

	<b>OFFICE OF THE COMMISSIONER</b> <b>CUSTOM HOUSE, KANDLA</b> <b>NEAR BALAJI TEMPLE, NEW KANDLA</b> <b>Phone : 02836-271468/469 Fax: 02836-271467</b>
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DIN-20250771ML00009959FF		
A	File No.	GEN/ADJ/COMM/267/2023-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-25-2025-26
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	30.07.2025
E	Date of Issue	30.07.2025
F	SCN No. & Date	F. No. S/43-63/SIIB/2011-12 dated 24.01.2014
G	Noticee / Party / Importer / Exporter	M/s. Vestas Wind Technology India Pvt. Ltd, 298, Rajiv Gandhi Salai, Sholinganallur, Chennai-600119

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 if penalty alone is in dispute.

## BRIEF FACTS OF THE CASE

The present proceedings have been taken on account of Final Order No. A/11398/2022 dated 27.07.2022/18.11.2022 passed by the Hon'ble CESTAT, West Zonal Bench, Ahmedabad in the matter of M/s Vestas Wind Technology India Pvt. Ltd, 298, Rajiv Gandhi Salai, Sholingenallur, Chennai-600119 (hereinafter referred to as "the Noticee") whereby Hon'ble CESTAT had set aside the impugned Order-in-Original No. OIO-KDL-PCOMMR-PVRR-07-2015-16 dated 30.06.2015 remanded back the matter to the original Adjudicating Authority for fresh adjudication with the direction that benefit of notification no. 104/94-Customs dated 16.03.1994 is required to be extended to the Noticee even in the case of re-export done after expiry of six months. The Hon'ble CESTAT further directed to finalize the provisional assessment of the relevant bill of entry and then proceed to recover the duty of Customs, if found due.

2. In earlier proceedings, the original adjudicating authority vide Order-in-Original No. OIO-KDL-PCOMMR-PVRR-07-2015-16 dated 30.06.2015 had adjudicated the show cause notice F. No. S/43-63/SIIB/2011-12 dated 24.01.2014 issued to the Noticee. The Noticee preferred appeal against the said adjudication order to the Hon'ble CESTAT, Ahmedabad and Hon'ble CESTAT, Ahmedabad set aside the said order and remanded back the said matter to the adjudicating authority deciding afresh considering the directions given in the said order. Therefore the present remand proceedings are in respect of the Noticee i.e. M/s Vestas Wind Technology India Pvt. Ltd, 298, Rajiv Gandhi Salai, Sholingenallur, Chennai-600119 in connection to the show cause notice F. No. S/43-63/SIIB/2011-12 dated 24.01.2014.

3. Briefly stated, the facts of the case are that the Noticee had imported various components/parts of wind mill i.e. wind towers, blades, frames, hubs and packing materials (for the purpose of safe transport of towers, blades and frames) viz. Barge frames, Low Hub Frame, Tower Foot, Tower Frapping Brackets, Double stacker frames, SOC containers etc. These packing materials were in the nature of specialized frames designed exclusively for the purpose of transporting the imported wind mill parts namely towers, blades etc.

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

5. It was found that during the period from January, 2011 to February, 2012, packing materials viz. Tower Foot, Tower Frapping Brackets, Low Hub Frame, Double stacker frames etc, were imported but these were not declared to the customs by M/s. Vestas in the Bills of Entry. **The details of such goods are mentioned in Annexure-B attached to the Show Cause Notice.** The value of these goods is Rs. 10,98,12,887/- involving duty amounting to Rs.2,67,06,548/-. The said undeclared goods were placed under seizure vide seizure memo dated 07.11.2013 valued at Rs. 10,98,12,887/-. The said seized goods were handed over to M/s. Vestas under a Supratnama dated 07.11.2013 for safe custody duly acknowledged by Shri R. Kannan, Manager Logistics of M/s. Vestas. The said goods were provisionally released as requested by M/s. Vestas on furnishing Bond of 100% value of the seized goods and 25% BG of the value of the seized goods. This was communicated to M/s. Vestas vide letter dated 07.11.2013. M/s. Vestas vide letter dated 06.01.2014, furnished a provisional release bond for the 100% value of the said seized goods, Bank Guarantee dated 20.12.2013 for Rs.2,74,53,222/- & amendment to

B.G. dated 07.01.2014, which were forwarded to Group Assistant Commissioner for necessary action.

6. Meanwhile, M/s. Vestas vide their letter dated 03.01.2014 informed that there was a theft attempt by a gang at their Bhachau Yard, wherein the seized goods were kept inside the containers; that they had registered this case with local police through Yard In-charge for necessary security arrangement; that the police was investigating the case, however advised them to immediately move the containers with materials available at the yard to safer place to avoid further attempts/ thefts as the present yard was not safe enough and was located in a very remote place; that they were shifting the entire material available at the present yard to the new yard near Anjar. They requested for permission to shift the seized materials from Bhachau to Anjar, which was considered vide letter dated 07.01.2014.

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

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

- (i) that the containers lying at Bachau Yard mentioned in the Appendix I may be seized in terms of Section 110 of the Customs Act, 1962 and the same may be permitted to be provisionally released for re-export in terms of Section 110A of the Customs Act, 1962;
- (ii) that towards the undeclared packing materials, they had paid the differential duty along with interest totally amounting to Rs.2,89,57,3 16 + Rs.46,02,074/- vide TR6 Challan Nos. Nil dated 04.07.2012 and as per the facts available in the Seizure Memo, for the undeclared packing materials, the differential duty and interest works out to Rs.2,67,06,548/-. As such, an excess duty amount of Rs.28,13,286/- (principal Rs.24,25,983/- and interest Rs.3,87,303/-) was paid at the earlier instance.
- (iii) that the total liability towards the above containers may be adjusted towards the excess differential duty and interest for these containers.
- (iv) that these containers may be permitted for provisional release without imposing any penalty towards the adjudication liabilities,
- (v) that all the containers may be permitted for re-export as per Section 74 of the Customs Act, 1962 read along with the Re Export of Imported Goods (Drawback of Customs Duties) Rules, 1995 and on re-export, they may be permitted to avail the benefit of Drawback of Customs Duties;

8. On perusal of the Appendix-I submitted by M/s. Vestas, it was found that there were total 63 SOC containers valued at Rs.70,18,643/- in respect of which benefit of Noti.No. 104/94-Cus dated 16.03.1994 was availed and duty was not paid. Out of these 63 containers, 31 containers valued at Rs.34,79,519/- were re-exported by M/s. Vestas under different shipping bills as detailed in the Appendix-I. 15 containers valued at Rs. 16,40,158/- were surrendered by them to the Leasing Company and later on shipped out of country by the Leasing Company. 17 containers valued at Rs.18,98,966/- were lying at their Bhachau Yard as per their letter dated

02.01.2014 and later on shifted to their Anjar Yard as per permission granted vide letter dated 07.01.2014. Since the 17 containers were physically available, a seizure memo dated 09.01.2014 was issued in respect of the aforesaid 17 containers valued at Rs. 18,98,966/- . The said seized goods were handed over to M/s. Vestas under a Supratnama dated 09.01.2014 for safe custody duly acknowledged by Shri R. Kannan, Sr. Manager Logistics of M/s. Vestas Wind Technology India Pvt. Ltd. In view of the request made by M/s. Vestas vide their letter dated 02.01.2014 for release of the seized goods (empty marine containers), the Commissioner of Customs, Kandla considered their request and ordered for provisional release of the seized goods on execution of Bond of full value of the seized goods and Bank Guarantee of Rs.5 lacs. This was communicated to M/s. Vestas vide letter dated 15.01.2014. M/s. Vestas vide their e-mail dated 22.01.2014 sent a copy of BG for Rs.5 lacs against provisional release of these containers stating that original BG was being sent through courier for submission along with the Bond.

9. In 4 Bills of Entry, M/s. Vestas paid the applicable duties for the packing materials viz. Tower Foot, Tower Frapping Brackets, Low Hub Frame, Double stacker frames etc, which were imported and declared in the import documents.

