

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

CUSTOMS APPEAL No. 40842 OF 2017

(Arising out of Order-in-Original No.01/2017, dated 02.01.2017 passed by
Commissioner of Customs, Custom House, Tuticorin 628 004)

The Commissioner of Customs

Custom House,
Tuticorin 628 004.

... Appellant

Versus

M/s. GE India Industrial Pvt. Ltd.

601, 6th Floor, Tower-B, RMZ Infinity,
Old Madras Road,
Bangalore 560 016.

...Respondent

APPEARANCE :

Mr. Anandalakshmi Ganeshram, Supdt. (A.R)
For the Appellant

Mr. Udit Jain, Advocate
Ms. Akanksha Dikshit, Advocate
For the Respondent

CORAM :

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

**DATE OF HEARING : 13.07.2023
DATE OF DECISION : 17.07.2023**

FINAL ORDER No.40558/2023

ORDER : Per Ms. SULEKHA BEEVI, C.S.

The above appeal is filed by the Department against the order passed by the Commissioner who dropped the proceedings initiated vide show cause notice No.06/2016 dated Nil/2/2016 alleging that the respondent herein wrongly availed exemption of Basic Customs Duty (BCD) under Notification No.21/2002-Cus. dated 01.03.2002 read with Notification No.12/2012-Cus. dated 17.3.2012 in as much as they had violated the condition of the Notifications.

2. Brief facts are that the respondent filed various Bills of Entry for import of Wind Operated Electricity Generator (hereinafter referred to as WOEG). The respondent availed BCD concession towards import of blades / towers and foundation mounting parts etc. under Sl.No.224 (2 & 3) along with condition No.35 and Sl.No.362 (2) & (3) along with condition No.45 of the Customs Notification No.21/2002-Cus. dt. 01.03.2002 and 12/2012-Cus. dt. 17.3.2012 respectively. These conditions stipulate that the importer at the time of importation has to (a) furnish a certificate to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, from an officer not below the rank of Deputy Secretary to the Government of India in the Ministry of Non-Conventional Energy Sources recommending the grant of this exemption and in the case of the goods at (2) to (5), the said officer certifies that the goods are required

for the specified purposes; and (b) furnish an undertaking to the said Deputy Commissioner or Assistant Commissioner to the effect that, -

(i) in the case of wind operated electricity generators upto 30KW or wind operated battery chargers upto 30 KW, he shall not sell or otherwise dispose off, in any manner, such generators or chargers for a period of two years from the date of importation;

(ii) in the case of other goods specified at (2) to (5), he shall use them for the specified purpose; and

(iii) in case he fails to comply with sub conditions (i) or (ii), or both conditions, as the case may be, he shall pay an amount equal to the difference between the duty leviable on the imported goods but for the exemption under this notification and that already paid at the time of importation.

3. It is the case of the department that though the goods may have been used for the specified purpose, the condition clearly stipulates that the importer himself should use the goods. In other words, the importer should not sell the goods to any one and should have used the goods for the specified purpose by himself. Since it was noted that the respondent had violated the above conditions, show cause notice was issued proposing to demand duty along with interest and also for imposing penalty. After due process of law, the original authority observed that there is no violation of conditions and dropped the proceedings. Aggrieved by such order, the department is now before the Tribunal.

4. Ld. A.R Ms. Anandalakshmi Ganeshram reiterated the grounds of appeal. It is submitted by the Ld. A.R that the intention of the Government as per the notification is that not only the product should be used for the specified purpose but the importer himself should use the product. Though many amendments came at later dates, for the past 20 years, the Government has not changed the condition to relieve the importer from fulfilling this condition that importer has to use the product himself. The respondent has wrongly sold the parts to the customer which is complete violation of the condition of the notification. Thus, the duty demand raised in the SCN ought to have been confirmed by the adjudicating authority. Ld. A.R prayed that the appeal may be allowed.

5. Ld. Advocate Mr. Udit Jain appeared along with Ms. Akanksha Dikshit, Advocate and argued for the respondent. It is submitted that the allegation in the SCN is mainly founded on the basis of the agreement entered with the customer. That it is alleged that parts of WOEG including blades were first sold by the respondent and thereafter assembled at the customer's site. The department has taken the view that the respondent / importer has not used the imported goods for the specified purpose of manufacture of WOEG. It is submitted by the Ld. Counsel for the respondent that two separate agreements were entered by the respondent with its customers (a) for supply of WOEG parts (b) for erection and commissioning of the WOEG equipment. The respondent imported blades for manufacture of WOEG and claimed the benefit of BCD exemption under the notification. The benefit under the

said exemption notifications is available to blades only if the conditions are fulfilled by the importer. The conditions are (1) that importer should furnish a certificate issued by the specified officer of the Ministry of Non-Conventional Energy Sources recommending the grant of exemption and certifies that the goods are required for the specified purpose and

(2) that importer should furnish an undertaking to the effect that he shall use them for the specified purpose.

