

	<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-20241271ML00003353B5		
A	File No.	GEN/ADJ/COMM/710/2023-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-16-2024-25
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla
D	Date of Order	27.12.2024
E	Date of Issue	27.12.2024
F	SCN No. & Date	GEN/ADJ/COMM/710/2023-Adjn-O/o Commr-Cus-Kandla dated 29.12.2023
G	Noticee / Party / Importer / Exporter	M/s. GE India Industrial Private limited

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.

### **BRIEF FACTS OF THE CASE-**

Whereas, M/s. GE India Industrial Private limited (IEC code 0393001962), having its address at C/O LM wind Power Blades India Pvt. Ltd., Plot. No. 1/B, Halol Industrial Area, PH-III, Vill- Chandrapura, Taluka Halol, Gujarat-389350(hereinafter referred to as 'M/s.GEIP or 'the importer') has imported the "Tower Kit, 130M HH, 50HZ,STW,C5,W/ Service Lift {(parts of Wind operated Electricity generator (WOEG)}", "Blade, GE 64.5A1, Traffic Orange 2 Stripe, With VG (parts of WOEG)", "Tower Kit, 94M HH, 50HZ, STW, C5, LM Blades, W Hoist(parts of WOEG)",(hereinafter referred to as 'the said goods')at Kandla Port.

2. During the course of Post Clearance Audit, it was noticed that M/s. GE India Industrial Private limited, has filed the BoEs (RUD-1), through the Customs broker M/s. Agility Logistics Pvt. Ltd., for the import of "Tower Kit, 130M HH, 50HZ,STW,C5,W/Service Lift (parts of WOEG)", " Blade, GE 64.5A1, Traffic Orange 2 Stripe, With VG (parts of WOEG)", "Tower Kit, 94M HH, 50HZ, STW, C5, LM Blades, W Hoist(parts of WOEG)", classifying the same under Customs Tariff item 85030090, on payment of BCD @7.5%/5% (20% Saptanotif no. 50/2018-CUS), SWS @10% & IGST @5%/12%, imported from China (Country of origin), 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.

3.1 It appeared that the above said imported goods viz. "Tower Kit, 130M HH, 50HZ,STW,C5,W/ Service Lift (parts of WOEG)", " Blade, GE 64.5A1, Traffic Orange 2 Stripe, With VG (parts of WOEG)", "Tower Kit, 94M HH, 50HZ, STW, C5, LM Blades, W Hoist(parts of WOEG)"etc fell under the description of goods in Column 3 of the Table under Notification No.01/2016(CVD) dated 19.01.2016 and accordingly, the said goods imported from China are liable for Countervailing Duty @ 13.44% of the landed value of the said goods imported from China.

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

3.3 As per Section 12 of the Customs Act, 1962 read with sub-section (7) of Section 3 of the Customs Tariff Act, 1975 the said tariff item, was liable to Integrated GST @ 5% ad valorem, during the period upto 29.09.2021, in view of the Entry at Sr. no. 234 of the SCHEDULE I under notification no. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended) and Integrated GST @ 12% ad valorem, during the period from 30.09.2021, in view of the entry at Sr. no. 201A of the SCHEDULE II under notification no. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended).

#### **4. Countervailing Duty (CVD)**

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

4.2 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)
.....	.....	.....	.....	.....	.....	.....	.....
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. ”*

4.3 Whereas, it further appears, from the wordings of description of goods in Column (3) of the Notification No. 01/2016 (CVD) dated 19.01.2016 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.**

4.4 The importer has imported various parts of WOEG from PR of China classified under tariff item 85030090. Such description of goods fall 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).

##### 5. Anti-Dumping duty(ADD)

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

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

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

*Table*

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

	90	Electricity Generators				
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**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.”**

## 6. **Integrated GST (IGST)**

Whereas, as per Section 12 of the Customs Act, 1962 read with sub-section (7) of Section 3 of the Customs Tariff Act, 1975 the said tariff item, was liable to **Integrated GST @ 5% ad valorem**, during the period upto 29.09.2021, in view of the entry at sr. no. 234 of the SCHEDULE I under notification no. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended) and **Integrated GST @ 12% ad valorem**, during the period from 30.09.2021, in view of the entry at sr. no. 201A of the SCHEDULE II under notification no. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended).

7. On perusal of the Notification No. 42/2017- Cus (ADD) dated 30.08.2017, for the purpose of levy of ADD and Notification No. 01/2016-Customs (CVD) dated 19.01.2016, for the purpose of levy of CVD vide, it appears that the wordings of description of goods, in both the Notifications in respect of the **Castings for Wind Operated Electricity Generators**, are identical to the imported product.

7.1 In other words, the goods attract CVD vide **Notification No. 01/2016- Customs (CVD) dated 19.01.2016.**

7.2 The said goods also attract ADD vide **Notification No.42/2017-Cus (ADD) dated 30.08.2017** and the rate of ADD shall be an amount equivalent to the difference between the quantum of anti-dumping duty calculated as per column (8) and the quantum of anti-subsidy/countervailing duty payable, if any.

7.3 It further appeared that the Castings for Wind Operated Electricity Generators for the purpose of the notification no. 42/2017-Cus(ADD) dated 30.08.2017 also includes a part of a sub-assembly or 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.

## 8. **Non Payment of CVD, ADD and IGST**

8.1 Whereas, 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.84,21,54,734/-**, for the period 01.02.2019 to 06.01.2021, as calculated as per **Annexure A** attached herewith.

8.2 Whereas, 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. 212,71,94,057/-** for the period 01.02.2019 to 08.06.2022, as calculated as per **Annexure B** attached herewith.

8.3 Whereas, it appears that Non-payment of the Countervailing Duty and the Anti-Dumping Duty, as discussed hereinabove, has also resulted in short-payment of customs duty (IGST) on the total assessable value arrived at by way of adding CVD and ADD in the landed value, for the purpose of calculation of IGST on imported goods and the differential amount of customs duty (IGST) thus short-paid comes to **Rs. 18,04,00,881/-** for the period 01.02.2019 to 08.06.2022, as calculated as per **Annexure C** attached herewith.

8.4. Thus total amount of customs duty due to be recovered, on account of non payment of CVD, ADD and resultant IGST, comes to **Rs. 314,97,49,672/-**, as calculated as under:-

<b>SN</b>	<b>Customs Duty</b>	<b>Amount</b>
1	BCD short-paid	-
2	SWS short-paid	-
3	CVD @13.44% <b>(NOT PAID)</b>	<b>84,21,54,734/-</b>
4	ADD @35.92%-13.44% <b>(NOT PAID)</b>	<b>212,71,94,057/-</b>
5	<b>Differential IGST not paid</b>	<b>18,04,00,881/-</b>
6	<b>Total customs Duty Short-paid</b>	<b>314,97,49,672/-</b>

9. The importer vide reply letter dated 25.05.2023 (**RUD-3**), in response to ACL letter dated 25.04.2023 (**RUD-2**), it is informed that they have imported **“Tower Kit, 130M HH, 50HZ, STW, C5, W/SERVICE Lift (parts of WOEG)”** and none of the parts assembled in the item or the item itself is Casting and therefore ADD is not applicable for the item imported.

9.1 However, importer did not submit evidences in support of their claim to prove that-

(i) the above said imported goods viz. **“Tower Kit, 130M HH, 50HZ, STW, C5, W/ Service Lift (parts of WOEG)”, “Blade, GE 64.5A1, Traffic Orange 2 Stripe, WithVG(parts of WOEG)”, “Tower Kit, 94M HH, 50HZ, STW, C5,**

**LM Blades, W Hoist(parts of WOEG)"etc.** do not fall under the description of goods in Column 3 of the Table under Notification 01/2016(CVD) dated 19.01.2016 or

(ii) the said goods are outside the scope of implied meaning of **Casting for Wind Operated Electricity Generators** as envisaged in Note (i) of the Table under **Notification 42/2017-CUS (ADD)** dated 30.08.2017. Therefore, their reply dated 25/05/2023 appeared to be a case of suppression of pertinent information as envisaged under Section 28(4) of the Customs Act.

9.2 Futher, the importer had informed vide the above said letter that none of the parts assembled in the item or the item itself is casting and also submitted some picture of Wind Turbine Tower and their parts like Nacelle, Generator, Gear Box, electrical System, Control System, Pitch System Hub etc.

**However, as per the observation made by the designated authority vide para 11 of notification no. 14/28/2013-DGAD dated the 28th July, 2017, a Windmill requires a number of casting parts, including the **Hub**, **Rotohub**, **Rotor Nabe**, **Main Frame**, **Base Frame**, **Main Foundation**, **Nacelle**, **Nacelle Frame**, **Nacelle Foundation**, **Bearing Housing**, **Bearing Support**, **Hollow Shaft**, **Main Axle**, **Rotor Shaft**, **Rotor Coupling**, **Axle Pin**, **Main Shaft**, **Lateral Suspender**, **Pitch Stop**, **Stator**, **Generator castings**, **Part of Generators**, **Rotor**, **Torque Arm support**, etc.**

9.3 The importer vide reply letter dated 05.09.2023 (**RUD-5**), in response to ACL letter dated 06.07.2023 (**RUD-4**), informed that none of the parts assembled in the item or the item itself is made up of CASTING and therefore, ADD and special CVD are not applicable for the items imported. However, they have failed to substantiate their claim with documentary evidences to establish that the goods imported by them are outside the scope of 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, it appeared that the goods in question are casting parts as per the wordings of description of goods in Column 3 of Notification No. 01/2016 (CVD) dated 19.01.2016 & Note (i) of the Table under Notification 42/2017-CUS (ADD) dated 30.08.2017.

9.4 The declared description of the goods refer them to be a part of Wind operated Electricity generator. Thus use of casting parts, along with some other non-casting parts and components, leads to generation of electricity in windmill. 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.

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

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

#### **11. Misdeclaration of Valuation of the imported goods**

11.1 It was also noticed during the Post Clearance Audit of the subject BoEs that there is difference in Assessable value, as declared in the BoEs, for the said imported item, in comparison to the transaction value, as shown as CIF/FOB value in the commercial Invoices and freight invoices and insurance invoices. This has resulted in mis-declaration of the Assessable Value of imported goods.

11.2 For example, during the Post Clearance Audit of the BoE no. **7109059** dated 17/01/2022, it was noticed that there was a difference in the Declared Assessable and actual Assessable value. The importer declared assessable value of Rs.31,56,44,893/-, in the said BoE No.7109059 dated 17/01/2022, for the said imported item, "**TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT (PARTS OF WIND OPERATED ELECTRIC GENERATOR)**", in comparison to the PRICE shown in respect of the said items of "**TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT (PARTS OF WIND OPERATED ELECTRIC GENERATOR)**", amounting to **CNY.18,342,079.80** and cost of OCEAN FREIGHT amounting to **CNY.8,702,832 (CNY.3,984,429.20 + CNY.4,718,403.00)**, as shown in the commercial Invoice No: TT21-46-B01 Date: 22.11.2021(**RUD-6**). **Scanned copy of the same is reproduced below:**



# 苏州天顺新能源科技有限公司

## SuZhou Titan New Energy Technology Co, LTD

Add: No. 28, Yangjiang Road, Taicang City, Jiangsu, 215400 China  
 E-mail: wendy@titanwind.com.cn www.titanwind.com.cn  
 Tel: 0086-512-81606986 Fax: 0086-512-53598666

### INVOICE

To:  
 GE India Industrial Pvt Ltd  
 Division Wind Energy  
 LM Wind Power Blades India Private Limited, Plot no 1/B,  
 Halol Industrial Area Phase III, Taluka Halol, GUJARAT 389350  
 TAN Number: BLRG06015G  
 PAN Number: AAACG4901D  
 GSTIN Number: 24AAACG4901D1ZA

Invoice NO: TT21-46-B01  
 Date: Nov. 22th, 2021

Ship to:  
 GERE\_IN7\_Gujarat - EG1-LM  
 GE India Industrial Pvt Ltd-(Division Wind Energy)  
 LM Wind Power Blades India Private Limited  
 Plot no 1/B, Halol Industrial Area Phase III, Taluka Halol, GUJARAT 389350, India

Transportation: Ocean freight  
 Payment Terms: T/T  
 Shipping Term: CIF Kandla port, India  
 Shipping on/about: Dec. 5th, 2021

Shipment from Taicang port, China to Kandla port, India

CASE MARKS	QUANTITY	DESCRIPTION	UNIT PRICE (CNY)	AMOUNT (CNY)	REMARK
			Per Sec.		
<b>MESSRS:</b> GE13002MW50STWG506 TOWER KIT, 130M HH, 50HZ, STW, C5, W/ SERVICE LIFT 450W0202G003 TOWER ADDON KIT, 130M HH, AVIATION- TOWER WARNING LIGHTS W BANDING WO EXTERNAL LIGHT Ocean freight charges for import of 8sets towers from Titan - Taicang Port to Kandla Port for Continuum Project site.	41 SEC.	WIND TOWER	447,367.80	18,342,079.80	PO#290004976
	41 SEC.	ADDON KIT	6,000.00	246,000.00	PO#290004976
	41 SEC.	Ocean freight	485,906.00	3,984,429.20	PO#290005283 PO#290005386
	41 SEC.	Additional Ocean freight	575,415.00	4,718,403.00	PO#290006660
<b>Signature Not Verified</b>					<b>Country of Origin: CHINA</b>
Digitally signed by Total: 41 SEC.				27,290,912.00	

NET WT: 0.000000  
 Reason: Secure  
 Date: 2022.01.11  
 20:08:22 IST  
 GR. WT: 0.000000  
 Location: India

11.2.1 Further the cost of insurance in respect of the said goods as per the relevant insurance certificate (**RUD-7**), as uploaded for imported goods is equal to 0.1402% of the insured value [(i.e. invoice value + Freight Value) \* 110%], which comes to **Rs.4,96,333/-**, in respect of the said goods. **Scanned copy of the insurance certificate follows.**

**SCANNED COPY OF INSURANCE CERTIFICATE**



Thursday, December 21, 2021

### Confirmation of Insurance - Customs

This is to certify that the policies of insurance listed below have been issued to the insured named below for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Coverage automatically applies per the policy rates listed herein and to shipments that commence within the policy period indicated. This document is issued electronically in its original format.