10. In 20 Bills of Entry, details mentioned in Annexure-A attached to Show cause Notice, these goods were mentioned in the Bills of Entry as having imported and having commercial value. M/s. Vestas had claimed benefit of Notification No.104/94-Cus dated 16.03.1994 for these imports and thereby claiming exemption of 'NIL' duty. The value of these goods is Rs.23,71,41,010/- . It was observed that most of these Bills of Entry had been assessed provisionally for SVB (Special Valuation Branch) purpose as M/s. Vestas and the supplier appeared to be related. These Bills of Entry were to be finalized as and when the SVB matter was finalized. Out of these goods, as informed by M/s. Vestas vide their letter dated 02.01.2014, all the goods other than SOC containers valued at Rs.23,01,22,367/- had been re-exported by M/s. Vestas under different Shipping Bills. As regards, SOC containers, there were total 63 SOC containers valued at Rs.70,18,643/- in respect of which benefit of Noti.No. 104/94-Cus dated 16.03.1994 was availed and duty was not paid. Out of these 63 containers, 31 containers valued at Rs.34,79,519/- were re-exported by M/s. Vestas under different shipping bills as detailed in the Appendix-I. 15 containers valued at Rs.16,40,158/- were surrendered by them to the Leasing Company and later on shipped out of country by the Leasing Company. 17 containers valued at Rs.18,98,966/- were lying at their Bhachau Yard as per their letter dated 02.01.2014 and later on shifted to their Anjar Yard as per permission granted vide letter dated 07.01.2014.

11. The Notification No.104/94-Cus dated 16.03.1994 as amended by Notification No. 101/95-Cus dated 26.05.1995 reads as under:

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

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

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

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

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

12 M/s. Vestas had executed re-export bonds, in terms of the notification 104/94-Cus at the time of import, binding themselves to re-export these goods along with SOC containers within 6 months of their import. During investigations, it was revealed that the goods imported by them claiming benefit of Noti.No. 104/94-Cus and as mentioned in Annexure-A to the notice were not re-exported by them within the prescribed time limit or within extended period. M/s Vestas not only failed to comply with the condition of the bonds executed but also did not seek any further extension of the time of re-export in terms of the conditions of the notification. M/s Vestas applied for the extension for a period of 6 months, but could not produce the permission granted to them. They did not apply for further extension for the same assuming that re-export would happen / take place in January 2012 itself. Thus, M/s. Vestas neither re-exported the said packing materials within the prescribed time limit or within extended period nor applied for further extension.

13. During investigations, it was further revealed that the imported specialized equipment was not in the nature of durable container'. These are custom-made equipment made for the transport of only the specialized goods namely wind mill towers and blades. Further some of these equipments were purchased by M/s. Vestas and the transaction formed part of the import invoices. In the case of import of 'durable containers' the same will not be part of the commercial invoice and the supplier would be supplying the same on re-export basis, which is not the case in the subject imports. Having paid for the import of the equipments, it appeared to be a modus followed by M/s. Vestas to declare the same as Durable containers' to claim duty exemption under notification 104/94-cus.

14. During the course of investigation, statements of Shri R Kannan, Manager Logistics of M/s Vestas Wind Technology India Pvt. Ltd, Chennai were recorded on 12.04.2012 and on 22.08.2012 under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that:

- i. at the time of import of wOEG components, those re-exportable Barge frames were classified as durable containers' vide Notification No. 104/94-Cus which exempted containers of durable nature from the whole of the Customs duty and Additional duty;
- ii. the Board Circular No.69/2002-Cus dtd 25th October 2002 clarified that "As per the meaning assigned to the words durable' and container in various dictionaries, it appears that any goods (containers) used for packaging or transporting other goods, and capable of being used several times, would fall in the category of 'containers of durable nature';
- iii. the terms of import invoices would be in Ex-Works, FOB and CIF in general and their supplier M/s. Vestas Bulgaria EOOD, Bulgaria raised commercial invoice in their name for the whole cargo supplied by them and accordingly, they made the payment to the supplier as per commercial invoice; that they also made "purchase contract/order" with overseas supplier;
- iv. for those frames, they had made the payment to the supplier inadvertently and they had already initiated process to get back the money from the supplier as per RBI regulations; that they had received back the entire foreign exchange from the overseas supplier in respect of declared packing materials which were part of commercial invoices raised by overseas supplier.
- v. the subject goods under investigation, were used as packing material for safe ocean transport, storage at ports/intermediate storages, handling and domestic transportation and storage at project site purposes etc. Hence, these goods were imported and there was no mentioning in commercial invoice for export;

vi. that they imported the goods which were durable and reusable containers, however, they did not put to use till date as it cannot be used for any other purpose except re-export the same to their manufacturing unit for re-use;

vii. that because of delay in erection at project site due to rains and site readiness, the re-export could not be done within prescribed time limit (6 Months); that they had already applied for the extension for a vii. they had neither re-exported the goods nor applied for the further extension; that they could not re-export these goods; period of 6 months; that he was not in position to produce the permission granted to them for the extension of further six month; that since the material was ready for shipment, they had not applied for further extension for the same assuming that re-export would happen / take place in January 2012 itself;

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

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

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

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

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

19. During the course of investigations, M/s. Vestas agreed to the facts that they had cleared some of the specialized packing materials without declaring the same in the Bills of Entry. They agreed to the duty liability of Rs.2,89,573 16/- which is the duty calculated on the commercial value of these goods. The details of the value and the duty calculation is shown in Annexure-C to Show Cause Notice as worked out by M/s. Vestas. During the course of investigation, M/s. Vestas have made voluntary payment of Rs.2,89,57,3 16/- vide Challan No.735 dated 04.07.2012 towards Customs duties on the packing materials imported by them from Kandla port which were not declared. They have also paid a total amount of Rs.46,02,074/ vide Challan No.1529 dated 04.10.2012 towards interest for delayed payment of Customs duties.

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

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

The seizures effected are also summarized as under :

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

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

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

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

## **21. RELEVANT LEGAL PROVISIONS:**

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

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

- (a) the whole of the duty of customs leviable thereon under the said First Schedule; and
- (b) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act:

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

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

### **The Customs Act, 1962**

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

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

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts,

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

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

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

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

(b) in any other case, within six months, from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

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

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

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

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

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

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

**v) SECTION 111. Confiscation of improperly imported goods, etc. -**

The following goods brought from a place outside India shall be liable to confiscation: -

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act.....:

(n) .....

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

**vi) SECTION 112. Penalty for improper importation of goods, etc. -**

Any person,-

- a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing omission of such an act, or
- b) .....shall be liable to
  - (i) .....
  - (ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

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

**22. DISCUSSION OF EVIDENCES:**

22.1 M/s. Vestas imported specialized equipment & packing materials viz. Tower Foot, Tower Frapping Brackets, Low Hub Frame, Double stacker frames, SOC containers etc. (As detailed in Annexure-B to show cause notice) during the period from January, 2011 to February, 2012, which they did not declare at the time of import. During the course of investigations, M/s. Vestas agreed to the facts that they had cleared some of the specialized packing materials without declaring the same in the Bills of Entry. They agreed to the duty liability of Rs.2,89,57,316/- which is the duty calculated on the commercial value of these goods. During the course of investigation, M/s. Vestas have made voluntary payment of Rs.2,89,57,316/- vide Challan No.735 dated 04.07.2012 towards Customs duties on the packing materials imported by them from Kandla port which were not declared. They have also paid a total amount of Rs.46,02,074/- vide Challan No.1529 dated 04.10.2012 towards interest for delayed payment of Customs duties. The said undeclared imported packing materials totally valued at Rs. 10,98,12,887/- were under seizure. The said goods under seizure and later on provisionally released, as detailed in Annexure-B to this notice, are liable for confiscation under Section 111(0) of the Customs Act, 1962. The Bond and Bank Guarantee furnished at the time of provisional release of the said goods are liable to be enforced for recovery of duty / interest/fine / penalty etc. Further, the customs duty along with interest is liable to be demanded from them on the said undeclared packing materials. The duty & interest already paid is required to be appropriated towards the duty demand.

