

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. III

**Customs Appeal No.40257 of 2013**

(Arising out of Order-in-Original No.19753/2012 dated 16.11.2012 passed by Commissioner of Customs (Seaport-import), Chennai)

**M/s. RRB Energy Ltd.,**

No.182/2, Bypass Road,  
Poonamallee,  
Chennai – 600 056.

**...Appellant**

**VS**

**Commissioner of Customs (Seaport-Import),**

Custom House,  
60, Rajaji Salai,  
Chennai – 600 001.

**...Respondent**

**APPEARANCE:**

Ms. Shobana Krishnan, Advocate for the Appellant  
Mr. S. Balakumar, Asst. Commissioner (A.R) for the Respondent

**CORAM:**

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)**  
**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING : 01.03.2023**

**DATE OF PRONOUNCEMENT: 17.03.2023**

**FINAL ORDER NO. 40175 / 2023**

**Order : [Per Ms. Sulekha Beevi C.S.]**

1. The issue that arises for analysis in this appeal is whether the imported goods (Tubular Tower) are parts of the Wind Operated Electricity Generator and eligible for benefit of exemption under Notification No.06/2006-CE (Sl. No.84).

2. The learned counsel Ms. Shobana Krishnan appeared and argued for the appellant. It is submitted that the appellant is engaged in the business of Wind Power Generation and manufacturing of Wind Operated Electricity Generator (WOEG). They imported various components of wind power generation unit, including towers. The details of the tower imports are as under:

<b>Details of Imports of Towers Effected By M/s RRB Energy Ltd.</b>					
Sl. No.	Bill of Entry No. & date	Description	CTH	Assessable value in Rs.	Invoice No & date
1	3334876/ 27.04.2011	Tubular Tower-78 meters (parts required for manufacturing wind Operated Electricity Generators)	85030010	13406658	RRBEL- 110304/5.4.2011
2	3334876/ 27.04.2011	Tubular Tower-98 meters (parts required for manufacturing wind Operated Electricity Generators)	850300100	22886681	RRBEL- 110304/5.4.2011

3. The appellant availed benefit of 7.5% of Basic Customs Duty (BCD) and 'nil' rate of Countervailing Duty (CVD) under Sl.No.84 of the Notification No.06/2006 for the importation of the said towers. The Department was of the view that the towers are classifiable under CTH 7308 and therefore not eligible for the benefit of notification. The learned counsel explained that the appellant imported tower sections to be used in the assembly of Wind Power Generating Units. All documents evidencing the procurement of these towers for a single wind generating unit was submitted before the authorities. The goods cleared from the unit of appellant is WOEG of which the tower is a part. The learned counsel explained that the principal parts of a wind generating unit may be divided into four— the tower, the hub, the nacelle and the blades. The tower which is fitted to the base foundation on the ground is connected to the hub at

the top. The hub in turn supports the nacelle which is connected to the rotor blades thereby completing a wind generating unit. The Department is of the view that tower is not a part of WOEG and therefore not eligible for the benefit of notification.

4. The learned counsel submitted that the issue is no longer *res integra* and settled by the judgment of Hon'ble Supreme Court in the case of *CCE Nagpur Vs. Hyundai Unitech Electrical Transmission Ltd. 2015 (323) ELT 220 (S.C.)*. Further the Board *vide* Circular No. 1008/15/2015-CX dated 20.10.2015 has issued clarifications and instructions that in view of the judgment of the Hon'ble Supreme Court, towers which support the nacelle, rotor wind operator electricity generator has to be treated as parts and components of WOGE and is eligible for exemption. The learned counsel prayed that the appeal may be allowed.

5. The learned Authorized Representative S. Balakumar supported the finding in the impugned order. The learned Authorized Representative relied upon the decision of the Tribunal in the case of *G.B. Engineering Enterprises Pvt. Ltd. Vs. Commissioner of Central Excise, Trichy 2010 (251) ELT 298 (Tri. Chennai)*.