6. Ld. Counsel submitted that the respondent has furnished the Ministry's recommendation as well as the undertaking required as per the notification. After the import of goods, in terms of the agreements entered with customers, the blades were supplied to the customers along with other parts of WOEG and was assembled at the customer's site by the respondent thereby fulfilling the conditions of the exemption notification. Merely because the goods were transported directly to the customer's premises, it cannot be said that the respondent has not used the goods for specified purpose.

7. Ld. Counsel submitted that the very same issue was considered by the Hon'ble High Court in the case of *Nordex Pvt. Ltd. vs CC Tuticorin* - 2022 (382) ELT 195 (Mad.) wherein the Hon'ble High Court had analysed the issue on the basis of the practical need to transport the Rotor Blades to the customer's premises for assembling the WOEG. There is no violation of the conditions of the notification and both the conditions have been fully satisfied by the respondent. The respondent has used the imported blades only for the specified purpose and the

allegation that the respondent has sold it and not complied with the condition is factually incorrect. The Ld. Counsel prayed that the appeal may be dismissed.

8. Heard both sides.

9. The issue involved in this appeal is the denial of benefit of BCD exemption Notification No.21/2002-Cus. dt. 1.3.2002 (Sl.No.224-condition No.35) and Notification No.12/2012-Cus. dt. 17.3.2012 (Sl.No.362 Condition No.45) to the goods imported by the respondent. The allegation of the department is that the respondent has violated condition No.45 (ii) of the notification. The details and the serial number of the above two notifications are noticed below :-

S.No.	Chapter or Heading or sub-heading or tariff item	Description of Goods	Std. Rate	Addl. Duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
224 & 362	84 or any Chapter	The following goods, namely:-			
		Wind operated electricity generators upto 30 KW and wind operated battery chargers upto 30 KW.	5%	-	45
		(2) Parts of wind operated electricity generators, for the manufacture or the maintenance of wind operated electricity generators, namely:- (a) Special bearings (b) Gear box (c) Yaw components (d) Wind turbine controllers, and (e) Parts of the goods specified at (a) to (d)	5%	-	45
		(3) Blades for rotor of wind operated electricity generators, for the manufacture or the maintenance of wind operated electricity generators	5%	-	45
		(4) Parts for the manufacture or the maintenance of blades for rotor of wind operated electricity generators	5%	-	45

	(5) Raw materials for the manufacture of (a) blades for rotor of wind operated electricity or (b) parts, sub-parts of such blades	5%	-	45
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Condition No.	Condition
45	<p>If the importer at the time of importation,-</p> <p>(a) furnishes in all cases a certificate to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, from an officer not below the rank of a Deputy Secretary to the government of India in the ministry of Non-Conventional Energy Sources recommending the grant of this exemption and in the case of the goods at (2) to (5), the said officer certifies that the goods are required for the specified purposes; and officer certifies that the goods are required for the specified purposes; and</p> <p>(b) furnishes an undertaking to the said Deputy Commissioner or Assistant Commissioner to the effect that,-</p> <p>(i) in the case of wind operated electricity generators upto 30 KW or wind operated battery chargers upto 30 KW, he shall not sell or otherwise dispose off, in any manner, such generators or chargers for a period of two years from the date of importation.</p> <p>(ii) in the case of other goods specified at (2) to (5), he shall use them for the specified purpose; and</p> <p>(iii) in case he fails to comply with sub-conditions (i) or (ii), or both conditions as the case may be, he shall pay an amount equal to the difference between the duty leviable on the imported goods but for the exemption under this notification and that already paid at the time of importation.</p>

10. The case of the department is that the respondent has not fulfilled conditions of the notifications as the imported blades were sold and were not put to use by the respondent for the specified purpose.

11. The issue has been analysed and discussed by the adjudicating authority which reads as under :

“18. GE India has also produced necessary documents like supply contract and erection & commissioning contract, they had with their client clearly evidencing that they have entered into two separate agreements with their clients i.e. one to sell the parts and another for erection, commissioning and installation of the wind mill.. Therefore, I find that the imported parts were properly utilized by GE India for the specified purpose i.e. for manufacture of Wind Operated Electricity Generators (WOEG) as per the Condition No.35 (ii) and 45 (ii) specified against . (2) to (5) of the Sl.No.224 and 362 of the said Customs

Notifications No.21/2002—Cus. dated 01.03.2002 and 12/2012-Cus. dated 17.3.2012 respectively.