**POLICY NUMBER:** 2002/E/199713226/02/000

**THE INSURED:** **GENERAL ELECTRIC COMPANY** and its subsidiary, associated, affiliated and interrelated companies, joint ventures and Limited Liability Companies (LLC's) in India which it now has or hereafter may have a direct or indirect insurable interest and other entities for whom they, or any of them, may have instructions to insure or deem themselves responsible to insure as their respective interests may appear (hereinafter referred to as "The Insured").

**TYPE OF INSURANCE:** Transit (Ocean / Air / Inland) "All Risks" (Warehouse to Warehouse) including Institute War, Strikes, Riots and Civil Commotions Risks

**LIMIT OF LIABILITY:** USD 50,000,000 any one ocean, air or international land conveyance or in any one place at one time.

**DEDUCTIBLE:** USD 50,000 per occurrence except that claims payable to third party customers and/or suppliers shall not be subject to a deductible nor shall this deductible apply to survey fees, general average, salvage and/ or special charges.

**INSURER:** ICICI Lombard General Insurance Company Limited

**POLICY PERIOD:** 31<sup>st</sup> December, 2021 to 30<sup>th</sup> December 2022 (both days inclusive)

**TERRITORY:** Worldwide (except where prohibited by US law). This insurance attaches from the time the goods and/or merchandise and/or property leave the warehouse, store or other location at the place named for the commencement of the transit and continues until the goods and/or merchandise and/or property are delivered to the final warehouse, store or other location at the destination named

**RATE:** 0.1402% of the insured value

**VALUATION:** Cost, Invoice, Freight plus 10% (CIF + 10%) of insured value OR as declared otherwise in the contract.

**ICICI Lombard General Insurance Company Limited**

*DV*

Authorized Representative

#### Information Page

This insurance declaration letter replaces the Benchmark Rates.

The insurance declaration letter can be used for various scenarios including, but not limited to, charging customers under CIF/CIP sales transactions, evidencing insurance sets for customs declarations, evidence of insurance for internal and external purposes and/or for information purposes.

#### Calculating the Insured Value

- Per the valuation clause, the Insured Value is the sum of the following:
  - 1) Cost of invoice and any applicable charges
  - 2) Freight charges
- Add a 10% mark-up (multiply the sum of 1 & 2 above 110%)
- The Insured Value can also include a higher mark-up (e.g. 20%) or can be declared amount per the contract of sale.

#### Calculating the "Premium Paid" (also known as "Insurance Cost"):-

- The "Premium Paid" or "Insurance Cost" is often requested by Customs to calculate any applicable duties/taxes due for import/export shipments.
- Apply the policy rate of 0.1402% to the Insured Value to calculate this amount.
- For example, if the Insured Value is INR 200,000 then the "Premium Paid" or "Insurance Cost" would be INR 280.

(Insured Value \* Policy Rate = "Premium Paid")

(INR 200,000 \* 0.1402% = INR 280)

Date of issuance:  
Place of issuance:

21<sup>st</sup> Dec 2021  
Mumbai, Maharashtra

This is a computer generated letter and does not require signature

#### **ICICI Lombard General Insurance Company Limited**

IRDA Reg. No. 115

Mailing Address Verified

401 & 402, Digital signed by 11, ICICI Lombard House, 414, Veer Savarkar Marg,  
New Linking Rd, Mumbai - 400 025.  
Dated 2022-01-04st,  
12:12:01 IST  
Reason: Secure  
Document  
Location: India

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11.2.2 It appeared that the value of the PRICE shown in respect of the said items of "TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT (PARTS OF WIND OPERATED ELECTRIC GENERATOR)" amounting to CNY.18,342,079.80 and cost of OCEAN FREIGHT amounting to CNY.8,702,832(CNY.3,984,429.20+CNY.4,718,403.00), as shown in the commercial Invoice No: TT21-46-B01 Date: 22.11.2021 (RUD-6), referred above, when converted to Indian currency INR @ 11.90/CNY, the transaction value of the said goods in respect of price and cost of transportation comes to Rs.32,18,34,453/- Adding the cost of insurance of Rs. 4,96,333/-, as discussed hereinabove, the assessable value of the

said goods under Section 14 of the Customs Act, 1962, comes to Rs.32,23,30,786/- in comparison to the assessable value declared in the said BOE amounting to Rs.31,56,44,893/-.This has resulted in under-valuation of the above-said imported goods by Rs.66,85,893/-, in respect of the said Bill of Entry.

11.3 Vide para 4 of the importer's reply letter dated 25.05.2023 (**RUD-3**), in response to ACL letter dated 25.04.2023 (**RUD-2**), it was submitted that **there are Tower Kit imported along with Fixtures (on returnable basis) and the total freight is being bifurcated with respect to the value of goods on pro-rate basis. However, it is found from the relevant invoice (RUD-6), that the freight cost only pertains to TOWER KIT.**

11.4 Further, vide ACL letter dated 11.07.2023 (**RUD-8**), this office communicated to the importer that their **submission that the freight cost is prorate bifurcated for the said fixtures imported on returnable basis, is NOT TENABLE for the reason that the said shipping fixtures have come along with the tower kit (apparently used for shipping transportation of tower kit) and any cost (like transportation etc.) incurred for so called shipping fixtures (even on returnable basis) would also attribute to the cost of TOWER KIT.**

11.4.1 It was further communicated to the importer that under Section 14 of customs Act 1962, *the value of the imported goods shall be the transaction value of such goods and such transaction value shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges*, therefore, the **costs of transportation to the place of importation** shall also be included in transaction value in the case of imported goods.

11.4.2 Further, it was also communicated to the importer that Value of insurance was not calculated as per insurance certificate, as uploaded for imported goods (i. e. insurance value as per insurance certificate = (invoice value +Freight Value)\*110%\*Insurance percentage as per insurance certificate) and this has resulted in **mis-declaration** of the Assessable Value of imported goods, resulting in short-payment of customs duties. However, the importer failed to reply the same and therefore, their inaction appeared to be a case of suppression of pertinent information as envisaged under Section 28(4) of the Customs Act.

11.5 **It appeared that** under Section 14 of customs Act 1962, *the value of the imported goods shall be the transaction value of such goods and such transaction value shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges*. Therefore, it appeared that **costs of transportation**

**to the place of importation** shall be also included in transaction value in the case of imported goods.

11.6 As per Section 12 of the Customs Act, 1962 read with Section 2 of the Customs Tariff Act, 1975 and the First Schedule thereunder, the said goods, namely, "**Tower Kit (parts of WOEG)**", as classified by the importer under Customs Tariff item **85030090**, attracted **Basic Customs Duty @ 7.5% ad valorem**.

11.7 As per Section 12 of the Customs Act, 1962 read with Section 2 of the Customs Tariff Act, 1975 and the First Schedule thereunder, the said goods, namely, "**Blade/LM Blades, (parts of WOEG)**", as classified by the importer under Customs Tariff item **85030090**, attracted **Basic Customs Duty @ 5% ad valorem**, in view of the entry at sr. no. 405(3) of the TABLE under notification no. 50/2017-CUS dated 30.06.2017 (as amended).

11.8 As per Section 12 of the Customs Act, 1962 read with Section 110 of the Finance Act, 2018, read with notification no. 13/2018-CUS dated 02.02.2018 (as amended), the said tariff item, also attracts **Social Welfare Surcharge @10% of Basic Customs Duty**.

11.9 Further, as per Section 12 of the Customs Act, 1962 read with sub-section (7) of Section 3 of the Customs Tariff Act, 1975 the said tariff item, was liable to **Integrated GST @ 5% ad valorem**, during the period upto 29.09.2021, in view of the entry at sr. no. 234 of the SCHEDULE I under notification no. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended) and **Integrated GST @ 12% ad valorem**, during the period from 30.09.2021, in view of the entry at sr. no. 201A of the SCHEDULE II under notification no. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended)

11.10 As per Section 12 of the Customs Act, 1962 read with Section 9 of the Customs Tariff Act, 1975 and Rules 20 and 22 of the Customs Tariff (IACCDSDADI) Rules, 1995 read with entry at sr. no. 2 of the TABLE under Notification No. 01/2016(CVD) dated 19.01.2016 (*effective upto 18.01.2021*), the said tariff item, as classified by the importer under Customs Tariff item **85030090**, falling under the description of goods in Column (3) of the Table under Notification No. 01/2016(CVD) dated 19.01.2016, attracted **Countervailing Duty @ 13.44% of the landed value of the said goods imported from China**.

11.11 As per Section 12 of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Rules 18 and 20 of the Customs Tariff (IACADDDADI) Rules, 1995, read with entry at sr. no. 17 of the TABLE under Notification No. 42/2017-CUS(ADD)dated 30.08.2017, the said tariff item, as classified by the importer under Customs Tariff item **85030090**, falling under the implied meaning of **Casting for Wind Operated Electricity Generators**, attracts **Anti-Dumping Duty @ 35.92% of the landed value of the said goods imported from China**.