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

22.3 Some of these equipments were purchased by M/s. Vestas and the transaction formed part of the import invoices. Noti.No. 104/94-Cus dated 16.03.1994 provides for exemption from duty in respect of containers which are of durable nature. CBEC vide Circular No.69/2002- Customs dated 25.10.2002 clarified that "as per the meanings assigned to the words durable' and container' in various dictionaries, it would appear that any goods (containers) used for packaging

or transporting other goods, and capable of being used several times, would fall in the category of containers of durable nature'. It is not necessary that the "container" must be enclosed from all sides or capable of being locked or sealed. In the instant case, if the containers are durable for supplier, then the cost of the containers (packing materials) could not have been recovered from M/s. Vestas. In case of containers which are used several times, the supplier require the said containers to be returned back to them urgently for rotating them further. In this case, the packing materials were not re-exported for a substantial period. In the case of import of "durable containers' the same will not be part of the commercial invoice and the supplier would be supplying the same on re-export basis, which is not the case in the subject imports. In such cases, supplier is charging only rent and not the full cost of containers. M/s. Vestas has accepted this position. Having paid for the import of some of the equipments, it appeared to be a modus followed by M/s. Vestas to declare the same as "durable containers" to claim duty exemption under notification 104/94-cus, while the same are not in the nature of durable container' as mentioned in the subject notification. Thus, the said imported specialized equipment & packing materials do not appear to qualify for the exemption claimed under the notification no.104/94-Cus.

22.4 It is also seen that all these packing materials were not re-exported by them within 6 months in terms of Noti.No. 104/94-Cus dated 16.03.1994. M/s. Vestas had executed re-export bonds, in terms of the notification 104/94-Cus at the time of import, binding themselves to re-export these goods along with SOC containers within 6 months of their import. During investigations, it is revealed that the goods imported by them claiming benefit of Noti.No. 104/94-Cus and as mentioned in Annexure-A to this notice were not re-exported by them within the prescribed time limit or within extended period. M/s. Vestas not only failed to comply with the condition of the bonds executed but also did not seek any further extension of the time of re-export in terms of the conditions of the notification. M/s. Vestas applied for the extension for a period of 6 months, but could not produce the permission granted to them. They did not apply for further extension for the same assuming that re-export would happen / take place in January 2012 itself. Thus, M/s. Vestas neither re-exported the said packing materials within the prescribed time limit or within extended period nor applied for further extension. Further, it is also noticed that as informed by M/s. Vestas vide their letter dated 02.01.2014 15 containers were surrendered by them to the Leasing Company and later on shipped out of country by them. It appears that this was done by M/s. Vestas without the knowledge of the Customs Department. The export of said 15 containers made by the Leasing Company cannot be reckoned to be re-export made by M/s. Vestas in terms of Noti.No. 104/94-Cus. Thus, it appears that the benefit of Notification No. 104/94-Cus dated 16.03.1994 on all the packing materials valued at Rs.23,71,41,010/- involving duty amount of Rs.5,82,34,253/- (As detailed in Annexure-A attached to Show Cause Notice) is required to be denied to them firstly on the aspect of eligibility of the notification benefit claimed and secondly for violating the condition of the notification No. 104/94-Cus prescribing the time limit for re-export, and duty is required to be demanded on these goods. Further the said imported packing materials valued at Rs.23,71,41,010/- are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962. Hence, the customs duty of Rs.5,82,34,253/- is required to be recovered from them along with interest at the applicable rate. Out of these goods, as informed by M/s. Vestas vide their letter dated 02.01.2014, all the goods other than SOC containers valued at Rs.23,01,22,367/- had been re-exported by M/s. Vestas under different shipping bills after the expiry of stipulated time. As regards SOC containers, there were total 63 SOC containers valued at Rs.70,18,643/- in respect of which benefit of Noti.No. 1104/94-Cus dated 16.03.1994 was availed and duty was not paid. Out of these 63 containers, 31 containers valued at Rs.34,79,519/- were re-exported by M/s. Vestas under different shipping bills after the expiry of stipulated time. 15 containers valued at Rs.16,40,158/- were surrendered by them to the Leasing Company and later on shipped out of country by the Leasing Company. 17 containers valued at Rs. 18,98,966/- were lying at their Bhachau Yard as per their letter dated 02.01.2014 and later on shifted to their Anjar Yard as per permission granted vide letter dated 07.01.2014. Since the 17 containers were

physically available, a seizure memo dated 09.01.2014 was issued in respect of the aforesaid 17 containers valued at Rs. 18,98,966/- . The said seized goods were handed over to M/s. Vestas under a Supratnama dated 09.01.2014 for safe custody. In view of the request made by M/s. Vestas for release of the seized goods (empty marine containers), the Commissioner of Customs, Kandla considered their request and ordered for provisional release of the seized goods on execution of Bond of full value of the seized goods and Bank Guarantee of Rs.5 lacs. This was communicated to M/s. Vestas vide letter dated 15.01.2014. M/s. Vestas vide their E-Mail dated 22.01.2014 sent a copy of BG for Rs.5 lacs against provisional release of these Containers stating that original BG was being sent through courier for submission along with the Bond. The Bond and Bank Guarantee furnished at the time of provisional release of the said goods are liable to be enforced for recovery of duty / interest / fine penalty etc.

22.5 It appeared that M/s. Vestas indulged in willful mis-statement of facts with an intention to evade customs duty inasmuch as the declared goods are not in the nature of durable container as mentioned in the subject notification: that some of these goods have been procured by them On the basis of commercial transaction with the supplier, which has been accepted by M/s. Vestas. Thus, the very claim of the exemption under Notification No.104/94-Cus dated 16.03. 1994 (mentioned in Annexure A) was a willful mis-statement to avail duty exemption. In addition to this, it appears that M/s. Vestas have surrendered 15 containers to Leasing Company, who later shipped them out (exported). This was done by M/s. Vestas without the knowledge of the Customs Department and thereby suppressing the material facts from the Department.

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

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

23. In view of the above, M/s. Vestas Wind Technology India Pvt. Ltd, 298, Rajiv Gandhi Salai, Sholinganallur, Chennai 600119 were called upon to show cause to the Commissioner of Customs, Kandla, as to why:

a. The benefit of duty exemption as claimed under Notification No.104/94 Cus dated 16.03.1994 in respect of goods mentioned in Annexure-A to the Show Cause Notice, should not be denied to them and Customs duty amounting to Rs.8,49,40,801/- (Rs.5,82,34,253/ Annexure-A on account of wrong availment of benefit of exemption under Noti.No. 104/94-Cus dated 16.03.1994 (+) Rs.2,67,06,548/- as per Annexure-B to the Show Cause Notice, on the goods which were not declared), should not be demanded under proviso to Section 28(1) (till 07.04.2011)/ Section 28(4) (w.e.f.08.04.2011) read with bonds furnished by them under Noti.No. 104/94-Cus at the time of import. The amount of Rs.2,89,57,316/- (As per Annexure-C) deposited by M/s. Vestas vide Challan No.735 dated 04.07.2012 during investigation should not be appropriated against the demand of Customs duty.

b. The interest under section 28AB (till 07/04/2011) and 28AA (from 08.04.2011) of the Customs Act, 1962 should not be demanded and recovered at the appropriate rate. The amount of

Rs.46,02,074/ deposited towards interest by M/s. Vestas vide Challan No. 1529 dated 04.10.2012 during investigation should not be appropriated against the demand of interest.

c. The goods declared as packing materials i.e. Barge frames, Low Hub Frame, Tower Foot, Tower Frapping Brackets, Double stacker frames, SOC containers etc. On returnable basis (re-export) valued at Rs.23,71,41,010/- should not be confiscated under Section 111(m) and/or 111(o) of the Customs Act, 1962. Some of these declared imported packing materials i.e. SOC containers totally valued at Rs.18,98,966/- were under seizure as detailed in Annexure-A to the Seizure Memo dated 09.01.2014. Since the Commissioner of Customs, Kandla considered their request and ordered for provisional release of the said seized goods on execution of Bond of full value of the seized goods and Bank Guarantee of Rs.5 lacs, why fine in lieu of confiscation should not be imposed upon them under Section 125 of the Customs Act, 1962 and why the Bond executed by them should not be enforced and Bank Guarantee furnished by them at the time of provisional release of said seized goods should not be encashed against their above liabilities towards duty, interest, fine and penalty etc.

d. The undeclared packing materials i.e. Tower Foot, Tower Frapping Brackets, Low Hub Frame, Double stacker frames & SOC containers etc. valued at Rs.10,98,12,887/-, which were under seizure, should not be confiscated under Section 111(1) of the Customs Act, 1962. Since the seized goods have been provisionally released to M/s. Vestas, why fine in lieu of confiscation should not be imposed upon them under Section 125 of the Customs Act, 1962 and why the Bond executed by them should not be enforced and Bank Guarantee furnished by them at the time of provisional release of seized goods should not be encashed against their above liabilities towards duty, interest, fine and penalty etc.

e. Penalty should not be imposed on them for their willful acts and omissions as discussed above under Section 112(a) and/or 114A of the Customs Act, 1962.

f. The Bonds furnished by them under Noti.No. 104/94-Cus dated 16.03.1994 and Bonds and Bank Guarantees furnished at the time of provisional release of the goods are liable to be enforced for recovery of duty / interest/ fine / penalty etc.