19. I also find that the Condition NO.35 (ii) and 45 (ii) only stipulates that the imported Parts of wind operated electricity generators should be used for the manufacture of wind operated electricity generators and there is no restriction on the sale of imported parts either before the manufacture/assembling of WOEG under the said condition of notification or thereafter. In other words, once the imported parts of the WOEF are manufactured/assembled by importer for installation of Wind Mill, it is deemed that the condition prescribed under notifications no.21/2002 and 12/2012 dated 17.3.2012 that “He shall use them for specified purpose” is fulfilled.

20. Further, importer in support of their defence contended that condition no.35 (i) and 45 (i) specified against (2) to (5) of the Sl.No.224 and 362 of the said Customs Notifications No.21/2002-Cus. dated 01.03.2002 and 12/2012 Cus. dated 17.3.2012 respectively mentioned that “(i) in the case of wind operated electricity generators upto 30 KW or wind operated battery chargers upto 30 KW, he shall not sell or otherwise dispose off, in any manner, such generators or chargers for a period of two years from the date of importation”. They rightly argued that there are no such restrictions in respect of WOEG. With capacity beyond 30 KW. I find considerable force in the above argument of the importer and accordingly concur.

21. From the foregoing, I find that the importer has fulfilled all stipulated conditions completely and there is no merit in the show cause notice. “

12. The very same issue was considered by the jurisdictional High Court in the case of *Nordex India Pvt. Ltd.* (supra) wherein the Hon’ble High Court has considered the practical difficulties of the importer to transport blades from the port to the factory and thereafter to the customer’s site. Relevant para of the judgment reads as under:

“8. As far as the present case is concerned, the issue involves interpretation of the condition relating to “use of the goods for specified purpose”. The petitioner submitted necessary certificate from the Ministry of Non-Conventional Energy, Government of India, and gave an undertaking that they would use the imported goods for the “specified purpose”. Thereafter,

the petitioner availed concession/exemption by giving an undertaking that the Rotor Blades imported would be used for manufacture of the Windmill. This being so, the Special Intelligence and Investigation Branch of the Customs Department at Tuticorin, conducted investigation into import of Rotor Blades made by the petitioner during May, 2018. The petitioner produced the required documents such as, copies of bills of entry, import invoice, bill of lading, purchase order, letter of credit, contract copies and end-user certificate. Further, the petitioner explained that they are the manufacturer of Windmill and as such, they install, erect and commission the Windmills for the customers at the respective site under an agreement and that they are eligible for availing the exemption available.

... ..

11. Further, as per the contract terms, the full value of the invoices were paid only on successful commissioning of Windmills, not on invoice basis. Though the Rotor Blades shown as sold, the possession retained by the petitioner, the same ultimately used in the manufacture of Windmill by the importer (at the customer's site) as required under the exemption notification. Hence, its utilization in the manufacture and assembly of Windmill cannot be repudiated by the Department. The only objection raised by the respondent is that the sale of Rotor Blades before utilization is on wrong notion, that the importer himself cannot use it after its sale. This objection was raised since the Department was not conversant with the manufacturing process involved in the installation of the Windmill. It is accepted and known procedure that all the components for the Windmill, such as, Rotor Blades, Tower, Transformer and other components are moved to the site of the customer and all components are assembled at the site and thereafter, Windmill comes into existence. Further, the contract work *i.e.*, erection, installation and commissioning of the Windmill is a turnkey project, only on completion of all these process, it could be said that the contract is complete and Windmill is commissioned. Further, these activities need expertise, knowledge and know-how, not anyone and everyone can collect the materials, erect and install a Windmill. From the stage of drawing, placing orders, transportation, erection and commissioning all done by petitioner.

12. Rotor Blades is one of the main parts of the Windmill as per the Board's Circular No. 1008/15/2015-CX, dated 20-10-2015, wherein it is stated that Wind Turbine is not complete without Rotor Blades and Rotor Blades cannot be used for any other purpose. A condition was stipulated in the notification for its use in the manufacture of Windmill and to prevent it for export. The point of sale of the Rotor Blade is not relevant for the purpose of availing concessional rate of duty and it is not contemplated indirectly in the Exemption Notification No. 12/2012-Cus., dated 17-3-2012.

... ..