11.12 However, it appeared that the importer had failed to properly self assess and pay the said custom duties, on the differential value, as discussed hereinabove. Non-payment of the Basic Customs Duty, Social Welfare Surcharge, 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

11.13 The total of all customs duties attributable to **mis-declaration** of the Assessable Value, comes to **Rs.8,98,21,998/-** for the period 01.02.2019 to 08.06.2022, as calculated as per **Annexure D** attached herewith and summarized as under:-

<b>S.No.</b>	<b>Customs Duty</b>	<b>Amount</b>
1	BCD short-paid	1,18,37,117/-
2	SWS short-paid	11,83,712/-
3	CVD @13.44% <b>(NOT PAID)</b>	<b>1,75,57,081/-</b>
4	ADD @35.92%-13.44% <b>(NOT PAID)</b>	4,48,18,152/-
5	<b>Differential IGST not paid</b>	<b>1,44,25,936/-</b>
6	<b>Total customs Duty Short-paid</b>	<b>8,98,21,998/-</b>

12. After considering details stated in Para 8.4 and 13.3 above, the total of all customs duties attributable to **on account of mis-declaration and non payment of CVD, ADD and resultant IGST**, comes to **Rs.323,95,71,670/-** for the period 01.02.2019 to 08.06.2022, as discussed hereinabove and summarized as under:-

<b>S.No.</b>	<b>Customs Duty</b>	<b>Amount</b>
1	BCD short-paid	1,18,37,117/-
2	SWS short-paid	11,83,712/-
3	CVD @13.44% <b>(NOT PAID)</b>	85,97,11,815/- (84,21,54,734/- +1,75,57,081/-)
4	ADD @35.92%-13.44% <b>(NOT PAID)</b>	217,20,12,209/- (212,71,94,057/-+ 4,48,18,152/-)
5	<b>Differential IGST not paid</b>	<b>19,48,26,817/-</b> (18,04,00,881/- +1,44,25,936/-)
6	<b>Total customs Duty Short-paid</b>	<b>323,95,71,670/-</b>

15. Therefore, M/s. GE India Industrial Private limited (IEC code 0393001962), having its address at C/O LM wind Power Bledesindia Pvt. Ltd.,

Plot. No. 1/B, Halol Indl. Area PH-III , Vill- Chandrapura Taluka Halol, Gujarat-389350, were called upon to show cause in writing to the Commissioner of Customs, Customs House Kandla, Kutch, having his office at First Floor, New Custom House, Near Balaji Temple, New Kandla, within thirty days from the receipt of this notice, as to why:-

- (i) The assessment in respect of Bills of entry mentioned in Annexure-A, B, C and D should not be rejected;
- (ii) Assessable Value as declared by the importer in the said Bills of Entry should not be rejected;
- (iii) 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;
- (iv) Anti-Dumping Duty (ADD) at applicable rate under Notification No.42/2017-Cus. (ADD) dated 30.08.2017 on the said goods namely parts of WOEG imported vide the Bills of Entry as detailed in the Annexure-B to this notice should not be applied;
- (v) Assessable Value, in respect of the above said Bills of entry, for the purpose of calculation of IGST should not be re-calculated 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;
- (vi) The differential Customs duties totally amounting to **Rs.3,23,95,71,670/-** (BCD-Rs.1,18,37,117/- + SWS-Rs.11,83,712/- + CVD-Rs.85,97,11,815/- + ADD-Rs.2,17,20,12,209/- + IGST-Rs.19,48,26,817/-), (Rupees Three Hundred and Twenty Three Crores, Ninety Five Lakhs, Seventy One Thousand, Six Hundred and Seventy 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;
- (vii) The impugned goods with the total declared Assessable value of Rs. 775,46,79,258/- as detailed in Annexure-A, B, C and D to this notice, should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962, for short levy of duty by reason of willful misstatement & suppression of facts;
- (viii) 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;
- (ix) 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.
- (x) Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

## WRITTEN SUBMISSION-

16. The noticee vide submission dated 24.10.2024, interalia, submitted that-

(a) The Noticee has its registered office at Plot No 1/B Halol Industrial Area, PH-III, Vil Chandrapura, Taluka Halol, Gujarat 389350 in engineering, procurement, manufacturing, construction and servicing of power plants and power equipment across India.

(b) The Noticee imports various parts and components of Wind Operated Electricity Generating (hereinafter referred to as "WOEG") System, in order to set up wind operated power plants. Amongst various parts of WOEG, the Noticee has imported the following parts that are subject matter of dispute (hereinafter referred to as the "impugned goods"):

- i. Tower Kit, 130M HH,50Hz, STW, C5, W/Service Lift {[parts of Wind Operated Electricity Generator (WOEG)]}
- ii. Blade, GE 64.5A1, Traffic Orange 2 Stripe, With VG (parts of WOEG)
- iii. Tower Kit, 94M HH, 50HZ, STW, C5, LM Blades, W Hoist (parts of WOEG)

(c) The Noticee has imported the impugned goods vide the 33 Bills of Entry (hereinafter referred to as "impugned BoEs") during the period of 2019-2022. The details and copies of the impugned BoEs on sample basis are enclosed as Annexure-2. The Noticee vide the impugned BOEs imported the impugned goods by classifying them under Tariff Entry 8503 00 90, on payment of Basic Custom Duty (hereinafter referred to as "BCD") @ 7.5%/5% by availing the benefit of Notification No. 50/2018-Customs dated 30.06.2018 (hereinafter referred to as "SAPTA Notification") as the impugned goods were imported from the Republic of China, SWS @ 10%, and IGST @ 5% / 12%. The Noticee did not pay CVD and ADD as there was no casting component in the said goods.

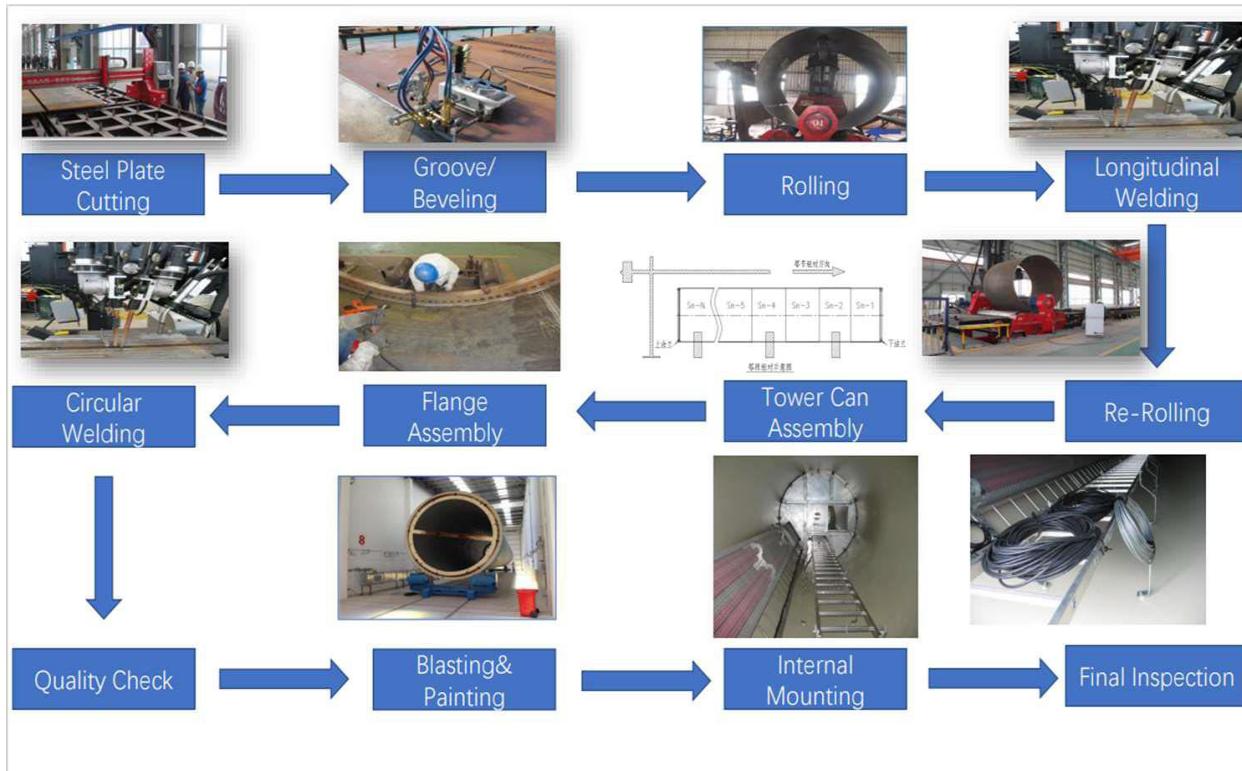
### (d) Details of the impugned goods

The Noticee has imported two kinds of tower kits and Blades of the windmill. The technical details of the impugned goods are explained below:-

#### (A) Tower Kits

The Tower Kits namely Tower Kit, 130M HH,50Hz, STW, C5, W/Service Lift {[parts of Wind Operated Electricity Generator (WOEG)]} and Tower Kit, 94M HH, 50HZ, STW, C5, LM Blades, W Hoist (parts of WOEG) are two tower kits of different heights that are used in the windmills. Towers of the windmills is a vertical tubular structure on which the wind turbine is mounted. The Tower is manufactured in sections from steel plates and is connected to the Nacelle of the Windmill. The Nacelle houses the main components of the wind generator. The Tower of the wind turbine has a lockable steel door at the base of the tower and access to various parts of the wind turbine is provided through the tower by means of a ladder. The tower is made up of steel plates. The steel plates are cut to size from sheets of steel, before grooving them, rolling them into a tube. The entire tower is rolled in different segments of different dimensions and are assembled together by the help of welding and flanges and has no casting component. The pictorial representation of the manufacturing process of the tower and the tower in the assembled form is reproduced below:-





#### **(B) Blade, GE 64.5A1, Traffic Orange 2 Stripe, With VG (parts of WOEG)**

Wind turbine blades are airfoil shaped blades that harness the wind energy and drive the rotor of a wind turbine. The airfoil shaped design of the wind blade is used to allow the blades would move perpendicular to the wind direction. This force acts on the rotor and is the driving force of the wind turbine. The windmills contain three rotor blades for each wind turbine generator and the same are either made up of glass fibre or carbon fibre. The blade is built in two halves wherein the one side of the mould for the blade is fixed to the floor. A layer of carbon/ glass fiber is placed in the mold. Thereafter, a layer of resin made of polyester or epoxy is sandwiched between multiple layers of carbon/ glass fiber. The wind blade is then covered with an adhesive and a foam made up of balsa wood, which forms the core. Once the two halves of the blade are closed and a foam is used in covering the wind blade which is either made up of Polyethylene terephthalate or Polyvinyl chloride. Further, there is a metal strip at the center of the blade which is made up of Aluminum or Copper as a lightning protection system. There is a flange at the bottom of the blade which is made up of metal. However, there is no element of casting whatsoever in the blade. The blade is demolded, and cut and polished, trimmed. The exterior of the wind blade is thereafter gel-coated or painted. The blades do not have a casting component whatsoever.

#### **(e) Countervailing Duty-**

The provision related to imposition of CVD is provided in Section 9 of the Customs Tariff Act, 1975 (hereinafter referred to as "CTA"). Section 9(1) of the CTA empowers the Central Government to impose CVD on imports of specified goods, in order to protect the domestic industry from the damage/injury caused due to the import of goods that are priced below fair market value.

The Central Government vide Notification No. 1/2016-Customs (CVD) dated 19.01.2016 (hereinafter referred to as "Notification 1/2016"), imposed CVD on the imports of "Casting for Wind Operated Electricity Generators", falling under tariff entry 8483 40 00, 8503 00 10 or 8503 00 90 of the First Schedule to the CTA, originating in or exported from Peoples' Republic

of China. The CVD Notification prescribes the rate of CVD leviable based on the exporter from whom the castings for WOEG are imported. If the castings for WOEG are imported from exporters not specifically mentioned in the Notification, then CVD is chargeable at the rate of 13.44%.

**(f) ANTI-DUMPING DUTY**

The provision related to imposition of ADD is provided under Section 9A of the CTA which empowers the Central Government to impose ADD on the import of specified goods, in order to protect the domestic industry from the damage/ injury caused due to the import of goods that are priced below the fair market value.

The Central Government vide Notification No. 42/2017-Cus (ADD) dated 30.08.2017 (hereinafter referred to as "Notification 42/2017") imposed ADD on the imports of "Casting for Wind Operated Electricity Generators", falling under tariff entry 8483 40 00, 8503 00 10 or 8503 00 90 of the First Schedule to the CTA, originating in or exported from Peoples' Republic of China.

The ADD Notification prescribes the rate of ADD leviable based on the exporter from whom the castings for WOEG are imported. If the castings for WOEG are imported from exporters not specifically mentioned in the Notification, then ADD is chargeable at the rate of 35.92% for all manufacturers other than the ones specifically mentioned in the Notification.

It is pertinent to mention here that the impugned goods imported by the Noticee are not made of the castings and the same has been certified by a Chartered Engineer. The certificate issued by the Chartered Engineer is enclosed herewith as Annexure-5. The technical literature of the impugned goods is enclosed as Annexure-6.

The Declaration of the supplier explaining the composition of each of the impugned goods is marked and is attached herewith as Annexure-7. According to the supplier's declaration, the casting component in the impugned goods is nil and has been verified from a Chartered Engineer.

(g) The allegations in the impugned SCN are non-payment of ADD & CVD and also regarding under-valuation of the goods imported. The Noticee does not agree with the allegation that the goods have been undervalued and is collating the facts and documents. These documents pertain to period starting from 2019 and the importer is required to examine each and every document to understand the reasoning and basis of the value being adopted. The data extraction and retrieval is taking substantial time & effort as the employees who were working during that the 2019-22 are not available/ working with the Noticee. In view of the above, the Noticee requires additional time of eight weeks to file the reply with respect to alleged under-valuation of the imported goods. Presently, the Noticee is filing the present reply in respect of alleged non-payment of CVD and ADD only.