### **23. PERSONAL HEARING AND DEFENCE SUBMISSIONS**

23.1 Personal Hearing was attended on 28.11.2023 by Shri Vijay Kumar, Authorised Representative on behalf of the noticee. He briefly stated that the demand was raised by SIIB, CH Kandla for the import of the undeclared packing material of the B.E.s which were imported under benefit Notification No. 104/94-Cus dated 16.03.1994 along with the original material. The confirmed demand was remand back to the original adjudicating authority by CESTAT, Ahmedabad with the view that the issue is to be decided after the final assessment of the bills of entry, which were provisionally assessed due to issued pending at SVB and also for verification of goods re-exported under Notification No. 104/94 dated 16.03.1994. He submitted that Bills of Entries were finalized and difference of Rs. 78,291/- has also been paid. Subsequently, they have also requested to cancel of two bank guarantees (BG) amount of Rs. 2.97 crores, which was executed during the proceedings with Kandla Customs.

23.2 On being asked he submitted that they have already paid the demand of Rs.2,89,57,316/- raised in the SCN and they were contesting fine and penalty imposed therein only. He further submitted that fine and penalty imposed in the SCN due to wrong availment of notification benefit i.e. 104/94 dated 16.03.1994 for import of wind mill project, which was not correct as they had followed all conditions and availed notification benefit correctly and same has been decided in their favour by the Hon'ble CESTAT, except for the items, which was remanded back for proper identification of the goods in respect of import and re-export documents. So, demand of fine and penalty was not sustainable. All containers imported under the benefit of notification no. 104/94 dated 16.03.1994 is re-exported and in this regard they had submitted all the relevant B.E.s and S.B.s in their written submissions. However, in regard of demand on undeclared packing material they had already paid all the liability during proceedings along with interest to

avoid any further burden of interest and penalty etc. On being asked about ground of waiver of penalty, he submitted that he had not any malafide intention and import of such undeclared packing material was just ignorance, for which they had already paid the duty. They requested not to impose penalty and take lenient view which adjudicating the matter.

23.3 The noticee vide their letter dated 23.01.2024 submitted that following 5 Bill of Entries were finalized and the differential duty was paid and details were furnished below –

Port Code	BOE No.	BOE Date	TR 6 Challan No	Challan Date	Amount
INIXY1	4661267	16-Sep-11	--	--	--
INIXY1	5331240	29-Nov-11	--	--	--
INIXY1	5889975	01-Feb-12	2045758354	16-10.2023	78,291
INIXY1	5889985	02-Jan-12	--	--	--
INIXY1	5889991	02-Jan-12	--	--	--

23.4 The noticee submitted that the company has already discharged Rs. 2,89,57,316/- vide challan dated 735 dated 04.07.2012.

23.5 The noticee stated that the company had executed the following Bank Guarantee during the import clearance against the BOE referred in the SCN, based on the Customs directions

SL	Bank	BG ref	BG Dt	Amount	BG issued in favour
1	ICICI, Chennai	0009BG00098014	21-Jan- 14	5,00,000	The Commissioner of Customs, Customs House, Kandla
2	ICICI Chennai	0009BG00086414	20- Dec-13	27453222	The Commissioner of Customs, Customs House, Kandla

23.6 The noticee submitted that all container imported under the benefit of notification no. 104/94 dated 16.03.1994 were re-exported and in this regard they had already submitted all the relevant B.E.s and S.B.s in written submissions. However, in this regard to demand on undeclared packing material, already paid all liabilities during proceeding along with interest to avoid any further burden of interest and penalty etc. Also the pending BOEs were finalized and the differential duty was paid.

23.7 The noticee further submitted that the company has not any mala fide intention and import of such undeclared packing material was just unawareness, for which they had already paid duty.

23.8 They requested to take lenient view to set aside the demand order and waiver of penalty and issue the SCN closure order along with BG closure letter.

## 24. DISCUSSIONS & FINDINGS:

24.1 I have carefully gone through the records of the case, including the Show Cause Notice dated 06.08.2014, the written submissions as well as the oral submissions made during the course of Personal Hearing.

24.2 I find that the following main issues are involved in the subject Show Cause Notice, which is required to be decided are:

a. Whether the benefit of duty exemption as claimed under Notification No.104/94-Cus dated 16.03.1994 in respect of goods mentioned in Annexure-A should be denied to M/s. Vestas and Customs duty amounting to Rs.8,49,40,801/- (Rs.5,82,34,253/- as per Annexure-A to Show Cause Notice, on account of wrong availment of benefit of exemption under Noti.No. 104/94-Cus dated 16.03.1994 (+) Rs.2,67,06,548/- as per Annexure-B on the goods which were not declared], is required be demanded under proviso to Section 28(1) (till 07.04.2011) / Section 28(4) (w.e.f.08.04.2011) read with bonds furnished by them under Noti.No.104/94-Cus at the

time of import. The amount of Rs.2,89,57,3 16/- (As per Annexure-C to Show Cause Notice) deposited by M/s. Vestas vide Challan No.735 dated 04.07.2012 during investigation is to be appropriated against the demand of the Customs duty.

b. Whether the interest under section 28AB (till 07/04/2011) and 28AA (from 08.04.2011) of the Customs Act, 1962 is required to be demanded and recovered at the appropriate rate. The amount of Rs.46,02,074/- deposited towards interest by M/s. Vestas vide Challan No. 1529 dated 04.10.2012 during investigation is to be appropriated against the demand of interest.

c. Whether the goods declared as packing materials i.e. Barge frames, Low Hub Frame, Tower Foot, Tower Frapping Brackets, Double stacker frames, SOC containers etc. on returnable basis (re-export) valued at Rs.23,71,41,010/- is required to be confiscated under Section 111(m) and/or 111(o) of the Customs Act, 1932, Some of these declared imported packing materials i.e. SOC containers totally valued at Rs.18,98,966/- which were seized and ordered for provisional release of the said seized goods on execution of Bond of full value of the seized goods and Bank Guarantee of Ru,5 lacs, whether fine in lieu of confiscation is required to be imposed upon them under Section 125 of the Customs Act, 1962 and the Bond executed by them is required to be enforced and Bank Guarantee furnished by them at the time of provisional release of said seized goods is required to be encased against their above liabilities toward duty, interest, fine and penalty etc.

d. Whether the undeclared packing materials i.e. Tower Foot, Tower Frapping Brackets, Low Hub Frame, Double stacker frames &, SOC containers etc. valued at Rs. 10,98, 12,887/-, which were under seizure is required to be confiscated under Section 111(o) of the Customs Act, 1962. Since the seized goods have been provisionally released to M/s. Vestas, whether inc in lieu of confiscation is required to be imposed upon them under Section 125 of the Customs Act, 1962 and the Bond executed by them is to be enforced and Bank Guarantee furnished by them at the time of provisional release of seized goods is required to be encased against their above liabilities towards duty, interest, fine and penalty etc.

e. Whether penalty is required to be imposed on M/s. Vestas for their willful acts and omissions as discussed above under Section 112(a) and/or 114A of the Customs Act, 1962.

f. Whether the Bonds furnished by M/s. Vestas under Noti. No. 104/94-Cus dated 16.03.1994 and Bonds and Bank Guarantees furnished at the time of provisional release of the goods are required to be enforced for recovery of duty / interest / fine / penalty etc.

