to prove that they either imported or procured such

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castings for the proper functioning of the windmills installed by them. The Chartered Engineer's certificate is also silent on the same.

47. In view of the above discussion and findings, I hold that the casting contained in the imported goods were not disclosed by the importer. It is thus amply clear that Importer had intentionally furnished documents such as the Bills of Entry and its invoices, packing lists containing incorrect/in-sufficient material particular with respect to the value and weight of casting parts in the imported items. It is therefore a matter of fact that the items of import in question do have castings as a component and it is incumbent on the Importer to make a complete and correct declaration. Having failed to do so despite opportunities given to them, there is little option but to demand CVD and ADD on the entire value of the imported items to protect revenue interest.
48. In view of the above discussion and findings, I hold that the imported goods vide subject Bills of Entry are casting parts meant for WOEg and accordingly, demands of CVD, ADD and IGST in view of the Notification No. 01/2016-Cus (CVD) dated 19.01.2016 and Notification No. 42/2017-Cus dated (ADD) dated 30.08.2017 are sustainable.
49. Since the demand of differential duties of customs is sustainable on merit under Section 28 of the Customs Act, 1962, consequently, the demand of interest is also sustainable.

QUANTIFICATION OF DUTIES OF CUSTOMS-

50. Non-payment of the **Countervailing Duty**, in respect of the BoEs, 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.65,85,30,745/-**, for the period 03.10.2018 to 29.08.2019 as per Annexure A to the show cause notice.
51. Non-payment of the **Anti-Dumping Duty**, in respect of the BoEs, has resulted in short-payment of Customs duty(ADD) @35.92% minus CVD payable @13.44%, of the landed value of the said goods imported from China, which amounts to **Rs.1,10,14,71,071/-** for the period 03.10.2018 to 29.08.2019, as per **Annexure B** to the show cause notice.
52. Non-payment of the Countervailing Duty and the Anti-Dumping Duty, 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.8,80,00,089/-** for the period 03.10.2018 to 29.08.2019, as per **Annexure C** to the show cause notice.

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53.Thus, total amount of customs duty due to be recovered, comes to **Rs.1,84,80,01,805/-**, as calculated as under:-

SN	Customs Duty	Amount
1	BCD short-paid	-
2	SWS short-paid	-
3	CVD @13.44% (NOT PAID)	65,85,30,745/-
4	ADD @35.92%-13.44% (NOT PAID)	1,10,14,71,071/-
5	Differential IGST not paid	8,80,00,089/-
6	Total customs Duty Short-paid	1,84,80,01,805/-

54. In view of the above, I hold that the importer is liable for payment of duties of Customs amounting to Rs. 184,80,01,805/- under the provisions of Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

CONFISCATION OF GOODS-

55. Section 46(4) of the Customs Act, 1962 requires an importer when they file the Bill of entry to subscribe to a declaration regarding the truth of the contents of the Bill of entry. If the details so declared to be true are found to be not true, it is mis-declaration.

56.I find that the importer has suppressed the material facts from the department insofar as to the extent value of casting components in parts of WOEG is concerned. The importer has wifully not declared the value of casting components imported by them while filing Bills of Entry which has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

57. Considering the Judgement of Hon’ble High Court of Madras in the case of M/s. Visteon Automotive Systems vs the Customs, 2017 2018 (9) G.S.T.L. 142 (Mad.), I hold that redemption fine is imposable in the instant case, even when the goods are not physically available for confiscation.

PENALTIES-

58. Since the instant matter involves non-payment/short payment of duties of customs amounting to Rs. 184,80,01,805/-by reason of willful mis-statement or suppression of facts, the importer is liable to penalty under Section 114A of the Customs Act, 1962. Further as per Circular no. 61/2002-Cus dated 20.09.2002, penalty under Section 114A is equal to the duty plus interest.

59.However, as per fifth proviso to Section 114A of the Customs Act, 1962, once penalty is imposed under Section 114A of the Customs Act, penalty under Section 112(a) is not invocable.

60. With regard to the penalty under Section 117 of the Customs Act, 1962, I find that the importer has indulged in willful mis-declaration of the value of goods as they

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have failed to declare the value of casting components, therefore, they have rendered themselves liable for penal action under Section 117 of the Customs Act, 1962.

61. In view of the above, I hereby pass the following order-

- (i) I reject the assessment in respect of Bills of entry mentioned in Annexure-A should and order to re-assess the said Bill of Entries by applying Countervailing duty (CVD) under notification No.01/2016-Cus. (CVD) dated 19.01.2016, Anti-Dumping Duty (ADD) at applicable rate under notification No.42/2017-Cus. (ADD) dated 30.08.2017 and IGST at the applicable rate on the said goods namely parts of WOEG imported vide the Bills of Entry.
- (ii) I determine and confirm the differential Customs duties totally amounting to Rs.1,84,80,01,805/-(CVD- 65,85,30,745/-+ ADD - 1,10,14,71,071/-+ IGST-8,80,00,089/-), (Rupees One hundred Eighty Four Crores, Eighty Lakh, One Thousand, Eight Hundred and Five only), and order to recover the same 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;
- (iii) I order to confiscate the impugned goods with the total declared Assessable value of Rs. 463,17,74,245/- as detailed in Annexure-A to the notice, under Section 111(m) of the Customs Act, 1962.

However, I impose Redemption fine of Rs. 25,00,00,000/-(Rupees Twenty Five Crores only) under Section 125 of the Customs Act, 1962.

- (iv) I impose Penalty equal to the duty plus interest confirmed above at (ii) under the provision of Section 114A of the Customs Act, 1962.
- (v) I don't impose Penalty under Section 112(a) of the Customs Act, 1962 in terms of fifth proviso to Section 114A of the Customs Act, 1962.
- (vi) I impose Penalty of Rs. 4,00,000/- (Rupees Four Lakhs only) under Section 117 of the Customs Act, 1962.

62. This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.

(M. Ram Mohan Rao)
Commissioner

F.No. GEN/ADJ/COMM/613/2023-Adjn-O/o Commr-Cus-Kandla
DIN- 20250571ML0000419284

To,

M/s. Envision Wind Power Technologies India Pvt. Ltd
Plot. No.03/A/Phase-III, PanchMahalas, Halol,
Gujarat-389350

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Copy to:-

1. The Chief Commissioner, Customs, Ahmedabad zone, Ahmedabad.
2. The Deputy/Assistant Commissioner (PCA) House Kandla, Custom House, Kandla for information.
2. The Supdt. (TRC/EDI) for necessary action at their end.
3. Guard File.