16.1 The noticee vide email dated 26.12.2024, interalia, submitted that they had filed two Bills of Entry, one for the import of impugned goods and other for the import of fixtures. The Cost of Ocean Freight is proportionally divided between impugned goods and the fixtures. The fixtures are nothing but the packing material used for transportation of the impugned goods. The fixtures are imported on a returnable basis and they re-export the empty containers to suppliers within 6 months.

16.2 They have further argued that cost of freight and insurance may be added on notional basis if actual cost is not available. The cost of goods is inclusive of the insurance paid by the noticee and cannot be added separately.

#### **PERSONAL HEARING-**

17. Opportunity of personal hearing was provided to the noticee on 24.10.2024. The Noticee was represented by Mr. Shankar Rochlani (CA from Lakshmikumaran & Sridharan). The Authorized Representative submitted the compilation of relevant documents, provisions, case laws vide email dated 24.10.2024 which has been taken on record. During the course of personal hearing, the Authorized Representative made the following submission: -

- (i) The Noticee has imported Tower Kit and Blades for wind operated electricity generators. Relying on the manufacturing process he argued that the imported goods are neither made up of casting nor have any casting component. Reliance was also placed on certificates issued by Chartered Engineer.
- (ii) ADD and CVD is only leviable on the casting component of the goods and since the said goods have no casting component, duty cannot be demanded. Accordingly the demand of ADD, CVD and differential IGST is liable to be dropped.
- (iii) Extended period of limitation is not invocable and demand for penalty is not sustainable in the present case as:
  - a) there is no fraud, suppression or wilful misstatement etc. The Noticee has been importing the goods regularly and consistently classifying the same under Chapter 84 and Chapter 85 of Customs Tariff. The proceedings have been initiated on the basis of BOEs filed by the Noticee. Nothing was brought on record to substantiate existence of mens rea or an intent to evade payment of duties.
  - b) Proceedings were initiated against the Noticee at the Nhava Sheva Port, Maharashtra for alleged non-payment of CVD on import of Aluminum fins and Gear boxes during the FY 2016-17. The said matter is currently pending before CESTAT, Mumbai.
- (iv) There is no mis-declaration and hence, goods are not liable for confiscation. Further, redemption fine under Section 125 of the Customs Act cannot be imposed.
- (v) With respect to undervaluation of imported goods, it was argued that the demand is not sustainable. For filing the submissions on this point, 4 weeks' time was requested and the same is granted.

18. Accordingly, this office vide email dated 09.12.2024 requested them to make their submission in respect of undervaluation of goods, which they have failed to do. Sufficient time has been given to them and adjudication proceedings are time bound as per the provisions of Section 28(9) of the Customs Act, 1962, therefore i take up the adjudication proceedings.

### **DISCUSSION AND FINDINGS-**

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

20. In the instant case, the issues to be decided before me are:-

- i) Whether the imported goods fall within the description of goods in column 3 of Noti. No. 01/2016-Cus dated 19.01.2016.
- ii) Whether the imported goods fall within the definition of implied meaning of castings as given in Noti. No. 42/2017-Cus dated 30.08.2017.
- iii) Whether there is mis-declaration of Assessable value resulting in short payment of duties on account of undervaluation.

*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.*

21. I find that the importer has imported the “Tower Kit, 130M HH, 50HZ,STW,C5,W/ Service Lift”, “Blade, GE 64.5A1, Traffic Orange 2 Stripe, With VG”, “Tower Kit, 94M HH, 50HZ, STW, C5, LM Blades, W Hoist at Kandla Port.

22. I find that during the course of Post Clearance Audit, it was noticed that M/s. GE India Industrial Private limited, had filed the BoEs (RUD-1), through the Customs broker M/s. Agility Logistics Pvt. Ltd., for the import of “Tower Kit, 130M HH, 50HZ,STW,C5,W/Service Lift (parts of WOEG)”, “ Blade, GE 64.5A1, Traffic Orange 2 Stripe, With VG (parts of WOEG)”, “Tower Kit, 94M HH, 50HZ, STW, C5, LM Blades, W Hoist(parts of WOEG)”, classifying the same under Customs Tariff item 85030090, on payment of BCD @7.5%/5% (20% Saptanotif no. 50/2018-CUS), SWS @10% & IGST @5%/12%, imported from China (Country of origin), However, the show cause notice proposed that no Countervailing Duty and/or Anti-dumping duty had been paid in view of Notification No.01/2016(CVD) dated 19.01.2016 and Notification No. 42/2017-CUS(ADD) dated 30.08.2017.

23. I further find that the show cause notice has proposed that the above said imported goods were within the description of goods in Column 3 of the Table under Notification No.01/2016(CVD) dated 19.01.2016 and accordingly, the said

goods imported from China were liable for Countervailing Duty @ 13.44% of the landed value of the said goods imported from China.

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

25. I find that as per Section 12 of the Customs Act, 1962 read with sub-section (7) of Section 3 of the Customs Tariff Act, 1975 the said tariff item, was liable to Integrated GST @ 5% ad valorem, during the period upto 29.09.2021, in view of the Entry at Sr. no. 234 of the SCHEDULE I under notification no. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended) and Integrated GST @ 12% ad valorem, during the period from 30.09.2021, in view of the entry at Sr. no. 201A of the SCHEDULE II under notification no. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended).

#### **Relevant Notifications-**

26. 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.

26.1 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)
.....							
.....							
2.	8483 00, 8503 10 or 8503 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."*

26.2 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.

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

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

Table

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

27. 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 notifications implicate "**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).

Thus in order to examine the nature of the goods, it is pertinent to examine the same w.r.t the description enlisted by the above Notifications as given below-

Notification No.	Casting for WOEG
01/2016-CVD	(i) Machined casting
	(ii) Not machined (Raw) casting
	(iii) Finished casting
	(iv) Sub-assembled casting
	(v) Casting as part of a sub-assembly

	(vi) Casting as part of an equipment
	(vii) Casting as component meant for WOEG

Notification No.	Casting For Windmill/Wind turbine	Casting for WOEG implies
42/2017-CVD	(i) Machined casting	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”
	(ii) Not machined (Raw) casting	
	(iii) Finished casting	
	(iv) Sub-assembled casting	
	(v) Casting as part of a sub-assembly	
	(vi) Casting as part of an equipment	

28. 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.

29. As per the definition of Castings on sciedirect.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.

30. Casting processes are of various types. One of such processes 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 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**

31. A windmill 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 relevant extract of the findings of the Designated Authority dated 27.11.2015 is reproduced below:-

portions of these equipments/components used for wind mills or wind turbines or wind-operated electricity generators.

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

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

#### **D.5. Like Article**

12. The WTO Agreement on Subsidies and Countervailing Measures defines like product as:

*"[T]he term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike; in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration."*

13. Following are the observations made by the Authority in regard to the like article:

- i. The product under consideration in the present investigation is "Castings for wind-operated electricity generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators".
- ii. A Windmill requires a number of casting parts, including the Hub, Rotohub, Rotor Nabe, Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation, Bearing Housing, Bearing Support, Hollow Shaft, Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft, Lateral Suspender, Pitch Stop, Stator, Generator castings, Part of Generators, Rotor, Torque Arm support, etc.
- iii. Various castings parts are used in a wind mill at different places at the top of wind mills. Various parts are produced by similar

production process, using similar raw materials and differ essentially in their shape, size, design, and extent of machining depending on the place where these casting parts are required to be used in eventual application. Therefore, different parts of castings fall in the same general category of castings. Casting is a very wide terminology and there are several types of castings produced for different purposes. The present investigation is however limited to casting for WOEG only. Since different types of castings are interchangeably produced and differ only in terms of shape, size, design, extent of machining, different types of castings constitute one article for the purpose of present investigations. It is, however, recognized that different types of castings are produced to meet different end application and these castings may differ significantly in terms of their associated costs and prices. It would, therefore be not appropriate to do a comparison of imported product price with the domestic industry price/NIP on the basis of weighted average of different types of castings. The Authority has therefore devised a model match criteria in order to ensure fair comparison between the domestic product and imported product as elaborated separately herein below. However, difference in costs and prices of different types of castings does not mean that each casting is a different article.

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 Nave 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.

15

SN	Type of Casting	Application
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 rotorshaft 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 Suspender 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

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 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 & Rear, Bearing Support.
		D - Hollow Shaft

16

Field Description	SN	Type of Casting
		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, Part of Generators, Rotor
		H - Torque Arm Support, rear Frame
		O - Others
Processing	X	M= Machined C= As Cast
Capacity	Y	As per the following table

Capacity (in KW)		PCN
100	299	A
300	499	B
500	699	C
700	899	D
900	999	E
1000	1000	F
1001	1199	G
1200	1399	H
1400	1599	I
1600	1799	J
1800	1999	K
2000	2000	L
2001	2099	M
2100	2100	N
2101	2299	O
2300	2499	P
2500	2699	Q
2700	2899	R
2900	3099	S
3100	3299	T
Above 3300		Z

vi. The petitioner claimed that the goods are produced as per requirements and specifications given by the consumer/buyer and therefore the goods supplied by the domestic industry and Chinese suppliers have to confirm to the specifications laid down by the consumers. This claim of the petitioner has not been disputed by the interested parties.

17

Clealry, 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 rotoshaft 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

While going through the description of Bills of Entry, w.r.t the above noting of the Designated Authority, it is seen that the importer was not engaged in importing the above mentioned casting parts considered by the designated authority.

### **Non-casting parts**

32. 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. The relevant para is reproduced herein below:-

*11. Following are the observations made by the Authority in regard to the product under consideration:*

*i. The product under consideration in this investigation is “Castings for wind operated electricity generators also known as castings for windmills or wind turbines, 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 windoperated electricity generators”.*

*ii. A Windmill requires a number of casting parts, including the Hub, Rotohub, Rotor Nabe, Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle*

*Foundation, Bearing Housing, Bearing Support, Hollow Shaft, Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft, Lateral Suspender, Pitch Stop, Stator, Generator castings, Part of Generators, Rotor, Torque Arm support, etc. These castings are used in the wind turbines along with some other non-casting parts and components like blades, etc. which leads to the generation of electricity. All such castings, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component, meant for wind-operated electricity generators are covered in the present investigation.*

*iii. Although the product under consideration is classified under Customs sub-heading No. 8503 under Chapter 85 of Customs Tariff Act, 1975, as reported by the domestic industry and reflected in the relied upon imports data obtained from DGCI&S, the PUC is being imported under various other heads as well. However, customs classification is indicative only and not binding on the scope of the investigation.*

*iv. The product under consideration has also been collectively referred to as castings for wind operated electricity generators (WOEG). The basic function of a casting is to be used in a wind mill along with some other non-casting parts and components like tower, blades, etc. which leads to the generation of electricity. A windmill requires a number of casting parts including Hub, Rotohub, Rotor Nabe, Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation, Bearing Housing, Bearing Support, Hollow Shaft, Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft, Lateral Suspender, Pitch Stop, Stator, Generator castings, Part of Generators, Rotor, Torque Arm support, etc.*

### **Sub-assemblies in WOEG: Casting and Non-Castings**

33. 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.