6. Heard both sides.

7. The learned counsel for the appellant has submitted that as the benefit of Notification No.6/2006 is available for goods described as non-

conventional energy devices/systems specified in list 5 falling under any chapter, the alleged classification under Chapter 7308 is of no consequence. As per list 5 wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller are eligible for exemption. The issue as to whether towers form part of WOEg was considered by the Tribunal in the case of *Hyundai Unitech Electrical Transmission Ltd. Vs. Commissioner of Central Excise Nagpur 2005 (187) ELT 312 (Tri. Mumbai)*.

*"2. As per the facts on records, the appellants were manufacturing Tower and Lattice Mass of Iron & Steel and other structures and parts of Iron and Steel and other structures and parts of Iron and Steel falling under Chapter 73 of CETA. They were placed with an order for supply of these goods by M/s. Suzlon Energy Ltd., Daman, for supply of tower materials, which were the part of Wind Mills and will be used for Wind Mills only. A certificate was given by the buyer to the effect that the said Wind Mill parts were exempted from payment of duty in terms of Notification No.5/98-C.E., dated 2-6-98. Accordingly, appellants filed two classification lists effective from 10-12-99 and 2-3-2000 claiming the benefit of the Notification No.5/99-C.E., dated 28-2-99 and 6/2000, dated 1-3-2000 respectively. The Revenue however entertained a view that there was no provision for exemption in respect of the parts of Wind Mill in the subsequent Notification No.6/2000, which granted exemption only to wind operated electricity generators, their components and parts thereof. In as much as the goods were not the parts of the wind operated electricity generator, they were not entitled to exemption. In support of the above view, Revenue compared two notifications i.e. Notification No.5/99, which was substituted by 6/2000 and held that Serial No.13 of the List No.4 of appendix to Notification No. 5/99 granted exemption to Wind Mill parts and Serial No.14 appended to the said notification granted exemption to any special devices including electric generator running on wind energy, whereas Notification No.6/2000, Serial No.13 of List No.5 exempted only wind operated electricity generators, their components and parts thereof. As such, Wind Mill and parts thereof, which were appearing at serial No.13 of earlier Notification No. 5/99 was not appearing in Notification No.6/2000. Accordingly, show cause notice was issued to the appellants on 2-9-2003 raising demand of duty in respect of the clearances affected during 1-3-2000 to 30-8-2000 by denying them the benefit of Notification in question. Personal penalty was also proposed along with confiscation of the seized goods.*

*3. The appellants challenged the above proposal on merits as also on the point of limitation. However, the appellant's submissions were not found favour with by the adjudicating authority, who confirmed the demand as also imposed penalty. Hence the present appeal.*

4. We have heard Shri Vishwanathan, Id. Advocate appearing for the appellants and Shri Ajay Saxena, Id. SDR for the Revenue.

5. We have considered the submissions made by both sides. The main issue required to be decided is as to whether the parts of Tower and Lattice Masts with accessories stubs and cleats are entitled to exemption under the provisions of Notification 6/2000. Admittedly, Serial No. 265 of Notification No.5/99, dated 28-2-99 read with Serial No. 13 of List No.4 appended to the said Notification granted exemption to Wind Mill and parts thereof. The question required to be decided is as to whether the tower material manufactured by the appellants can be considered to be a part of wind operated electricity generator. We note that while considering the said issue, the Commissioner has taken into account, the definition of electric generator as appearing in various technical books and has held that the tower materials cannot be a part of electric generator. However, he seems to have mixed up that it is not simplicitor electric generator, which are specified in the notification but are "wind operated electricity generator, their components and parts thereof". Admittedly, the tower material is required for full operation of the wind operated electricity generators. The Tribunal in the case of Bharat Heavy Electricals Ltd. V. Collector of Customs, Chennai reported in 1999 (108) ELT 448 (Tribunal) has considered the technical details of wind operated electricity generators and has held that the same consists of various parts including tower and foundation. As such, it was held that the goods imported without tower cannot be regarded as complete wind operated electricity generators. The distinction made by the Commissioner to hold that the said decision is not applicable does not appeal to us. He has observed that in the case of Bharat Heavy Electricals Ltd., the Tribunal was considering a situation for import wind operated electricity generator in CKD/SKD condition and was not considering the fact of clearances of individual items at the time of clearance from the factory. When the exemption in respect of the excise duty is granted to the parts of the wind operated electricity generator at the time of clearance from their factory and the Tribunal having held that the tower is a part of wind operated electricity generator, ratio of the above decision of the Tribunal squarely applies to the facts of the present case. Undisputedly, the goods manufactured by the appellants and cleared by them were meant for wind operated electricity generator, being tower material and, as such, were entitled to the benefit of Notification 6/2000."