24.3 I find that the limited issue to be decided in the present case on remand back to the adjudicating authority by CESTAT vide their Final Order No. A/11398/2022 dated 27.07.2022/18.11.2022. While remand the matter to the adjudicating authority, the Hon'ble CESTAT in para 4 to 5 observed that –

*“4. We have heard both sides and perused the records. We find that the Revenue has denied the duty Exemption Notification No. 104/94-Cus dated 16.03.1994 in respects of the impugned disputed imported goods. It is seen from the language of the Notification that it pertains to exemption to durable containers from payment of Customs duty when imported into India if importer execute a bond and re-export of containers is done within the prescribed period of extended period. In the present matter as per the details of documents submitted by the Appellant and argument of Learned Counsel, we find that in some cases goods imported by them availing benefits of Notification No. 104/94-Cus have already been re-exported. We are of view that once the imported goods have been allowed export by the department, demand of customs duty denying benefit of notification no. 104/94 on export goods is not correct in spite of the fact that they have re-exported after the stipulated period of 6 months. Therefore where the goods are already re-exported benefit of the said Notification should be granted. However, the facts of export of the very same goods, which were imported by the appellant have to be established and identity of the imported and re-exported goods is required to be examined by the lower*

authorities, therefore matter needs to be reconsidered. We set aside the impugned order and remand the matter to the assessing authority for examining the appellant's claim in this regards.

4.1 We also find that in the present matter Ld. Commissioner also accepted the facts that most of these Bill of Entry have been assessed provisionally. We *prima facie* agree with the arguments of the Ld. Counsel that the demand of the duty can be determined only after finalization of assessment. We also note that it is a settled law that a provisional assessment retains its provisional character for every purpose as held by the Hon'ble Madras High Court in Indian Oil Corporation Ltd. case 2002(141) ELT 334 (Mad.) and by the Tribunal in the case of Orient Pre-stressed Products(P) Ltd. – 2003(159) ELT 1181 (Tri.-Del.). If the assessment is provisional for purpose of valuation, classification, it is also provisional for other aspects of assessment such as rate of duty, exemption notification, quantification of duty, etc.

4.2 The assessment are provisional and the same have to be finalized in accordance with the provisions of the Customs Act and there can be no demand of duty without finalization of the assessment as held in Hon'ble Gujarat High Court's judgment in the case of Essar Steel Ltd. – 2004(176) ELT 64 (Guj) *supra*. Where there is incompatibility between departmental proceedings to enforce contract and parallel proceedings for finalization of provisional assessment under Section 18 of the Customs Act, the statutory action must prevail. This is to say that the proceedings for finalization of provisional assessment must go ahead. The assessee's duty liability will depend upon the result of these proceedings.

4.3 In this view of the above, we set aside the impugned order and allow this appeal by way of remand directing the assessing authority to finalize the provisional assessment of the relevant Bill of Entry and then proceed to recover the duty of Customs, if found due. Needless to say that these proceedings must be undertaken in accordance with the provisions the Customs Act and the principles of natural justice. We keep all the issues open.

5. Accordingly, appeal is allowed by way of remand to the Adjudicating/Assessing Authority."

25. From the above, I find that the Hon'ble CESTAT remanded the case to the adjudicating authority only on two aspects (1) The adjudicating authority is required to examine the goods re-export are very same goods, which were imported by the appellant and identity of the imported and re-exported goods is required to be examined (2) The assessing authority to finalize the provisional assessment of the relevant Bill of Entry and then proceed to recover the duty of Customs, if found due. Now, I proceed to decide the show cause notice as per direction of the Hon'ble CESTAT.

26. Frist issue is the goods re-exported were very same goods which imported by the noticee

26.1. I find that the noticee had claimed benefit of duty exemption under Notification No. 104/94-Cus dated 16.03.1994 in respect of goods mentioned in Annexure-A and Annexure-B attached to the notice and show cause notice was issued for Customs duty amounting to Rs.8,49,40,801/- under proviso to Section 28(1) (till 07.04.2011) / Section 28(4) (w.e.f. 08.04.2011) read with bonds furnished by them at the time of import.

26.2 I find that the noticee had imported specialized equipment & packing materials viz. Barge frames, Low Hub Frame, Tower Foot, Tower Frapping Brackets, Double stacker frames, SOC containers etc. valued at Rs.23,71,41,010/- involving duty amount to the tune of Rs.5,82,34,253/- (As detailed in Annexure-A attached to the notice), wherein they claimed the benefit of Notification No.104/94-Cus dated 16.03.1994. The differential duty calculation is summarized as below :

Annexure	Particulars	Value(In Rs)	Duty amount (in Rs)
A	Imported goods wherein benefit of Notification No. 104/94-Cus dated	23,71,41,010/-	5,82,34,253/-

		16.3.94 availed and duty not paid		
B		Imported Goods Which Were Not Declared	10,98,12,887/-	2,67,06,548/-
<b>Total duty liability = A+B</b>			34,69,53,897/-	8,49,40,801/-
C		Duty Amount Deposited During Investigation In Respect Of Non Declared Packing Materials as worked out by M/s. Vestas	10,91,60,287/-	2,89,57,316/-
<b>Differential duty recoverable = A+B-C</b>			23,77,93,610/-	5,59,83,485/-

The seizures effected are also summarized as under :

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

Annexure	Particulars	Value (Rs)
A (i.e. total a + b below)	Imported goods wherein benefit of Notification No. 104/94-Cus dated 16.3.94 availed and duty not paid	23,71,41,010/-
a	Goods other than SOC containers and re exported by Vestas	23,01,22,367/-
b	63 SOC containers	70,18,643/-

**FINDINGS IN RESPECT OF ANNEXURE-A- GOODS DECLARED-ANNEXURE-A:-**

26.3 I find that demand of customs duty to the tune of Rs.5,82,34,253/- are in respect of Bill of Entries as enumerated in Annexure-A to the show cause notice involving value of Rs. 23,71,41,010/-. As per directions of the Hon'ble CESTAT, I have gone through the details of Bill of Entries submitted by the noticee as per Annexure-A to show cause notice and corresponding shipping bill through which re-export was made by the noticee. The details submitted by the noticee are as below-

BO E NO	BOE DAT E	DESCRIPTION OF THE TRANSPORT EQUIPMENT	IMP ORT ED QTY IN NOS	RE BOND DETAILS(YE S/NO)	CONT AINER NOS	RE- EXP ORT ED QTY	SB NO	SB DAT E	REMA RKS
319 187 2	12- Apr- 11	V100 BARGE FRAME	30	YES (2000087793)	-	30	8835 381	09- May- 12	RE- EXPOR TED
319 187 2	12- Apr- 11	40 SOC CONTAINERS	2	YES (2000087793)	TEXU1 505001 & GAEU 250130 0	2	2406 257 &26 2913 7	31- OCT -12 & 17- NOV -12	RE- EXPOR TED
328 389 1	21- Apr- 11	CONTAINER (FOR MARINE TRANSPORT)	5	YES (2000077783)	TITU3 918446 , TITU5 692424 , TITU5 295068 , TCIU9 903114 & TITU5 294082	5	4497 365, 2666 911, 4497 177	18- MA R- 13, 20- NOV -12, 18- MA R-13	RE- EXPOR TED

328 389 1	21- Apr- 11	CONTAINER (FOR MARINE TRANSPORT)	2	YES (2000077783)	TCIU9 906010 &TITU 990222 0	2	1957 837	02- Apr- 14	RE- EXPOR TED
328 389 1	21- Apr- 11	CONTAINER (FOR MARINE TRANSPORT)	1	YES (2000077783)	TITU5 492719	1	1957 837	02- Apr- 14	RE- EXPOR TED
305 195 8	25- Mar- 11	V100 BARGE FRAME	30	YES (2000060665)	-	30	8835 381	09- May- 12	RE- EXPOR TED
305 195 8	25- Mar- 11	LOW HUB FRAME FOE 2 MW	23	YES (2000060665)	-	23	2406 267	31- Oct- 12	RE- EXPOR TED
305 195 8	25- Mar- 11	40 SOC CONTAINERS	15	YES (2000060665)	AMFU 502204 8, AMFU 502233 0, TEXU1 509780 , GAEU 250340 6, TEXU1 514132 , GAEU 250240 0, TEXU1 511998 , TEXU1 501182 , TEXU1 510923 , AMFU 501031 9, GAEU 250620 , AMFU 501470 0, GAEU 250464 0, TEXU1 513497 & TEXU1 511072	15	2405 874, 2405 958, 2629 137, 2685 201, 2683 852, 2231 998, 8772 609 & 8835 375	31- OCT -12, 17- NOV -12, 21- NOV -12, 18- OCT -12, 04- MA Y- 12, & 09- MA Y-12	RE- EXPOR TED
305 195 8	25- Mar- 11	40 SOC CONTAINERS	4	YES (2000060665)	TEXU1 509183 , TEXU1 511365 , TEXU1 506538 & TEXU1 517893	4	1957 575	02- Apr- 14	RE- EXPOR TED
305 195 8	25- Mar- 11	20 SOC CONTAINERS	1	YES (2000060665)	PRSU0 004480	1	2231 998	18- Oct- 12	RE- EXPOR TED
353 537	18- May-	40 SOC CONTAINERS	1	YES (2000089593)	SEAU7 806687	1	-	-	