34. 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. The relevant findings are reproduced herein below:-

***"D4.11***

*(vi). The Authority notes that the basic production process involved in the production of the product under consideration is production of raw casting. Once raw casting has been made, it undergoes multiple machining operations. These machining operations can be performed either by the producers themselves or by stand alone parties specializing in machining operations (in China or in India) or by the end consumers themselves. 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. Therefore, the eventual consumer has a choice of buying the product under consideration at any stage of its production process and even as a part of a sub-assembly.*

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

*(viii) The operations involved in preparing sub-assembly are almost a screw driver technology and efforts involved are quite insignificant in proportion to overall operations carried out. Therefore, it is quite feasible for an eventual consumer to buy sub-assembled products instead of buying castings and other products separately. The Authority, therefore, notes that if the scope of the PUC does not include the sub-assemblies, it shall defeat the very purpose of imposing any trade defense measure, if any. The Authority however appreciates that the scope of the PUC cannot be extended to entirety of subassemblies, merely because it contains castings within the scope of the measures. The Authority therefore holds that it is appropriate to consider sub-assemblies within the scope of the product under consideration so long as the scope of the CVD measures, if any, is limited to casting portions of the sub-assemblies."*

**Castings as a part of equipment/component-**

35. 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 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. The relevant extract is reproduced herein below:-

*“D4.11(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.”*

Whether imported goods fall under the meaning of castings-

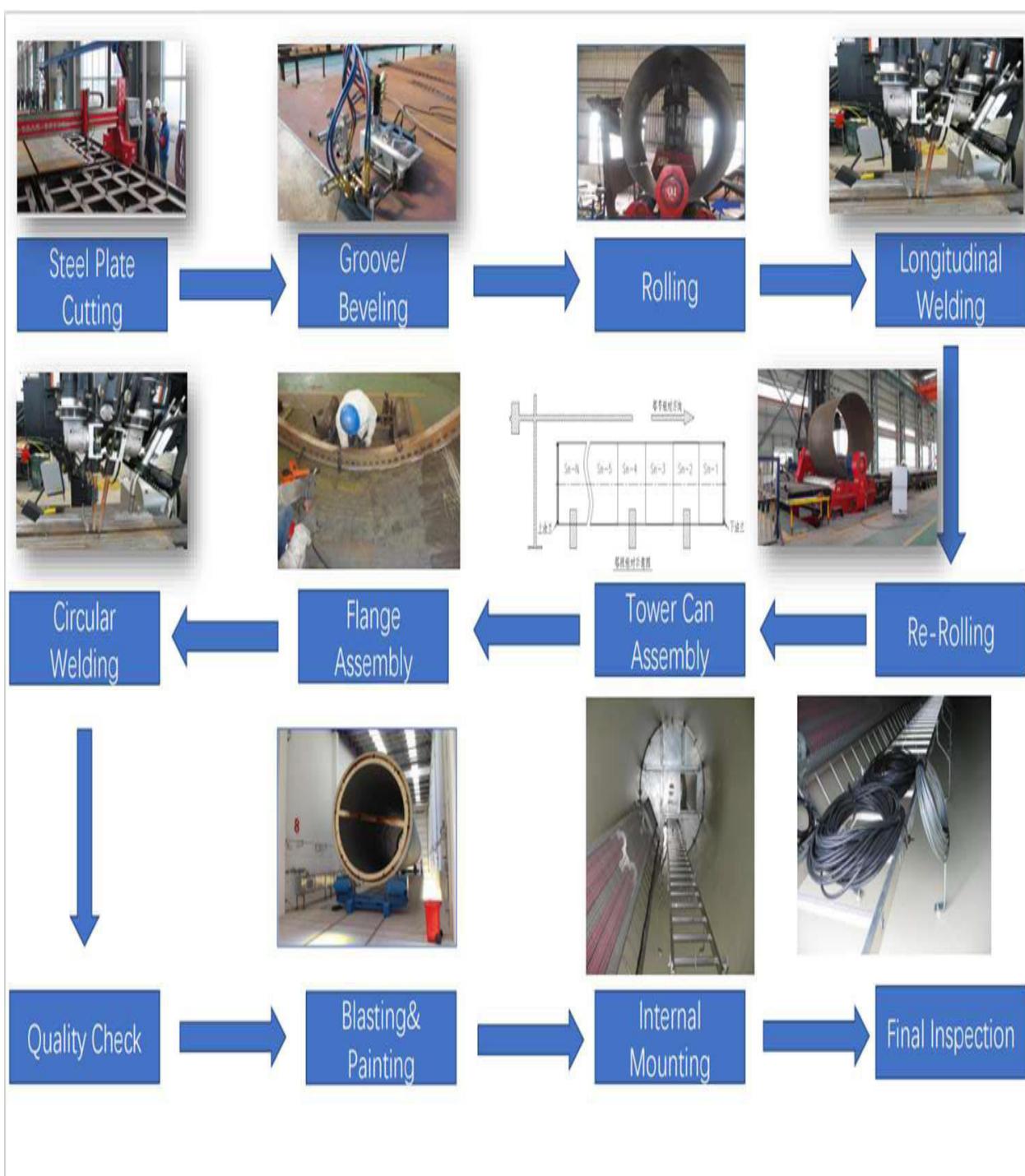
36. I find that the impugned goods can be divided into the following categories of goods namely:-

- i. Tower Kit, 130M HH,50Hz, STW, C5, W/Service Lift {[parts of Wind Operated Electricity Generator (WOEG)]}
- ii. Blade, GE 64.5A1, Traffic Orange 2 Stripe, With VG (parts of WOEG)
- iii. Tower Kit, 94M HH, 50HZ, STW, C5, LM Blades, W Hoist (parts of WOEG)

37. While going through the submission of the noticee, I find that they have elaborated the manufacturing process of Tower Kit and Blades, as given below-

#### **(A) Tower Kits**

The Tower Kits namely- Tower Kit, 130M HH,50Hz, STW, C5, W/Service Lift {[parts of Wind Operated Electricity Generator (WOEG)]; and Tower Kit, 94M HH, 50HZ, STW, C5, LM Blades, W Hoist (parts of WOEG)- are two tower kits of different heights that are used in the windmills. Tower of the windmill is a vertical tubular structure on which the wind turbine is mounted. The Tower is manufactured in sections from steel plates and is connected to the Nacelle of the Windmill. The Nacelle houses the main components of the wind generator. The Tower of the wind turbine has a lockable steel door at the base of the tower and access to various parts of the wind turbine is provided through the tower by means of a ladder. The tower is made up of steel plates. The steel plates are cut to size from sheets of steel, before grooving them, rolling them into a tube. The entire tower is rolled in different segments of different dimensions and is assembled together by the help of welding and flanges and has no casting component. The pictorial representation of the manufacturing process of the tower and the tower in the assembled form is reproduced below:-



## **(B) Blade, GE 64.5A1, Traffic Orange 2 Stripe, With VG (parts of WOEG)**

Wind turbine blades are airfoil shaped blades that harness the wind energy and drive the rotor of a wind turbine. The airfoil shaped design of the wind blade is used to allow the blades to move perpendicular to the wind direction. This force acts on the rotor and is the driving force of the wind turbine. The windmills contain three rotor blades for each wind turbine generator and the same are either made up of glass fibre or carbon fibre. The blade is built in two halves wherein the one side of the mould for the blade is fixed to the floor. A layer of carbon/ glass fiber is placed in the mold. Thereafter, a layer of resin made of polyester or epoxy is sandwiched between multiple layers of carbon/ glass fiber. The wind blade is then covered with an adhesive and a foam made up of balsa wood, which forms the core. Once the two halves of the blade are closed and a foam is used in covering the wind blade which is either made up of Polyethylene terephthalate or Polyvinyl chloride. Further, there is a metal strip at the center of the blade which is made up of Aluminum or Copper as a lightning protection system. There is a flange at the bottom of the blade which is made up of metal. However, there is no element of casting whatsoever in the blade. The blade is demolded, and cut and polished, trimmed. The exterior of the wind blade is thereafter gel-coated or painted. The blades do not have a casting component whatsoever. The details of manufacturing process are as given below:-

### **Manufacturing Process (1 of 4)**

162

#### **Negative molds give the outer shape of the blades**

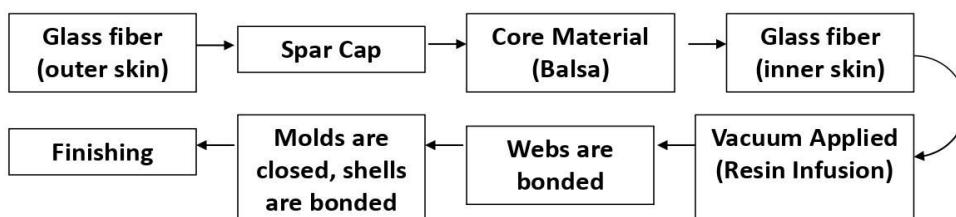
- Blade is built up in two halves
- Sparcap is pre- manufactured in separate molds
- Molds are equipped with electrical heating system
- Full area of mold can be connected to 100% vacuum



#### **Blades are bonded by closing the molds**

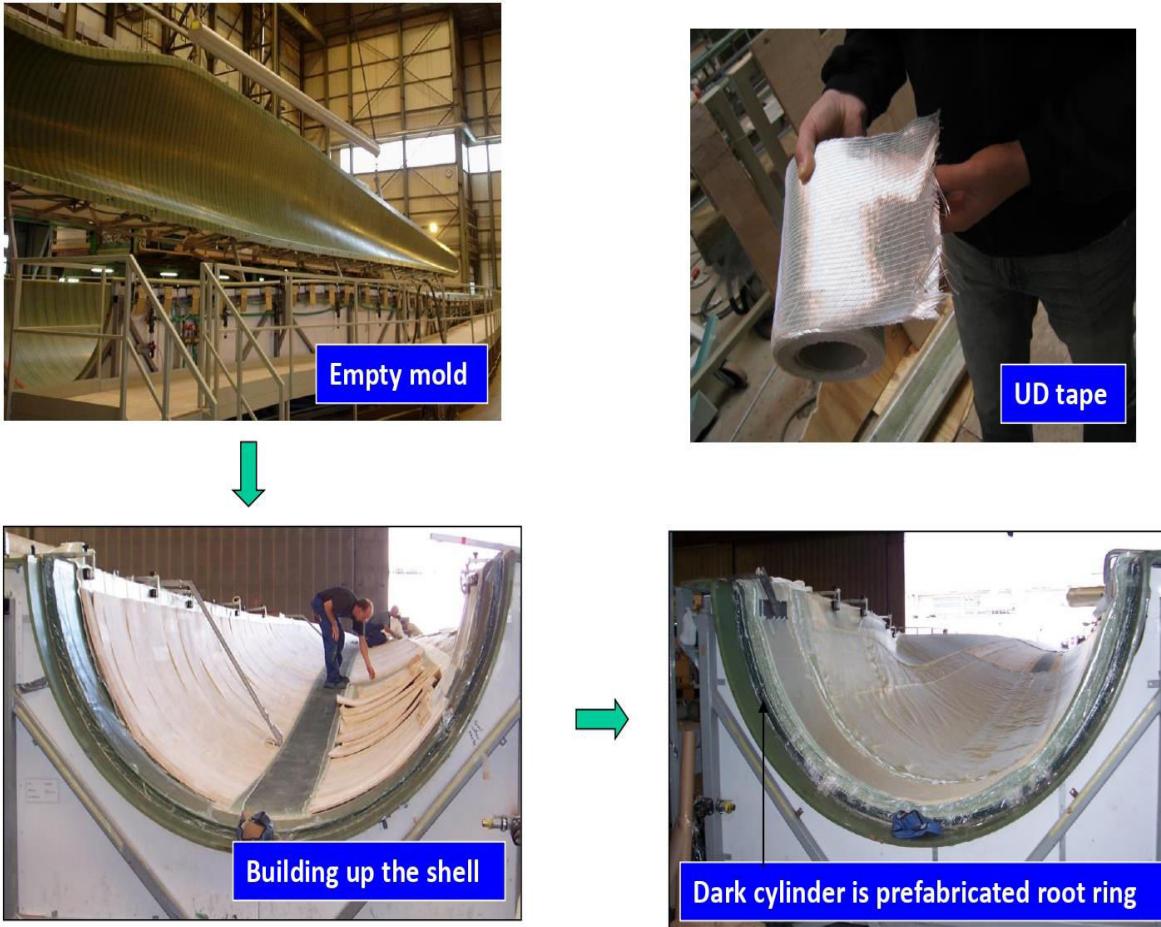
- One side of the mold is fixed to the floor
- Turning side is linked with hinges to the fixed side
- Turning side is lifted with a crane containing the ready infused shell