(emphasis supplied)

8. Further, in the case of Gemini Instratech Pvt. Ltd. vs. CCE Nashik 2014 (300) ELT 446 (Tri. Mum.). Similar issue as to whether wind mill door are eligible for benefit of Notification No.6/2002/CE was considered and the issue was decided in favour of assessee. The Tribunal held as below:

"11. The issue involved in this appeal is whether the doors manufacture by the appellant are entitled for the benefit of above mentioned notification or not.

12. The Revenue relied upon the decision of the Hon'ble Supreme Court in Nicco Corporation Ltd. case (cited supra) whereby the Hon'ble Supreme Court denied the benefit of Notification No.205/88-C.E., dated 25-5-1988 in respect of wires and cables. We find that the Notification No. 205/88-C.E., at Sl. No. 12 provides exemption from payment of Central Excise duty in respect of wind mill and specifically devices which run on the wind mill. In these situation, the Hon'ble Supreme Court held that wires and cables are not entitled for the benefit of notification. The wordings of the notifications which are under consideration before us are different. The Notification No.3/2001-C.E. & No. 6/2002-C.E. provides exemption from payment of Central Excise duty in respect of wind operated electricity generators and its components and parts thereof. As the benefit of notification is available to the components and parts thereof, which not in the case before the Hon'ble Supreme Court in the case of Nicco Corporation Ltd. (supra). Therefore, ratio of the above decision is not applicable in the facts of the present case.

13. The Revenue is not denied the benefit of notification in respect of the tower of the wind operated electricity generators as held by the Commissioner of Central Excise, Raipur, vide order dated 28-02-2005 and the Commissioner (Appeals) vide order dated 10-2-2003 allowed the benefit of notification in question in respect of towers of wind operated electricity generators. The Revenue has not produced any evidence to show these orders are challenged by the Revenue. As the benefit of Notification No. 6/2002-C.E. is allowed to the tower of wind operated electricity generators, therefore, the door which is part of tower is also entitled for the benefit of notification which provides exemption from payment of Excise duty to wind operated electricity generators and its components and parts thereof.

14. In view of the above, the impugned order is set aside and the appeal is allowed."

9. The Department preferred appeal before the Hon'ble Apex Court against the above two orders passed by the Tribunal. In the case of *CCE Nagpur Vs. Hyundai Unitech Electrical Transmission Ltd.* as reported in 2015 (323) ELT 220 (SC), the Hon'ble Apex Court considered both the appeals together, and held as under:

"6. It is argued by Mr. K. Radhakrishnan, learned senior counsel appearing for the Revenue, that windmill doors and electrical boxes are not the components or parts of the electricity generators. It is not in dispute that as far as windmill doors or tower doors are concerned, it is a safety device which

*is used as security for high voltage equipments fitted inside the tower, preventing unauthorised access and preventing entries of reptiles, insects, etc., inside the tower. This, according to us, would be sufficient to make it part of the electricity generator. We further find that this was so held by the Commissioner of Central Excise and Customs, Raipur in Order-in-Original dated 28-02-2003. The said orders were accepted by the Revenue as it is recorded by the CESTAT that the Revenue could not produce any evidence to show that those orders were challenged by it. Further, since the tower is held as part of the generator, door thereof has to be necessarily a part of the generator. We, therefore, are of the opinion that there is no case of interference made out by the Department.*