0	11								
357 483 9	23- May- 11	V100 BARGE FRAME	30	YES (2000096022)	-	30	8772 609	04- May- 12 RE- EXPOR TED	
357 483 9	23- May- 11	LOW HUB FRAME FOE 2 MW	5	YES (2000096022)	-	5	2406 267	31- Oct- 12 RE- EXPOR TED	
357 483 9	23- May- 11	40 SOC CONTAINERS	8	YES (2000096022)	TEXU1 505866 , TEXU1 513007 , AMFU 502267 0, TEXU1 508084 , AMFU 601351 3, TEXU1 516515 , TEXU1 501813 & GAEU 250499 5	8	2565 268, 2683 852, 8835 375, 8772 609	10- NOV -12, 21- NOV -12, 09- MA Y- 12, & 04- MA Y-12	RE- EXPOR TED
357 893 8	23- May- 11	V100 BARGE FRAME	30	YES (2000096024)	-	30	8772 609	04- May- 12 RE- EXPOR TED	
357 893 8	23- May- 11	40 SOC CONTAINERS	1	YES (2000096024)	TEXU1 508356	1	8835 375	09- May- 12 RE- EXPOR TED	
357 893 8	23- May- 11	40 SOC CONTAINERS	1	YES (2000096024)	AMFU 602067 8	1	1958 339	02- Apr- 14 RE- EXPOR TED	
371 705 5	06- Jun- 11	V100 BARGE FRAME	30	YES (2000100811)	-	30	8772 609	04- May- 12 RE- EXPOR TED	
373 385 4	08- Jun- 11	40 SOC CONTAINERS	2	YES (2000101536)	NOWU 095052 8 & NOWU 095020 9	2	1957 997	02- Apr- 14 RE- EXPOR TED	
373 385 4	08- Jun- 11	40 SOC CONTAINERS	1	YES (2000101536)	CAGU 400354 8	1	-	-	
466 126 7	16- Sep- 11	SINGLE BLADE TRANSPORT FRAME	24	YES (2000198452)	-	24	2682 588	21- Nov- 12 RE- EXPOR TED	
466 126 7	16- Sep- 11	TIP FRAME LOWER SECTION	24	YES (2000198452)	-	24	2682 588	21- Nov- 12 RE- EXPOR TED	
466 126 7	16- Sep- 11	HJ TIP FRAME TOP SECTION	24	YES (2000198452)	-	24	2682 588	21- Nov- 12 RE- EXPOR TED	
466 126 7	16- Sep- 11	TIP SADDLE MAIN ASSY 4M PREPR	24	YES (2000198452)	-	24	2682 588	21- Nov- 12 RE- EXPOR TED	
466 127 1	16- Sep- 11	LOW HUB FRAME FOE 2 MW	8	YES (2000198450)	-	8	2406 061	31- Oct- 12 RE- EXPOR TED	
435 057 7	12- Aug- 11	TOWER FOOT(2 NOS/SECTION)	16	YES (2000198447)	-	16	2556 234	09- Nov- 12 RE- EXPOR TED	
435 057 7	12- Aug- 11	TOWER FRAPPING BRACKETS(8 PCS/SECTION)	48	YES (2000198447)	-	48	2556 234	09- Nov- 12 RE- EXPOR TED	

435 057 7	12- Aug- 11	DOUBLE STACKER FRAME	8	YES (2000198447)	-	8	2556 234	09- Nov- 12	RE- EXPOR TED
533 124 2	29- Nov- 11	LOW HUB FRAME FOE 2 MW	5	YES (2000200259)	-	1	2405 927	31- Oct- 12	RE- EXPOR TED
533 124 2	29- Nov- 11	40 SOC CONTAINERS	1	YES (2000200259)	MLCU 505447 2	1	-	-	RE- EXPOR TED
533 124 2	29- Nov- 11	40 SOC CONTAINERS	1	YES (2000200259)	LLTU8 904893	1	1958 126	02- Apr- 14	RE- EXPOR TED
533 124 0	29- Nov- 11	SINGLE BLADE TRANSPORT FRAME	15	YES (2000200265)	-	15	2683 861	21- Nov- 12	RE- EXPOR TED
533 124 0	29- Nov- 11	TIP FRAME LOWER SECTION	15	YES (2000200265)	-	15	2683 861	21- Nov- 12	RE- EXPOR TED
533 124 0	29- Nov- 11	HJ TIP FRAME TOP SECTION	15	YES (2000200265)	-	15	2683 861	21- Nov- 12	RE- EXPOR TED
533 124 0	29- Nov- 11	TIP SADDLE MAIN ASSY 4M PREPR	15	YES (2000200265)	-	15	2683 861	21- Nov- 12	RE- EXPOR TED
533 124 0	29- Nov- 11	40 SOC CONTAINERS	1	YES (2000200265)	TRLU4 011016	1	2666 911	20- Nov- 12	RE- EXPOR TED
533 124 0	29- Nov- 11	20 SOC CONTAINERS	1	YES (2000200265)	TITU3 204840	1	8556 952	21- Nov- 13	RE- EXPOR TED
580 146 7	21- Nov- 12	SINGLE BLADE TRANSPORT FRAME	21	YES (2000225731)	-	21	2629 142	17- Nov- 12	RE- EXPOR TED
580 146 7	21- Nov- 12	TIP FRAME LOWER SECTION	21	YES (2000225731)	-	21	2629 142	17- Nov- 12	RE- EXPOR TED
580 146 7	21- Nov- 12	HJ TIP FRAME TOP SECTION	21	YES (2000225731)	-	21	2629 142	17- Nov- 12	RE- EXPOR TED
580 146 7	21- Nov- 12	TIP SADDLE MAIN ASSY 4M PREPR	21	YES (2000225731)	-	21	2629 142	17- Nov- 12	RE- EXPOR TED
580 146 7	21- Nov- 12	LOW HUB FRAME FOE 2 MW	14	YES (2000225731)	-	14	2407 102	31- Oct- 12	RE- EXPOR TED
580 146 7	21- Nov- 12	40 HQ SOC CONTAINERS	2	YES (2000225731)	TCKU 950473 9, TTNU9 079302	2	2556 222	09- Nov- 12	RE- EXPOR TED
580 146 7	21- Nov- 12	40 HQ SOC CONTAINERS	3	YES (2000225731)	TCKU 950940 6, TCKU 901284 7, TCKU 972484 1	3	1958 070	02- Apr- 14	RE- EXPOR TED
580 146 7	21- Nov- 12	40 HQ SOC CONTAINERS	1	YES (2000225731)	TTNU9 695078	1	-	09- Nov- 12	RE- EXPOR TED
588 998 3	01- Feb- 12	V100 BARGE ROOT FRAME	1	YES (2000233798)	-	1	2683 861	21- Nov- 12	RE- EXPOR TED
588 998 3	01- Feb- 12	V100 BARGE TIP FRAME	1	YES (2000233798)	-	1	2683 861	21- Nov- 12	RE- EXPOR TED
588 997 8	01- Feb- 12	SINGLE BLADE TRANSPORT FRAME	30	YES (2000233801)	-	30	2683 861	21- Nov- 12	RE- EXPOR TED
588 997 8	01- Feb- 12	TIP FRAME LOWER SECTION	30	YES (2000233801)	-	30	2683 861	21- Nov- 12	RE- EXPOR TED