#### **Manufacturing Steps**



## Manufacturing Process (2 of 4)

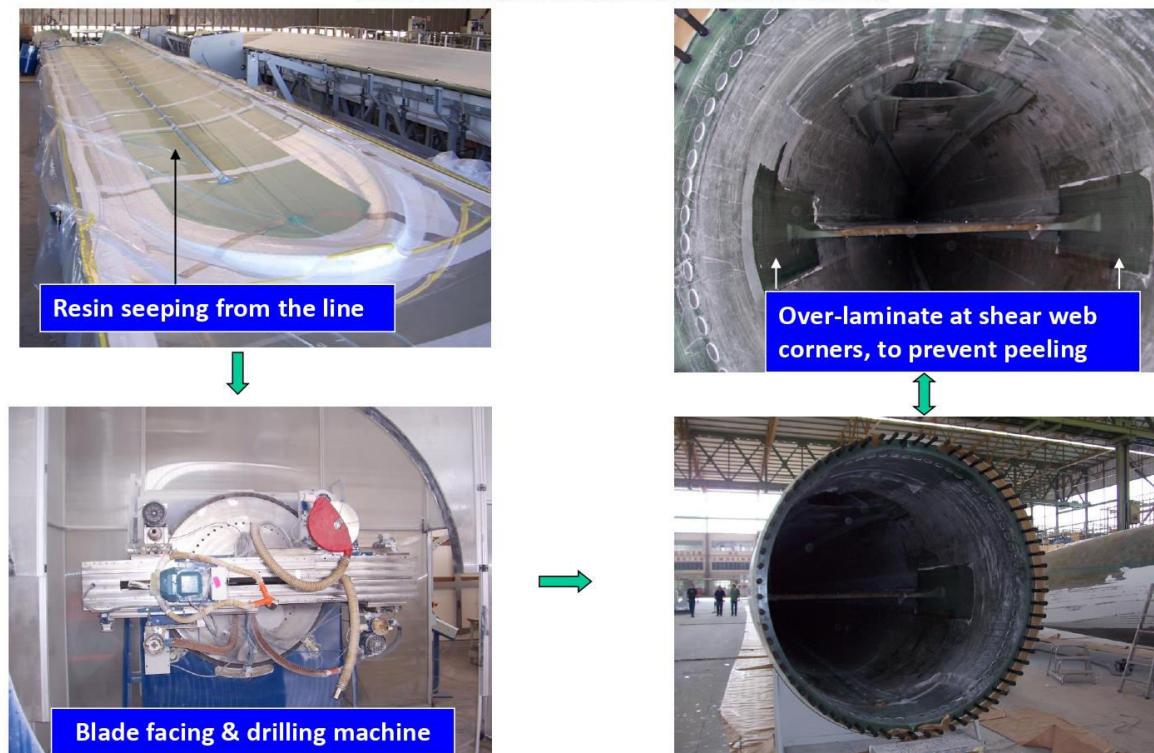
163



### Wind Turbine: Blades

## Manufacturing Process (3 of 4)

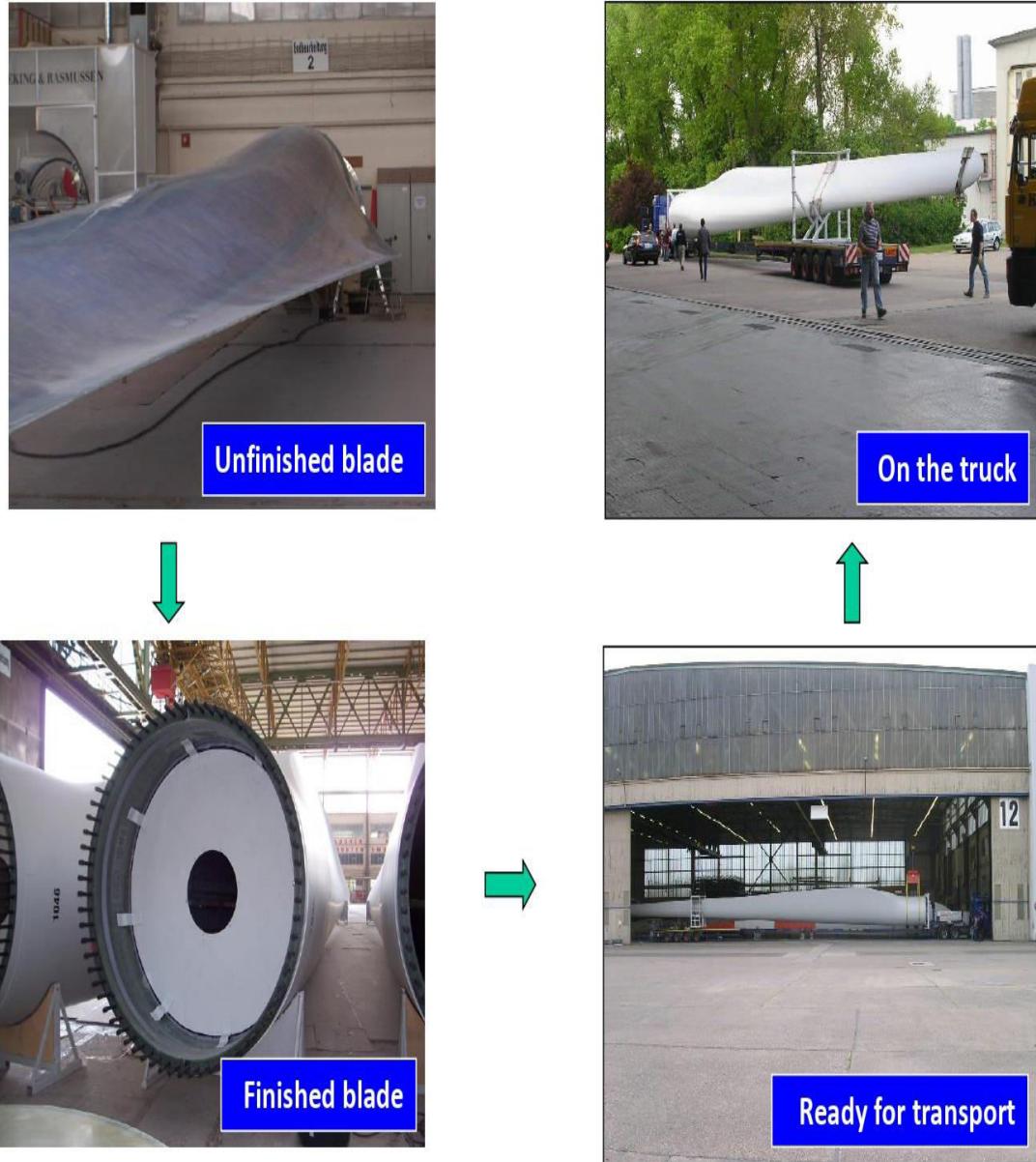
164



### Wind Turbine: Blades

## Manufacturing Process (4 of 4)

165



imagination at work

### Wind Turbine: Blades

38. On going through the manufacturing process and findings recorded in Para 28 to 35 above, I find that none of the imported material can be considered as Casting for the purpose of levy of CVD and ADD as proposed in the show cause notice.

39. I find that the show cause notice in Para 9.4 and 9.5 alleges that-

*“9.4 The declared description of the goods refer them to be a part of Wind operated Electricity generator. Thus use of casting parts, along with some other non-casting parts and components, leads to generation of electricity in windmill. 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.*

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

40. I find that the understanding underlining the allegation in the impugned SCN is flawed, and not all parts which are meant to be used in WOEG are casting for the purpose of levy of CVD and ADD as held by the Final Finding Report discussed above. It is necessary for any assembly or subassembly imported by the assessee to be partially or completely made up of casting. In the present case, there is no evidence on record to suggest element of casting in any of the impugned goods. Merely because an item is used in WOEG, it cannot be a casting and ADD cannot be made leviable. As stated above, I find that notice did not place any evidence in order to establish that the imported goods contained any castings.

41. I find that 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 clearly states that Towers and Blades are non-casting parts, however, in the show cause notice it is presumed that the imported goods contain casting parts which have not been disclosed. In this regard, no material evidence is available on record which could establish that the imported items contained casting parts. Further, during the adjudication proceedings, the noticee has provided Certificate of Chartered Engineer and Bills of Material to establish that the imported goods are neither casting nor casting as a part of sub-assembly/equipment/component meant for WOEG.

#### **CE CERTIFICATE-**

42. I find that the noticee has provided certificates issued by Chartered Engineers in the instant matter as given below-



## AVINASH PAWAR & ASSOCIATES

- Chartered Engineers, Approved Valuers
- Certification under :- Foreign Trade Policy & Customs Act.

17

Ref: CEC/GIPL/2024-25/02

Date: 22.10.2024

### TO WHOMSOEVER IT MAY CONCERN

I have examined the import consignment, imported by M/s. GE India Industrial Private Limited ("the Company") having its plant at 121: C/O LM Wind Power Blades India Pvt. Ltd, Plot No. 1/B, Halol Industrial Area Phase III, Village Chandrapura, Taluka, Halol 389350 (hereinafter referred to as Company) from China and cleared in India vide bill of entry no. 7109059 containing the following goods i.e.

1. TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT- GE13002MW50STWG506 (PARTS OF WIND OPERATED ELECTRIC GENERATOR),
2. TOWER ADD ON KIT, 130M HH, AVIATION- TOWER WARNING LIGHTS WBANDING W EXTERNAL LIGHT - 450W0202G003 (PARTS OF WIND OPERATED ELECTRIC GENERATOR)

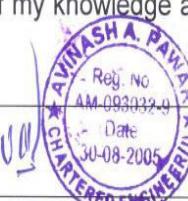
I have been asked to certify whether the aforementioned goods are made up of castings or not.

I have examined the technical details / technical description / specification of Impugned the goods imported by the Noticee Company vide Bill of Entry no: 7109059 Dated: 17.01.2022 and the same are not made of the castings.

Based on the examination of the goods, I certify that the said goods do not contain any casting component.

The particulars are true and correct to the best of my knowledge and belief. The said certificate is issued as per request of Company.

Signature	
Name in Block letters:	AVINASH PAWAR
Designation	Chartered Engineer
Address	Office No. 11, 4th Floor, Gangadhar Chambers, 314 Narayan Peth, Opp. Prabhat Printing Press, Pune - 411030
Telephone /Mobile Number	02024490152
Email ID	Siddhi28avi@gmail.com
Member Ship Number	AM-093032-9 dt. 30.08.2005
Name and Address of the Institution under which Chartered	The Institution of Engineers (I) Off Institution 8, Gokhale Road, Kolkata.
Date: 22.10.2024	Place: Pune



Regd. Office : Off. No.11, 4th Flr, 314 Narayan Peth, Gangadhar Chambers, Opp. Prabhat Printing Press, Pune 411030. Tel. : 020 24490152

Corres. Add. : 'Sun Paradise', Phase - II, Flat No. 702, Bldg. No. S-8, Near Sun City, Vadgaon Bk., Pune - Sinhagad Road, Pune 411051.

Mobile : 98227 54652 / 76201 76388 E-mail : apgroup28avi@gmail.com / info@pawarnassociates.com



## AVINASH PAWAR & ASSOCIATES

18

- Chartered Engineers, Approved Valuers
- Certification under :- Foreign Trade Policy & Customs Act.

Ref: CEC/GIPL/2024-25/01

Date: 22.10.2024

To,

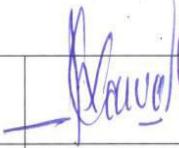
Commissioner of Customs,  
New Custom House, Near Balaji Temple,  
New Kandla, Gujarat 370210.

I have examined the **Blade, GE 64.5A1, Traffic Orange 2 Stripe, With VG (parts of Winds Operated Electrical Generator)** imported by M/s. GE India Industrial Private Limited ("the Company") having its plant at 121: C/O LM Wind Power Blades India Pvt. Ltd, Plot No. 1/B, Halol Industrial Area Phase III, Village Chandrapura, Taluka, Halol 389350 (hereinafter referred to as **Company**) from China and cleared in India.

I have been asked to certify whether the aforementioned goods are made up of castings or not. I have examined the technical details / technical description / specification of the goods imported by the Company.

Based on the examination of the goods, I certify that the said goods are not made up of castings and do not contain any casting component.

The particulars are true and correct to the best of my knowledge and belief. The said certificate is issued as per request of Company.

Signature	 <div style="text-align: right;">  </div>
Name in Block letters:	AVINASH PAWAR
Designation	Chartered Engineer
Address	Office No. 11, 4th Floor, Gangadhar Chambers, 314 Narayan Peth, Opp. Prabhat Printing Press, Pune - 411030
Telephone /Mobile Number	02024490152
Email ID	Siddhi28avi@gmail.com
Member Ship Number	AM-093032-9 dt. 30.08.2005
Name and Address of the Institution under which Chartered	The Institution of Engineers (I) Off Institution 8, Gokhale Road, Kolkata.
Date: 22.10.2024	Place: Pune

Regd. Office : Off. No.11, 4th Flr, 314 Narayan Peth, Gangadhar Chambers, Opp. Prabhat Printing Press, Pune 411030. Tel. : 020 24490152  
Corres. Add. : 'Sun Paradise', Phase - II, Flat No. 702, Bldg. No. S-8, Near Sun City, Vadgaon Bk., Pune - Sinhagad Road, Pune 411051.  
Mobile : 98227 54652 / 76201 76388 E-mail : apgroup28avi@gmail.com / info@pawarnassociates.com

I find that the Chartered Engineers vide the above certificates declared that the imported goods don't have any casting component in it.

