

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 11588 of 2018-DB

[Arising out of Order-in-Original/Appeal No KDL-COMMR-SKA-25-2017-18 dated 15.02.2018 passed by Commissioner of CUSTOMS-KANDLA]

L M Wind Power Blades India P Ltd

...Appellant

Halol Industrial Area(Phase Iii), Chandrapura,
PANCHMAHAL,
GUJARAT-389350

VERSUS

C.C.-Kandla

...Respondent

Custom House,
Near Balaji Temple,
Kandla,
Gujarat

APPEARANCE:

Shri Hardik Modh, Advocate for Intervener for the Appellant

Shri Tara Prakash, Deputy Commissioner (Authorized Representative) for
the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

FINAL ORDER NO. 10531/2024

DATE OF HEARING:06.11.2023
DATE OF DECISION: 29.02.2024

RAJU

This appeal has been filed by M/s. L. M Wind Power Blade India Pvt Ltd, against rejection of the declared assessable, confiscation and demand of customs duty and imposition of penalty.

2. Heard both the sides.

3. The appellant argued that they had imported Turning Cradle LM 47.6 P#02 and Blade ShellLiftingDevice LM 46.7/56.0P. The said goods were used goods. The said goods had been put to use by the supplier in their plant outside India. Revenue came to the conclusion that the said

goods were new. On that ground the declared assessable value of Rs. 16.05 Crore (approx.) was enhanced to Rs. 24 Crore (approx) and the goods were confiscated. Demand of duty and penalty were also imposed alongwith interest. The benefit of the SHIS Scheme under Notification No. 104/2009-Cuswas also denied on the ground that the 'Rotor Blades' manufactured by using the aforesaid capital goods would not fall under the category of "relating to plastic sector" as required to get the benefit of aforesaid notification.

4. The appellants are engaged in manufacture of 'Rotor Blades' used for wind turbine. He pointed out that for manufacture of Rotor Blades there are 3 key equipment required: (1) Stationary Blade Mould (SBM), (2) Blade Shell Lifting Device (BSLD), and (3) Turning Cradle (TC). He pointed out that these equipment are uniquely designed for manufacture of every specific model of rotor blade. He pointed out that two equipment namely: Turning Cradle and Blade Shell Lifting Device were imported by the appellant. He pointed out that the appellant entered into a contract with Global Customer "Gamesa" to manufacture and supply specific model of rotor blades., LM Wind Power Blade (Qinhuangdao) China manufactured SBM and TC in house and procured BSLD from third party i.e. Denmark and installed at its factory premises. The said equipment were installed in China and 7 Blades were manufactured for passing the test phase of the equipment and thereafter 150 blades were commercially produced and supplied to Gamesa China. Later, upon Gamesha's request, the set of 3 equipment were imported into India for manufacture and supply of same model of rotor blades to Gamesa India. In support of their claim that they had manufactured and supplied 150 Blades, the appellant submitted sample invoices and delivery challans along with the appeal papers. The said 3 equipment i.e. SBM, TC, BSLD were imported into India. The SBM was declared as used goods and same was cleared without any objection

by custom authorities in India. However, when TC and BSLD was imported declaring the same as used goods the present dispute was raised. In support of their claim that the goods are used/second hand, a Chartered Engineer Certificate was obtained in terms of Circular No. 25/2015-Cus dated 15.10.2015.

5. According to the inspection report under taken by Shri N J Lalwani, and a Government approved valuer and CE, it was certified that the imported goods are in used condition. However, later, on Shri N J Lalwani withdrew his initial finding and issued contradictory findings. The series of events in this regard are summarized below:

S.N.	CE Certificate/ Panel Report Date	Findings
1	16.10.2015 (Issued on the request of the Appellant)	Certificate issued by Mr. Lalwani in prescribed Form B certifying that the subject goods are <u>used</u> . This was issued on the basis of visual and physical inspection which took nearly 8 hours.
2	19.11.2015 (Issued on the direction of the Respondent)	Certificate issued by Mr. Lalwani withdrawing his own previous certificate as above and contradictorily stating that the subject goods <u>new and unused</u> . Cancellation of previous certificate was made on the basis that it was issued only on the basis of documents / photographs and not physical verification. This certificate was issued merely in the form of handwritten document and not in the prescribed FORM B.
3	09.12.2015 (Issued on the request of the Appellant to get goods re-examined by another CE)	Another certificate issued by Mr. Lalwani in the form of handwritten document to re-certify that the goods are <u>new and unused</u> , without any additional / new facts on record.
4	10.12.2015 (Issued on request of the Appellant to get goods reexamined by another CE)	Panel Examination Report issued by a panel of Customs Officers and Mr. Lalwani finding that on re-examination, the goods found to be <u>new and unused</u> . The report noted that the physical condition of the goods did not show any sign of installation of the subject goods. Also, there was no evidence/sign to suggest that the TC was used even for trial purposes.
5	30.12.2015	Another certificate issued by Mr. Lalwani stating that on re-examination the goods found to be <u>new and unused</u> and approximate value of goods is <u>Rs. 24 crores</u> .

The SCN was issued to the appellant seeking to adopt the revised certificate of Shri Lalwani and treat the imported goods as new and unused. The notice also proposed to re-value the goods at Rs. 24 Crore as against the declared value of Rs. 16 Crore (approx). The notice also proposed to deny the benefit of SHIS (Status Holder Incentive Scheme) on the ground that the goods imported by them did not relate to plastic sector. The appellant had obtained the SHIS Scheme from M/s. SR Steel India Ltd under Notification No. 104/2009 dated 14.09.2009. Para 3.16.3 of Foreign Trade Policy 2009-14 provide the use of SHIS Scrips in specific terms listed in the said policy. The appellant had claimed benefit from the imported cradle under plastic sector.

6. In view of above, the appellant sought cross-examination of the Chartered Engineer Shri Lalwani. The appellant filed an interim reply seeking certain documents before filing a final reply and before cross examination of Shri N J Lalwani, two opportunities were given to the appellant for cross examination of N J Lalwani, on 21.12.2017, and again on 21.12.2017. The appellant did not avail the opportunity of cross-examination of the pretext that they did not supply certain documents. The impugned order examines in detail all the documents which the appellant had sought for and given detail explanation to show that the said documents were either already supplied to the appellant or were in custody of the appellant as it appellant from following:

"3.2 Despite sufficient opportunities, the noticee did not cross-examine the Chartered Engineer and did not submit their final reply on the pretext of non-supply of documents, therefore, first of all I proceed to go through these facts. I find that initially total 38 documents were called for by the noticees. Out of those 38 documents, 19 were relied upon by the Department and 19 were non-relied upon documents. Then copies of the relied upon documents were supplied to the noticee vide letter dated 29.12.2017 by the Assistant Commissioner (SIIB), Custom House, Kandla. After various correspondence, as discussed above, many documents which were not relied by the department in the show cause notice were also supplied. Lastly the noticee requested for

documents appearing at Sr. No. 2 to 5, 10 to 14, 19, 27, 31 to 38 of the table in the their letter dated 08.08.2016. The reply submitted by the noticee has been stated to be "interim reply" and the noticee has not submitted their reply in the form of "final reply" on the pretext that it would be submitted only after supply of desired documents and cross-examination of the Chartered Engineer. I have taken care to see that principal of natural justice are followed but the circumstances show that the noticee has adopted dilatory tactics, therefore, I find it necessary to look into the bona fides of the noticee. Accordingly, first of all I discuss nature of demanded documents and related facts:

Description of document mentioned at serial number 2 of the table has been mentioned as import documents'. I find that these are the documents which were produced by the noticee for clearance of the imported cradle. Therefore, copies of the same must be in the possession of the noticee. However, copies of the same were supplied to the noticee vide letter dated 28.07.2016.

(ii) Next document appearing at serial number 3 of that table is Panchnama dated 18.11.2015. The department informed the noticee vide letter dated 14.09.2016 that regular examination was carried out and no panchnama was drawn during the examination. Therefore, there was no question of supply of the same. However, despite that reply the noticee is still demanding the same.

(iii) Further, the document appearing at serial number 4 of that table, is examination report/ certificate dated 19.11.2015 of the Chartered Engineer. The same was in the form of his self-statement. It was supplied to the noticee vide letter dated 28.07.2016. Thereafter, the noticee asked for certificate in Form-B, Ref No. NJL/Kandla/15-16 dated 16.10.2015 for which department informed them that it was not relied upon. It was again demanded by the noticee and I instructed for supply of the same, It was supplied to them vide letter dated 29.12.2017.