588 997 8	01- Feb- 12	HJ TIP FRAME TOP SECTION	30	YES (2000233801)	-	30	2683 861	21- Nov- 12	RE- EXPOR TED
588 997 8	01- Feb- 12	TIP SADDLE MAIN ASSY 4M PREPR	30	YES (2000233801)	-	30	2683 861	21- Nov- 12	RE- EXPOR TED
588 997 8	01- Feb- 12	40 SOC CONTAINERS	1	YES (2000233801)	TCIU5 427724	-	4497 365	18- Mar- 13	RE- EXPOR TED
588 997 8	01- Feb- 12	20 SOC CONTAINERS	1	YES (2000233801)	TRLU2 759143	-	8584 601	23- Nov- 13	RE- EXPOR TED
588 997 5	01- Feb- 12	LOW HUB FRAME FOE 2 MW	6	YES (2000233799)	-	6	2406 061	31- Oct- 12	RE- EXPOR TED
588 998 5	01- Feb- 12	40 SOC CONTAINERS	2	YES (2000233800)	TCIU9 910622 , TITU4 905757	-	8807 962	05- Dec- 13	RE- EXPOR TED
588 999 1	01- Feb- 12	20 SOC CONTAINERS	1	YES (2000233802)	TCIU4 820547	-	8360 176	08- Nov- 13	RE- EXPOR TED
588 995 6	01- Feb- 12	SINGLE BLADE TRANSPORT FRAME	21	YES (2000233796)	-	21	2629 142	17- Nov- 12	RE- EXPOR TED
588 995 6	01- Feb- 12	TIP FRAME LOWER SECTION	21	YES (2000233796)	-	21	2629 142	17- Nov- 12	RE- EXPOR TED
588 995 6	01- Feb- 12	HJ TIP FRAME TOP SECTION	21	YES (2000233796)	-	21	2629 142	17- Nov- 12	RE- EXPOR TED
588 995 6	01- Feb- 12	TIP SADDLE MAIN ASSY 4M PREPR	21	YES (2000233796)	-	21	2629 142	17- Nov- 12	RE- EXPOR TED
588 995 6	01- Feb- 12	LOW HUB FRAME FOE 2 MW	4	YES (2000233796)	-	4	2405 927	31- Oct- 12	RE- EXPOR TED
588 995 6	01- Feb- 12	40 HQ SOC CONTAINERS	1	YES (2000233796)	TTNU9 325710	1	1958 235	02- Apr- 14	RE- EXPOR TED
588 995 6	01- Feb- 12	40 HQ SOC CONTAINERS	3	YES (2000233796)	TCKU 973296 0, TCKU 928025 9 & TTNU9 071873	3	-	-	RE- EXPOR TED

26.4 I find from the submissions of the noticee that they had imported returnable goods under bill of entry as given in above table by availing benefit of notification no. 104/94-Cus dated 16.03.1994. I find from the details submitted by the noticee that the noticee had re-exported the same goods which were earlier imported by them. I find that for each instance of import of impugned goods, such goods have been re-exported with or without delay. This is evident from the fact that for each import of racks through various Bills of Entry a subsequent Shipping bills have also been filed.

26.5. In this regard, this office vide letter dated 09.07.2025 was written to Customs Mundra to verify the details of Annexure-A to the Show cause notice. In response to the same, the office of Mundra vide letter dated 15.07.2025 provided the verification report and further informed that 13 shipping bills, details of which provided by M/s. Vestas, were not retrievable from the ICES/EDI system. It is noticed that out of the remaining 13 shipping bills, on being asked, the noticee has provided 6 shipping bills and they could not provide the copies of remaining 7 shipping bills. Thus, except the said 13 Shipping Bills, the benefit of exemption notification is available to the noticee as per directions of the Hon'ble CESTAT in Order dated 18.11.2022 to all the shipping

Bills. Thus, the benefit of exemption notification is required to be examined in respect of remaining 13 shipping Bills.

26.6. In respect of 6 Shipping Bills provided by the noticee, I find that the details are as below:-

Sl. No	Shipping Bill	Description of goods Re-exported	Quantity	Details of BE against which re-export is done	Details of goods imported
1.	1957575	40 SOC containers	4	3051958	40 SOC Containers
2.	2231998	20 SOC containers	1	3051958	20 SOC containers
3.	2405958	40 SOC container	1	3051958	40 SOC container
4.	2406257	40 SOC container	1	4661271	40 SOC container
5.	2683852	40 SOC container	1	3574839	40 SOC container
6.	2385201	40 SOC container	1	30151958	40 SOC container

Since the durable containers have been re-exported and the description of the same are also matching, I find that the benefit of exemption notification is available to the noticee as per directions of the Hon'ble CESTAT in Order dated 18.11.2022 in respect of the above shipping Bills.

**DETAILS OF 7 SHIPPING BILLS AND DUTIES OF CUSTOMS WHERE COPIES OF SHIPPING BILLS ARE NOT PROVIDED-**

26.7. I find that there are only 7 shipping Bills where copies of said shipping bills are not provided. In respect of those 7 SBs, they have provided the Shipping Bill No., date and Port code only, as given below. Therefore, in pursuance of the direction of Hon'ble CESTAT, details of re-exported goods can be matched with the Corresponding Bill of Entry only when copies of SBs are provided to the department. Thus, I find that the benefit of exemption notification is not available to the noticee as per directions of the Hon'ble CESTAT in Order dated 18.11.2022 in respect of the remaining 7 shipping bills as given below:-

**TABLE-A**

Sl No	Shipping Bill No.	Date	Port Code No.	Corresponding BE No.	Differential duty involved as per Annexure-A
1	4497365	18-Mar-13		5889978	34,153
2	2666911	20-Nov-12	INNSA1	3283891 3283891	98,621
3	4497177	18-Mar-13			
4	8556952	21-Nov-13	INNSA1	5331240	20,358
5	8584601	23-Nov-13	INNSA1	5889978	31,048
6	8807962	5-Dec-13	INNSA1	5889985	68,305
7	8360176	8-Nov-13	INNSA1	5889991	31,048
				Total	2,83,533/-

26.6. Therefore, I find that they are liable to differential duties of customs amounting to Rs. 2,83,533/- out of the total demand of Rs. 5,82,34,253/- under the provisions of Section 28 of the Customs Act, 1962.

26.7 I find from the above that the noticee had fulfilled their obligations by re-exporting the impugned goods. Therefore, I hold that the noticee has fulfilled the conditions of the notification and the exemption under Notification No. 104/1994-Cus dated 16.03.1994, in respect of Bills of Entry given in Annexure-A to the Show Cause Notice except the Bills of Entry mentioned in the above table-A, is available to the noticee.

26.8 I further find that some of the goods have been physical found by the department and put under seizure vide seizure memo dated 09.01.2014 in respect of the aforesaid 17 containers valued at Rs. 18,98,966/- which was provisionally released by the adjudicating authority on request of the noticee and subsequently re-exported. Thus, I find that the noticee had complied with the condition of notification no. 104/95-Cus. and benefit of the said exemption notification is available to the noticee as per Hon'ble CESTAT order.

26.9 In view of above, I find that the demand of customs duty raised to the tune of Rs. 5,79,50,720/- (Rs. 5,82,34,253/- (-) Rs. 2,83,533/-) is not sustainable and required to be dropped in respect of bill of entries enumerated in Annexure-A to show cause notice.

26.10 I further find that once the demand of customs duty amounting to Rs. 5,79,50,720/- is not sustainable the question of recovery of interest under Section 28AB/Section 28AA of the Customs Act, 1962 and imposition of penalty under Section 112(a) and/or Section 114A of the Customs Act, 1962 does not sustain and I refrain to impose the same.

26.11. Further w.r.t the durable containers in which they could not provide the copies of Shipping Bill mentioned in Table-A, I find that such containers (though not available for physical confiscation) are also liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.

#### **FINDINGS IN RESPECT OF GOODS NOT DECLARED- ANNEXURE-B:-**

27. In respect of second issue regarding finalization of provisional assessment of bill of entries as enumerated in Annexure-B to show cause notice and payment of differential duty, if any due, I find that the Hon'ble CESTAT, Ahmedabad directed to demand of customs duty, if any after finalization of provisional assessment and accordingly assessing authority finalized the provisional assessment and intimate to this office vide letter dated 12.09.2023. As per final assessment carried out, the noticee required to pay the differential amount of Customs duty to the tune of Rs.78291/- which was paid by the noticee vide challan number 2045758354 dated 16.10.2023.