## **CERTIFICATE FROM THE SUPPLIER-**

43. I find that the supplier has provided certificates stating that no casting component has been used in the manufacturing of Tower Kit.

**169**

Chengxi Shipyard Co.,Ltd

Date: July. 14, 2023

**TO WHOMSOEVER IT MAY CONCERN**

1. Chengxi Shipyard Co.,Ltd (hereinafter referred to as "We" or 'Us') are engaged in manufacturing of TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT - GE13002MW50STWG500/504/505 (PARTS OF WIND OPERATED ELECTRICITY GENERATOR) during the period from Aug-2017 to Jan-2022, we have sold said goods to M/s. GE India Industrial Private Limited, India (herein after referred to as 'GE').
2. TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT - GE13002MW50STWG506 (PARTS OF WIND OPERATED ELECTRICITY GENERATOR), supplied to GE, vide Part No. GE13002MW50STWG500/504/505 do not comprise of any casting component. Further, we also confirm that the casting has never been used in manufacturing the said item since Aug-2017 to Jan-2022
3. We certify that the above facts are true and correct as per our knowledge and belief.

Yours Faithfully,

**For**

**Authorized Signatory**

Name: Jin Da

Designation : Marketing Manager

Sign with company stamp



170

**CS WIND****CS Wind China Co., LTD.**

No.30 YunYang Rd. Lianyungang Nat'l Export Processing Zone 2nd

Phase,Lianyungang City, Jiangsu Province , China 222042

Tel: +86 518 8232 0457 Fax: +86 518 8231 6550

Date: Aug 18, 2023

**TO WHOMSOEVER IT MAY CONCERN**

1. CS WIND China (hereinafter referred to as “**We**” or ‘**Us**’) are engaged in manufacturing of TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT - GE13002MW50STWG506 (PARTS OF WIND OPERATED ELECTRICITY GENERATOR) during the period from Aug-2017 to Jan-2022, we have sold said goods to M/s. GE India Industrial Private Limited, India (herein after referred to as ‘**GE**’).
2. TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT - GE13002MW50STWG506 (PARTS OF WIND OPERATED ELECTRICITY GENERATOR), supplied to GE, vide Part No. GE13002MW50STWG504 do not comprise of any casting component. Further, we also confirm that the casting has never been used in manufacturing the said item since Aug-2017 to Jan-2022
3. We certify that the above facts are true and correct as per our knowledge and belief.

Yours Faithfully,

**For****Authorized Signatory**Name: Jinysou Lin

Designation : \_\_\_\_\_

171

Penglai Dajin Offshore Heavy Industry Co.,Ltd

Date: July 11<sup>th</sup> 2023

## TO WHOMSOEVER IT MAY CONCERN

1. Penglai Dajin Offshore Heavy Industry Co.,Ltd (hereinafter referred to as "We" or 'Us') are engaged in manufacturing of TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT - GE13002MW50STWG500/GE13002MW50STWG504/GE13002MW50STWG505(PARTS OF WIND OPERATED ELECTRICITY GENERATOR) during the period from Aug-2017 to Jan-2022, we have sold said goods to M/s. GE India Industrial Private Limited, India (herein after referred to as 'GE').
2. TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT - GE13002MW50STWG500/GE13002MW50STWG504/GE13002MW50STWG505 (PARTS OF WIND OPERATED ELECTRICITY GENERATOR), supplied to GE, vide Part No. GE13002MW50STWG500/GE13002MW50STWG504/GE13002MW50STWG505 do not comprise of any casting component. Further, we also confirm that the casting has never been used in manufacturing the said item since Aug-2017 to Jan-2022
3. We certify that the above facts are true and correct as per our knowledge and belief.

Yours Faithfully,

For

Authorized Signatory

Name: Alex XuDesignation : Sales Director Overseas Market Sales

Sign with company stamp



44. In view of the above discussion and findings, I hold that the imported goods vide subject Bills of Entry are non-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 not sustainable.

## FLANGES-

44.1 I find that Tower Kit imported contains "Flanges" which may be manufactured through casting or forging process. In respect of the same, this office vide email dated 27.12.2024 requested the importer to ascertain whether the imported goods contained "flanges" or not. In response of the same, this office received an email enclosing CE certificate dated 27.12.2024 stating that the flanges contained in the goods were not casting in nature. The scanned copy of the same is reproduced herein below:-



**AVINASH PAWAR & ASSOCIATES**

► Chartered Engineers, Approved Valuers  
► Certification under :- Foreign Trade Policy & Customs Act.

Ref: CEC/GIPL/2024-25/01

Date: 27.12.2024

### TO WHOMSOEVER IT MAY CONCERN

I have examined the consignment, imported by M/s. GE India Industrial Private Limited ("the Company") having its plant at 121: C/O LM Wind Power Blades India Pvt. Ltd, Plot No. 1/B, Halol Industrial Area Phase III, Village Chandrapura, Taluka, Halol 389350 (hereinafter referred to as Company) from China and cleared in India containing the following goods i.e.

- i. TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT- GE13002MW50STWG506 (PARTS OF WIND OPERATED ELECTRIC GENERATOR),
- ii. Blade, GE 64.5A1, Traffic Orange 2 Stripe, With VG (parts of Winds Operated Electrical Generator)

I have been asked to certify whether the flanges contained in aforementioned goods have are made up of castings or not.

I have examined the technical details / technical description / specification of the goods imported by the Company. I have examined the technical details / technical description / specification of the goods imported by the Company.

Based on the examination of the goods, I certify that the flanges do not have casting component. Further, based on the examination of the goods, I certify that the flanges are not made up of casting.

The particulars are true and correct to the best of my knowledge and belief. The said certificate is issued as per request of Company.

Signature	Avinash Ashok Pawar	Digital signature by Avinash Ashok Pawar Date: 2024.12.27 17:26:30 +05'30'
Name in Block letters:	AVINASH PAWAR	
Designation	Chartered Engineer	
Address	Office No. 11, 4th Floor, Gangadhar Chambers, 314 Narayan Peth, Opp. Prabhat Printing Press, Pune - 411030	
Telephone /Mobile Numebr	02024490152	
Email ID	Siddhi28avi@gmail.com	
Member Ship Number	AM-093032-9 dt. 30.08.2005	
Name and Address of the Institution under which Chartered	The Institution of Engineers (I) Off Institution 8, Gokhale Road, Kolkata.	
Date: 27.12.2024	Place: Pune	

44.2 In this regard, further the show cause notice does not discuss any evidence in this regard. Accordingly, I hold that the duty liability doesn't arise in respect of the flanges contained in the impugned goods.

***Whether there is mis-declaration of Assessable value resulting in short payment of duties on account of undervaluation***

45. I find that during the Post Clearance Audit of the subject BoEs it was noticed that there is difference in Assessable value, as declared in the BoEs, for the said imported item, in comparison to the transaction value, as shown as CIF/FOB value in the commercial Invoices and freight invoices and insurance invoices. This has resulted in mis-declaration of the Assessable Value of imported goods.

46. For example, during the Post Clearance Audit of the BoE no. **7109059** dated 17/01/2022, it was noticed that there was a difference in the Declared Assessable and actual Assessable value. The importer declared assessable value of Rs.31,56,44,893/-, in the said BoE No.7109059 dated 17/01/2022, for the said imported item, "TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT (PARTS OF WIND OPERATED ELECTRIC GENERATOR)", in comparison to the PRICE shown in respect of the said items of "TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT (PARTS OF WIND OPERATED ELECTRIC GENERATOR)", amounting to CNY.18,342,079.80 and cost of OCEAN FREIGHT amounting to CNY.8,702,832 (CNY.3,984,429.20 + CNY.4,718,403.00), as shown in the commercial Invoice No: TT21-46-B01 Date: 22.11.2021(RUD-6). Scanned copy of the same is reproduced below:

 <b>苏州天顺新能源科技有限公司</b> <b>SuZhou Titan New Energy Technology Co., LTD</b>						
<small>Add: No. 28, Yangjiang Road, Taicang City , Jiangsu,215400 China            E-mail:wendy@titanwind.com.cn www.titanwind.com.cn            Tel:0086-512-81606986 Fax:0086-512-53598666</small>						
<u>INVOICE</u>						Invoice NO: TT21-46-B01
						Date: Nov. 22th, 2021
<b>To:</b> GE India Industrial Pvt Ltd Division Wind Energy LM Wind Power Blades India Private Limited, Plot no 1/B, Halol Industrial Area Phase III, Taluka Halol., GUJARAT 389350 TAN Number:BLRG06015G PAN Number:AAACG4901D GSTIN Number:24AAACG4901D1ZA						
<b>Ship to:</b> GERE_IN7_Gujarat - EG1-LM GE India Industrial Pvt Ltd-(Division Wind Energy) LM Wind Power Blades India Private Limited Plot no 1/B, Halol Industrial Area Phase III, Taluka Halol., GUJARAT 389350, India						
Transportation: Ocean freight <b>Shipping Term:</b> CIF Kandla port, India Shipment from Taicang port, China to Kandla port, India						Payment Terms: T/T Shipping on/about: Dec. 5th, 2021
CASE MARKS	QUANTITY	DESCRIPTION	UNIT PRICE (CNY)	AMOUNT (CNY)	REMARK	
<b>MESSRS:</b> GE13002MW50STWG506 TOWER KIT, 130M HH, 50HZ, STW, C5, W/ SERVICE LIFT 450W0202G003 TOWER ADDON KIT, 130M HH, AVIATION- TOWER WARNING LIGHTS W BANDING WO EXTERNAL LIGHT	41 SEC.	WIND TOWER	447,367.80 <b>Per Sec.</b>	18,342,079.80	PO#290004976	
Ocean freight charges for import of 8sets towers from Titan - Taicang Port to Kandla Port for Continuum Project site.	41 SEC.	ADDON KIT	6,000.00	246,000.00	PO#290004976	
Inflated Ocean freight charges for import of 8 sets towers from Titan - Taicang Port to Kandla Port for Continuum Project site.	41 SEC.	Ocean freight	485,906.00	3,984,429.20	PO#290005283 PO#290005386	
<b>Signature Not Verified</b>	41 SEC.	Additional Ocean freight	575,415.00	4,718,403.00	PO#290006660	
				<b>27,290,912.00</b>		<b>Country of Origin: CHINA</b>
Digitally signed by <b>SARAVANAN R</b> Date: 2022.07.11 20:08:22 IST						
NET WT: Reasonable GR. WT: Secure Location: India						

47. Further the cost of insurance in respect of the said goods as per the relevant insurance certificate (**RUD-7**), as uploaded for imported goods is equal to 0.1402% of the insured value [(i.e. invoice value +Freight Value)\*110%], which comes to **Rs.4,96,333/-**, in respect of the said goods. **Scanned copy of the insurance certificate follows.**

**SCANNED COPY OF INSURANCE CERTIFICATE**



Thursday, December 21, 2021

**Confirmation of Insurance - Customs**

This is to certify that the policies of insurance listed below have been issued to the insured named below for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Coverage automatically applies per the policy rates listed herein and to shipments that commence within the policy period indicated. This document is issued electronically in its original format.

**POLICY NUMBER:** 2002/E/199713226/02/000

**THE INSURED:** GENERAL ELECTRIC COMPANY and its subsidiary, associated, affiliated and interrelated companies, joint ventures and Limited Liability Companies (LLC's) in India which it now has or hereafter may have a direct or indirect insurable interest and other entities for whom they, or any of them, may have instructions to insure or deem themselves responsible to insure as their respective interests may appear (hereinafter referred to as "The Insured").

**TYPE OF INSURANCE:** Transit (Ocean / Air / Inland) "All Risks" (Warehouse to Warehouse) including Institute War, Strikes, Riots and Civil Commotions Risks

**LIMIT OF LIABILITY:** USD 50,000,000 any one ocean, air or international land conveyance or in any one place at one time.

**DEDUCTIBLE:** USD 50,000 per occurrence except that claims payable to third party customers and/or suppliers shall not be subject to a deductible nor shall this deductible apply to survey fees, general average, salvage and/ or special charges.