7. *The appeal is, accordingly, dismissed."*

*(emphasis supplied)*

10. The larger Bench of the Tribunal in the case of *Rakhok Enterprises Vs. Commissioner of Central Excise 2016 (338) ELT 449 (Tri. L.B.)* observed that the issue having been settled by the Hon'ble Apex Court as per the judgment reported in *2015 (323) ELT 220 (SC)*, the anchor rings and load spreading plates which is specifically designed for the purpose of attaching the tower to the ground by providing necessary bolts are eligible for exemption under Notification No.6/2006 dated 01.03.2006 as these are parts of the tower. The larger Bench also relied upon the Circular No.1008/5/2015 CX, dated 20.10.2015 which was issued clarifying that tower, nacelle, rotor, wind turbine controller are eligible for exemption. The relevant paragraph of the Larger Bench decision is reads as under:

**"5.2** *The learned AR argued that the anchor rings and load spreading plates are not parts of the tower and are parts of the foundation of the tower. He argued that Circular No. 1008/15/2015, dated 20-10-2015 covers only the following items :*

*2. Ministry of New and Renewable Energy had earlier clarified to CBEC on the subject that the following are parts of wind operated electricity generators :*

- (i) Tower : which supports the nacelle and rotor assembly of a wind operated electricity generator.*
- (ii) Nacelle : which consists of gear box, generator, yaw components, flexible couplings, brake hydraulics, brake calipers, sensors, nacelle plate, nacelle cover and other smaller components.*
- (iii) Rotor consists of blades, hub, nosecone, main shaft,*

*special bearings.*

*(iv) Wind turbine controller, nacelle controller and control cables.*

*He pointed out that the foundation is not covered as part of the wind operated electricity generator in the said circular. He argued that views of Ministry of New and Renewable Energy should be taken before arriving at any conclusion in this regard, in terms of Para 5 of the Circular dated 20-10-2015 which reads as under :*

*"For any clarification regarding parts and component of WOEG, not covered in para 3 above, opinion of Ministry of New and Renewable Energy would be sought by the Board, if required. Issues relating to exemption of parts and components of WOEG not covered in para 3 above may be referred to Board through the Chief Commissioner concerned, if required.*

*He argued that while Ministry has clarified the tower is part of a wind operated electricity generators, no such clarification has been issued, for items like anchor rings and load spreading plates.*

**5.3** *We have gone through the rival submissions. We find that the anchor rings consists of large rings with long bolts attached to this at the circumvent. The load spreading plates is also a ring with matching holes to accommodate anchor bolts fixing to the anchor rings. The load spreading plates and the anchor rings can be joined together into one item by fixing the anchor bolts at the matching holes of the load spreading plates. When assembled it would form in the shape of a cylindrical cage. The tower has holes at its base matching with the bolts of the anchor rings and the load spreading plates and together they can be joined by bolts. However, the assembly of anchor rings and the load spreading plates is first fixed together and made a part of the foundation by using reinforced cement concrete. Thereafter the tower is attached to the bolts of the anchor rings and load spreading plates assembly. A picture of the said arrangement of the anchor rings, load spreading plates and the tower base given by the appellant is reproduced below.*

**5.4** *We find that the anchor rings and the load spreading plates are specifically designed for the purpose of attaching the tower to the ground by providing necessary bolts for the same. The anchor rings and the load spreading plates are an extension of the tower, though the same is fixed to the foundation first and later attached to the tower. Thus they are parts of the tower.*

**5.5** *In view of the above, we find that the anchor rings and load spreading plates are parts of tower specially designed for wind operated electricity generators and are eligible for exemption under Notification No. 6/2006, dated 1-3-2006."*

11. The learned Authorized Representative has relied upon the decision in the case of *G.B. Engineering Enterprises Pvt. Ltd. (supra)*. On perusal of the facts of the case, it is seen that the period of dispute in the said case are from September 1994 to January 1995, when the earlier Notification No.205/88



dated 25.05.1988 was applicable. Prior to 16.03.1995 the parts of wind mills were not covered under the notification. The facts being entirely different, the said decision is of no assistance to the Department.

12. After appreciating the facts and following the decision of the Apex Court as discussed above, we are of the considered opinion that the appellant is eligible for the benefit of exemption as per the Notification No.6/2006-C.E.

13. We make it clear that we have not considered the issue of classification in this appeal. The impugned order denying the exemption and demanding differential duty is set aside. The appeal is allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 17.03.2023)

Sd/-  
**(SULEKHA BEEVI C.S.)**  
MEMBER (JUDICIAL)

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)

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