27.1 I find that the noticee had imported specialized packing materials which were not in the nature of optional equipment but it was a part of the goods being imported and that the same had commercial value. I find that the noticee had paid for these equipments along with the imported goods and that the transaction was also reflected in their commercial invoices. I find that the noticee while importing the said goods had deliberately not declared the packing materials for components / parts of wind mill / SOC containers with an intention to evade custom duty. I find that the aforesaid undeclared goods valued at Rs.10,98,12,887/- were placed under seizure and the said goods were provisionally released on furnishing Bond of 100% value of the seized goods and 25% BG i.e. Rs.2,74,53,222/- of the value of the seized goods.

27.2 I further find that the noticee had also agreed to the above facts that they had cleared some of the specialized packing materials without declaring the same in the Bills of Entry and therefore they had made payment of Customs duties to the tune of Rs.2,89,57,316/- along with interest of Rs.46,02,074/- at the time of investigation.

27.3 I find that the noticee had in fact cleared some of the specialized packing materials without declaring the same in the Bills of Entry, thus, wrongly claiming benefit of the Notification No. 104/94-Cus dated 16-3-1994. I also find that the noticee had never disclosed this facts to the customs authority and had cleared the goods without payment of proper customs duty by wrongly availing the benefit of Notification no. 104/94-Cus dated 16.03.1994.

27.4 In view of the above, I find that by agreeing to the facts by the noticee regarding not declaring the packing materials in the Bills of Entry at the time of import and wrongly claiming benefit of the Notification No.104/94-Cus, dated 16-3-1994 and also having paid the Customs duty during investigation, I am of the opinion that the said imported specialized equipment and packing materials do not qualify for the exemption claimed under Notification No. 104/94-Cus.

28. The noticee in their written submissions as well as during the course of personal hearing has contended that there was no malafide intention either to circumvent the provisions of law or to disobey the conditions stipulated under Notification No. 104/1994. The Show Cause Notice has been issued under the premise that the department has initiated suomoto investigation. However, most of the disclosure of facts and payment of duty for the undeclared items were in the nature of voluntary disclosure of information by then to the department. I find that the investigation started in April 2012 and the said undeclared packing materials were imported by M/s. Vestas from the period during January 2011 to February, 2012. I also find from records that during investigation, while reconciling their imports M/s. Vestas came to know about their discrepancy regarding non-declaration of certain packing materials in the Bills of Entry. Therefore their claim that they have paid duty along with interest on their internal verification and realizing their lacunae, does not hold good. In fact, the said liability were discharged only after department had initiated investigation and reconciliation of the impugned goods by them during the process. Nevertheless, but for a thorough investigation by the Customs, the matter would have gone unnoticed.

29. I further find that the noticee has failed to declare the said packing materials i.e. Tower Foot, Tower frapping Brackets, Low Hub Frame, Double stacker frames & SOC containers etc. valued at Rs. 10,98,12,887/- are liable for confiscation under Section 111(l) of the Customs Act, 1962.

30. Consequently, by above acts and omission the M/s. Vestas have rendered themselves liable for penal action under Section 112(a) and / or 114A of the Customs Act, 1962. Further, I find that M/s. Vestas have made themselves liable to penalty under Section 112(a) as well as under Section 114A of the Customs Act, 1962. However, since I propose to impose penalty under Section 114A of the Customs Act, 1962, I do not impose any penalty on them under Section 112(a) of the Customs Act, 1962 as provided in fifth proviso to Section 114A.

31. In view of the forgoing discussions and findings, I pass the following order:

## **ORDER**

### **ORDER IN RESPECT OF ANNEXURE-A- GOODS DECLARED-**

- (i) I deny the benefit of duty exemption as claimed under Notification No. 104/94-Cus dated 16.03.1994 in respect of goods mentioned in respect of Bills of Entries mentioned in Table-A above in Para 26.5.
- (ii) I determine and confirm the customs duty amounting to Rs.2,83,533/- (Two Lakhs Eighty three thousand Five hundred and Thirty Three only) for the Bills of Entries as per Annexure-A, as per the discussion in para 26.5 above, under Section 28(1) (till 07.04.2011)/ Section 28(4) w.e.f 08.04.2011 read with Bonds furnished by them under Noti. No. 104/94-Cus at the time of import.
- (iii) I drop demand of customs duty amounting to Rs. 5,79,50,720/- for Bill of Entries enumerated in Annexure-A, as discussed in the above paras, to the show cause notice.

- (iv) I order to recover interest on the duty of Rs. 2,83,533/- confirmed above at the applicable rate under S. 28AB (till 07.04.2011) and 28AA(from 08.04.2011) of the Customs Act, 1962.
- (v) I impose penalty equal to the duty plus interest confirmed above under Section 114A of the Customs Act, 1962. I further order to extend the benefit of reduced penalty of 25%, if the Customs duty, interest and such reduced penalty are paid within thirty days from the date of communication of the order.
- (vi) I hold that the goods mentioned in Table-A are liable for confiscation under Section 111(o) of the Customs Act, 1962.

Since the goods are not available for physical confiscation, I impose redemption fine of Rs. 3,00,000/- (Rupees Three Lakhs only) under Section 125 of the customs Act, 1962 in lieu of confiscation.

**ORDER IN RESPECT OF ANNEXURE-B-GOODS NOT DECLARED-**

- (vii) I deny the benefit of duty exemption as claimed under Notification No.104/94-Cus dated 16.03.1994 in respect of goods mentioned in Annexure-B to M/s. Vestas and Customs duty amounting to Rs.2,67,06,548/- as per Annexure-B to the show cause notice on the goods which were not declared, and confirm the demand of Rs.2,67,06,548/- under proviso to Section 28(1) (till 07.04.2011) / Section 28(4) (w.e.f. 08.04.2011) read with bonds furnished by them under Noti. No. 104/94-Cus at the time of import.

The amount of Rs.2,89,57,316/- (As per Annexure-C to the Show Cause Notice) deposited by the importer vide Challan No.735 dated 04.07.2012 during investigation is hereby appropriated against the demand of Customs duty.

- (viii) I order to pay the interest under section 28AB (till 07/04/ 2011) and 28AA (from 08.04.2011) of the Customs Act, 1962 at the appropriate rate. The amount of Rs.46,02,074/- deposited towards interest by M/s. Vestas vide Challan No. 1529 dated 04.10.2012 during investigation is hereby appropriated against the demand of interest.
- (ix) I order to confiscate the undeclared packing materials i.e. Tower Foot, Tower Frapping Brackets, Low Hub Frame, Double stacker frames SOC containers etc valued at Rs.10,98,12,887/-, under Section 111(o) of the Customs Act, 1962.

Further, I impose redemption fine of Rs. 2,00,00,000/- (Rs. Two crores only) under Section 125 of the Customs Act, 1962, in lieu of the confiscation for the goods provisionally assessed and cleared under Bond.

- (x) I order to enforce the Bond executed by M/s. Vestas and I also order to encash the Bank Guarantee furnished by M/s. Vestas at the time of provisional release of said seized goods against their above liabilities towards duty, interest, fine and penalty etc.
- (xi) I impose penalty equal to the duty plus interest confirmed above at (vii) and (viii) under Section 114A of the Customs Act, 1962. I order to extend the benefit of reduced penalty of 25%, if the Customs duty, interest and reduced penalty 25% are paid within thirty days from the date of communication of the order.

**(M. Ram Mohan Rao)**

**Commissioner**

By REGD. POST A.D.

F.NO. GEN/ADJ/COMM/267/2023-Adjn-O/o Commr-Cus-Kandla

Din-20250771ML00009959FF

To

M/s. Vestas Wind Technology India Pvt. Ltd.

298, Rajiv Gandhi Salai, Sholinganallur,

Chennai – 600 119.

Copy to

1. The Chief Commissioner of Customs, Gujarat Zone, Customs House, Navrangpura, Ahmedabad for information along with the copy of show cause notice.
2. The Deputy/Assistant Commissioner, GR-I, Kandla
3. The Deputy/Assistant Commissioner (Recovery/EDI), CHK for necessary action.