**INSURER:** ICICI Lombard General Insurance Company Limited

**POLICY PERIOD:** 31<sup>st</sup> December, 2021 to 30<sup>th</sup> December 2022 (both days inclusive)

**TERRITORY:** Worldwide (except where prohibited by US law). This insurance attaches from the time the goods and/or merchandise and/or property leave the warehouse, store or other location at the place named for the commencement of the transit and continues until the goods and/or merchandise and/or property are delivered to the final warehouse, store or other location at the destination named

**RATE:** 0.1402% of the insured value

**VALUATION:** Cost, Invoice, Freight plus 10% (CIF + 10%) of insured value OR as declared otherwise in the contract.

**ICICI Lombard General Insurance Company Limited**

*DV*

Authorized Representative

#### Information Page

This insurance declaration letter replaces the Benchmark Rates.

The insurance declaration letter can be used for various scenarios including, but not limited to, charging customers under CIF/CIP sales transactions, evidencing insurance sets for customs declarations, evidence of insurance for internal and external purposes and/or for information purposes.

#### Calculating the Insured Value

- Per the valuation clause, the Insured Value is the sum of the following:
  - 1) Cost of invoice and any applicable charges
  - 2) Freight charges
- Add a 10% mark-up (multiply the sum of 1 & 2 above 110%)
- The Insured Value can also include a higher mark-up (e.g. 20%) or can be declared amount per the contract of sale.

#### Calculating the "Premium Paid" (also known as "Insurance Cost"):-

- The "Premium Paid" or "Insurance Cost" is often requested by Customs to calculate any applicable duties/taxes due for import/export shipments.
- Apply the policy rate of 0.1402% to the Insured Value to calculate this amount.
- For example, if the Insured Value is INR 200,000 then the "Premium Paid" or "Insurance Cost" would be INR 280.

(Insured Value \* Policy Rate = "Premium Paid")

(INR 200,000 \* 0.1402% = INR 280)

Date of issuance:  
Place of issuance:

21<sup>st</sup> Dec 2021  
Mumbai, Maharashtra

This is a computer generated letter and does not require signature

#### **ICICI Lombard General Insurance Company Limited**

IRDA Reg. No. 115

Mailing Address Verified

401 & 402, Digital signed by 11,  
RANA RANJIT SINGH  
New Linking Rd (2022.01.04st),  
Mumbai - 400 025.  
Reason: Secure  
Document  
Location: India

CIN: U67200MH2000PLC129408

Registered Office:

ICICI Lombard House, 414, Veer Savarkar Marg,  
Near Siddhi Vinayak Temple, Prabhadevi,  
Mumbai - 400 025.

Toll free No. : 1800 2666

Alternate No.: +919223622666 (chargeable)

Email: customersupport@icicilombard.com

Website: www.icicilombard.com

46. I find that the value of the PRICE shown in respect of the said items of "TOWER KIT, 130M HH, 50HZ, STW, C5, W/SERVICE LIFT (PARTS OF WIND OPERATED ELECTRIC GENERATOR)" amounting to CNY.18,342,079.80 and cost of OCEAN FREIGHT amounting to CNY.8,702,832(CNY.3,984,429.20+CNY.4,718,403.00), as shown in the commercial Invoice No: TT21-46-B01 Date: 22.11.2021 (RUD-6), referred above, when converted to Indian currency INR @ 11.90/CNY, the transaction value of the said goods in respect of price and cost of transportation comes to Rs.32,18,34,453/-. Adding the cost of insurance of Rs. 4,96,333/-, as discussed hereinabove, the assessable value of the

said goods under Section 14 of the Customs Act, 1962, comes to Rs.32,23,30,786/- in comparison to the assessable value declared in the said BOE amounting to Rs.31,56,44,893/-. This has resulted in under-valuation of the above-said imported goods by Rs.66,85,893/-, in respect of the said Bill of Entry.

47. Vide para 4 of the importer's reply letter dated 25.05.2023 (RUD-3), in response to ACL letter dated 25.04.2023 (RUD-2), it was submitted that *there are Tower Kit imported along with Fixtures (on returnable basis) and the total freight is being bifurcated with respect to the value of goods on pro-rate basis*. However, it was found from the relevant invoice (RUD-6), that the freight cost only pertains to TOWER KIT.

48. Further, vide ACL letter dated 11.07.2023 (**RUD-8**), this office communicated to the importer that their submission that the freight cost is prorate bifurcated for the said fixtures imported on returnable basis, is NOT TENABLE for the reason that the said shipping fixtures have come along with the tower kit (apparently used for shipping transportation of tower kit) and any cost (*like transportation etc.*) incurred for so called shipping fixtures (even on returnable basis) would also attribute to the cost of TOWER KIT. In view of the same, the importer's contention to exclude the value of fixtures is rejected and the same has been included.

49. It was further communicated to the importer that under Section 14 of customs Act 1962, *the value of the imported goods shall be the transaction value of such goods and such transaction value shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges*, therefore, the **costs of transportation to the place of importation** shall also be included in transaction value in the case of imported goods.

50. Further, it was also communicated to the importer that Value of insurance was not calculated as per insurance certificate, as uploaded for imported goods (i. e. insurance value as per insurance certificate = (invoice value +Freight Value)\*110%\*Insurance percentage as per insurance certificate) and this has resulted in **mis-declaration** of the Assessable Value of imported goods, resulting in short-payment of customs duties. However, the importer failed to reply the same and therefore, their inaction appeared to be a case of suppression of pertinent information as envisaged under Section 28(4) of the Customs Act.

51. I find that under Section 14 of customs Act 1962, *the value of the imported goods shall be the transaction value of such goods and such transaction value shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges*. Therefore, it appeared that **costs of transportation**

**to the place of importation** shall be also included in transaction value in the case of imported goods.

52. I find that during the course of hearing on 12.10.2024 requested for four weeks time to make submission in respect of undervaluation of goods, Accordingly, after providing them sufficient time, this office vide email dated 09.12.2024 requested them to make their submission in respect of undervaluation of goods, which they have failed to do till date.

**QUANTIFICATION OF DEMAND OF DUTY ON ACCOUNT OF UNDERRVALUATION-**

53. I find that Para 13.13 of the show cause notice has proposed differential duty of customs on account of undervaluation as given below-

“The total of all customs duties attributable to **mis-declaration** of the Assessable Value, comes to **Rs.8,98,21,998/-** for the period 01.02.2019 to 08.06.2022, as calculated as per **Annexure D** attached herewith and summarized as under:-

<b>S.No.</b>	<b>Customs Duty</b>	<b>Amount</b>
1	BCD short-paid	1,18,37,117 /-
2	SWS short-paid	11,83,712/-
3	CVD @13.44% <b>(NOT PAID)</b>	<b>1,75,57,081/-</b>
4	ADD @35.92%-13.44% <b>(NOT PAID)</b>	<b>4,48,18,152/-</b>
5	<b>Differential IGST not paid</b>	<b>1,44,25,936/-</b>
6	<b>Total customs Duty Short-paid</b>	<b>8,98,21,998/-</b>

54. However, as already discussed CVD and ADD are not payable, therefore duty demand on account of undervaluation needs to be re-calculated as given below-

<b>S.No.</b>	<b>Customs Duty</b>	<b>Amount(Rs.)</b>
1	Declared Assessable Value (31 Bills of Entry)	739,14,25,108.43
2	Actual Assessable Value	791,53,08,854
3	Differential Assessable Value	16,06,29,596
4	BCD short-paid	1,18,37,117 /-
5	SWS short-paid	11,83,712/-
6	CVD @13.44% <b>(NOT PAID)</b>	<b>0</b>
7	ADD @35.92%-13.44% <b>(NOT PAID)</b>	<b>0</b>
8	Differential Ass. Value for IGST	17,36,50,425
9	Differential IGST not paid	1,06,13,549/-

10	<b>Total customs Duty Short-paid</b>	<b>2,36,34,378/-</b>
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55. In view of the above, I hold that the importer is required to pay duties of Customs amounting to **Rs. 2,36,34,378/-** 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-**

56. I find that the noticee has undervalued the goods in respect of 31 Bills of Entry which resulted in duty evasion of Rs. 2,36,34,378/-. Their act of undervaluation of goods has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

#### **REDEMPTION OF GOODS-**

57. In this regard, it is important to note that the provisions of Section 125(1) as discussed below, don't necessitate the requirement of physical availability of goods for confiscation. Section 125 of the Customs Act, 1962 provides for an option to pay fine in lieu of confiscation. Relevant paras of Section 125 are reproduced hereunder:-

"Section 125: Option to pay fine in lieu of confiscation:--

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

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed.

Provided further that without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods."

58. It is apparent from the sub-section (1) of Section 125 that whenever confiscation of goods is authorized by this Act, the officer adjudging it shall in the case of goods other than prohibited goods give an option to pay fine in lieu of confiscation.

The pre-requisite for making an offer of fine under Section 125 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the "redemption fine", would not arise. Therefore, the basic premise upon which the citadel of Section 125 of the Act rests is that the goods in question are liable to be confiscated under the Act. It is clear that the subject goods, are liable to confiscation under the provision of Section 111 of the Customs Act, 1962 as discussed above, therefore the imposition of fine under Section 125 in lieu of confiscation is sustainable even though the goods are not available for confiscation.

59. In this regard, I rely on the Judgement of Hon'ble High Court of Madras in the case of M/s. Visteon Automotive Systems vs the Customs, 2017, wherein the Hon'ble Court in Para 23 categorically held that the physical availability of goods doesn't have any significance for imposition of redemption fine under Section 125, which is reproduced as under:-

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No.(iii)"

### **PENALTIES UNDER CUSTOMS ACT, 1962**

60. With regard to penalty under Section 114A of the Customs Act, 1962, I find that Section 114A provides for penalty for non/short payment of duty. In the instant case, it has already been held that M/s. GE India are liable for duty amount of Rs. 2,36,34,378/- under Section 28(4) of the Customs Act, 1962 for wilfull mis-statement/suppression and evasion of duties of customs, therefore, penal action under Section 114A of the Customs Act, 1962 is attracted. Further relying on the circular No.61/2002 dated 20.09.2002, I find that penalty imposable upon M/s. Reha Superfine exporters, under Section 114A, is equal to the duty plus interest.

61. With regard to penalty under Section 112 of the Customs Act, 1962 I find that as per fifth proviso to Section 114A of the Customs Act, 1962 once penalty under

Section 114 of the Customs Act, 1962 is levied no penalty is levied under Section 112 of the Customs Act, 1962.

62. With regard to penalty under Section 117 of the Customs Act, 1962, I find that the importer has contravened the provisions of Section 14 of the Customs Act, 1962 and the provisions of Section 12 of the Customs Act, 1962 read with Section 9 of the Customs Tariff Act, 1975 and Rules 20 and 22 of the Customs Tariff (IACCDSDADI) Rules, 1995 read with Notification No. 01/2016(CVD) dated 19.01.2016 and Section 9 of the Customs Tariff Act, 1975 read with Rules 18 and 20 of the Customs Tariff (IACADDDADI) Rules, 1995, read with Notification No. 42/2017-CUS(ADD) dated 30.08.2017. The importer has also contravened the provisions of Section 46 of the Customs Act, 1962 and evaded payment of duties rendering them liable for penal action under Section 117 of the Customs Act, 1962.

63. In view of the above discussion and findings, I hereby pass the following order-

- (i) I reject the assessable value as declared by the importer and order to re-assess the same as mentioned in Table-54 above.
- (ii) I determine and confirm the differential Customs duties totally amounting to Rs. 2,36,34,378/- (Rupees Two Crore Thirty Six Lakh Thirty Four thousand Three Hundred and Seventy Eight only), as discussed hereinabove, 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;

I drop the remaining demand of Rs. 321,59,37,292/- as discussed in the foregoing paras.

- (iii) I order to confiscate the impugned goods with the total declared Assessable value of Rs. 775,46,79,258/- as detailed in Annexure-A, B, C and D to this notice, under Section 111(m) of the Customs Act, 1962, for short levy of duty by reason of willful misstatement & suppression of facts;

However, as the goods are not physically available for confiscation, I impose redemption fine of Rs. 30,00,000/- (Rupees Thirty lakhs 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 impose penalty equal to Rs. 4,00,000/- (Rupees Four Lakhs only) under Section 117 of the Customs Act, 1962.

64. 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/710/2023-Adjn-O/o Commr-Cus-Kandla**

**DIN-20241271ML00003353B5**

**By Speed Post/ email**

**To,**

M/s. GE India Industrial Private limited,  
C/O LM wind Power Bledesindia Pvt. Ltd.,  
Plot.No. 1/B, Halol Indl. Area PH-III,  
Vill- ChandrapuraTalukaHalol. Gujarat-389350

**Copy to:-**

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