28. Considering the rival submissions and on perusal of the materials produced by both the petitioner and respondent, it is seen that in the impugned order, the respondent admits that the petitioner is engaged in the business of manufacture and installation of Wind Operated Electricity Generators, for which, they have imported Rotor Blades - Parts of Wind Operated Electricity Generators and filed three bills of entry through their Customs Broker, by

availing Basic Customs Duty [BCD] concession under Sl. No. 362(3) of the Customs Notification No. 12/2012-Cus., dated 17-3-2012 (read with Condition No. 45) and exemption from additional duty of customs under Sl. No. 14-C of the Customs Notification No. 21/2012-Cus., dated 17-3-2012, as amended (read with condition No. 46 of the Customs Notification No. 12/2012-Cus., dated 17-3-2012). The petitioner have obtained certificates from the Ministry of New and Renewable Energy on the ground that the Rotor Blades will be used for the manufacture of WOEGs. Further, they have also executed undertaking bonds to the Assistant Commissioner with an undertaking that the said goods, namely, Rotor Blades of Wind Operated Generator falling under CTI 8503 00 90 are imported for the manufacture of wind operated power generators. It is seen that nowhere in the notification, it is stated that the goods should not be sold before it is utilized by the importer in assembly and erection of the Wind Operated Energy Generator, which is done at the site of their customer, to whom it is sold. Further, the sale of Rotor Blades does not bar the importer to avail credit benefits, who sells it to his customer. The importer still have the contractual responsibility of manufacturing (assembly, erection and installation) of the Windmill at the customer's site, as they are the manufactures of Wind Turbines. As per the contract terms, the full value of the invoices paid only on successful commissioning of Windmills, not by invoice wise.

29. The adjudicating authority admitted the above aspects and has given no contra version. It is not in dispute that the goods imported were used in the manufacture of Wind Operated Electricity Generators at the site of the customer. Thus, the goods have been used for specific purpose is confirmed. The only objection seems to be once the goods are sold by the petitioner to their client, the client becomes the manufacturer of Wind Operated Electricity Generators. It is incidental that the petitioner themselves had undertaken the job of fabrication, assembly and erection. Thus, the petitioner had not violated the condition that "he should use the goods for specific purpose", since the Rotor Blades have already been sold and straightaway taken to the petitioner's client, who used the imported Rotor Blades in the manufacture of the Windmill.

30. It is an admitted fact that the petitioner used the Rotor Blades only in the manufacturing of Wind Operated Electricity Generators and further, Rotor Blades is not used for any other purpose. The only objection is that, clause (b) of Condition No. 45 of Notification No. 12/2012-Cus., dated 17-3-2012, is not followed for the reason that the petitioner/importer, shall not use them for specific purpose. In this case, it has been used for the specific purpose in the Windmill. It is only the word "he" is stressed against the petitioner. This cannot be looked into in isolation and it has to be considered as a whole. The petitioner had been awarded Turnkey project and there were two contracts and one of the contracts is for erection, installation and commission. This needs expertise. The petitioner having expertise applied with the Ministry of New and Renewable Energy, got approval, and then imported Rotor Blades and thereafter, transported the same, erected and commissioned the same at the customer's site. It is a known fact that the Windmill has to be necessarily erected only in the site. It cannot be assembled in a factory and thereafter, moved to the site, which is impracticable. The imported Rotor Blades, thus, need no customization and mechanization. Hence, by raising an invoice in the name of his client namely, Sun Photo Voltaic Energy Private Limited after import and thereafter, transporting the same to the customer's site is only an

notional exercise, by that alone, it cannot be said that the petitioner is not the importer and he is the person, who has used the same for a specific purpose, for which, it was imported. The payment to the petitioner is not on invoice to invoice basis, it is a turnkey project, wherein, the payments made at stages, which is no way correlated to the invoices raised. This Court as well as the Hon'ble Apex Court held that the wording of the notification is to be interpreted in such a way as not to frustrate the purpose of the notification. The exemption cannot be denied unless it is seen that it has been made to evade duty, it leads to evasion of duty. In this case, it is not so. The Rotor Blades has been fixed in the Windmill, which is a vital component for completion of the Windmill project. The specific purpose is the key word to be looked into, which is completed in the above case.”

13. After considering the facts of the case and perusing the records, we are of the view that the judgment of the Hon'ble Jurisdictional High court in the case of *Nordex India Pvt. Ltd.* (supra) is squarely applicable to the instant case. Following the same, we find that the demand proposed in the SCN is on misconception of facts and law. The impugned order does not call for any interference. The appeal filed by the department is dismissed.

(Pronounced in court on 17.07.2023)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(SULEKHA BEEVI C.S.)
Member (Judicial)

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