(iv) Next: document, appearing at serial number 5 of that table, is a panchnama evidencing that examination of goods was carried out by Shri N. J. Lalwani, Chartered Engineer. Vide letter dated 14.09.2016, it was informed by SIIB section of this office that certificate has already been provided to them. vide letter dated 28.07.2016, I find from the records available before me that no such panchnama was drawn and there is no mention of such panchname in the show cause notice.

(v) The demanded document appearing at serial number 10 of that table, is list of 150 blades claimed to be produced in China, The documents appearing at serial number 11 of that table, are photographs claimed to be of installation of the imported cradle in China. The documents appearing at serial number 12 of that table, are photographs claimed to be of dismantling of the imported cradle in China, The documents appearing at serial number 13 of that table, are photocopies of visa related to claimed visit of engineers to supervise the dismantling process in China. The documents, appearing at serial number 14 of that table, are photographs of the imported cradle, claimed to be taken at Kandia

port. I consider these four types of documents together because copies all these were submitted by Shri Anand S.R., working as Manager (Sourcing & Logistics) with the noticee. As these are the documents, copies of which are claimed to have been submitted by an employee of the noticee, the same are obviously in possession of the noticee and demanding the same from the department does not make any sense.

(vi) Next document, appearing at serial number 19 of that table, is any panchnama drawn during re-examination. Vide letter dated 14.09.2016, the Assistant Commissioner (SIIB), Custom House, Kandla informed the noticee that the imported cradle was re-examined by the panel of officers and the Chartered Engineer in the presence of representatives of the noticee on 09.12.2015 and the panel submitted its report dated 10.12.2015. As the re-examination was done in the presence of representatives of the noticee, the noticee are very well aware that panchnama was not drawn during the re-examination. Despite this fact the noticee demanded a copy of panchnama, if any. Even when it was informed to the noticee that no panchnama was drawn and the panel submitted only a report dated 10.12.2015, copy of which was provided to them, the noticee again vide letter dated 22.10.2016 demanded copy of panchnama dated 10.12.2015, I find that it is not possible to supply a document which is not in existence and demand of such a document is not logical.

(vii) Further, the demanded document, appearing at serial number 27 of that table, is copy of statement of Shri Sandeep Shan, working Operation Controller with the noticee. The same was supplied to the noticee vide letter dated 14.09.2016 by the Assistant Commissioner (SIIB), Custom House, Kandla, However, the noticee informed vide letter dated 22.10.2016 that though mentioned in the letter, copy of the statement was not found enclosed with the letter. Therefore, the same was again supplied to the noticee vide letter dated 06.01.2017 by the Assistant Commissioner (SIIB), Custom House, Kandla. However, vide letter dated 14.12.2017, the notices has again demanded the same.

(viii) Next document, appearing at serial number 31 of that table, is copy of Demand Draft No. 119055 dated 11.05.2015. The said demand draft was submitted by the noticee. Therefore, copy of the same must be available with them. However, the department supplied copy of the said demand draft vide letter dated 28.07.2016 but, it was again demanded by the noticee vide letter dated 08.08.2016. It was again supplied to them by the department vide letter dated 14.09.2016. However, it was again demanded by the noticee vide letter dated 14.12.2017. I do not find any logic in requisition of photocopy of demand draft, which was submitted by themselves, again and again.

(ix) Next document, appearing at serial number 32 of that table, is copy of letter F. No. S/43-13/SUB/2015-16 dated 15.01.2016. Photocopy of the said letter was provided to the noticee vide letter dated 28.07.2016. However, the noticee again demanded the same and it was again provided vide letter dated 14.09.2016. However, vide letter dated 14.11.2017, the noticee again requested to supply copy of that letter. I have gone through the

letter dated 15.01.2016. It was issued by the Deputy Commissioner (SIIB), Custom House, Kandla vide which the noticee was informed to submit Bank Guarantee, PD bond and demand draft, in pursuance to the order of Hon'ble High Court of Gujarat in the SCA filed by the noticee. Therefore, original letter must also be in the possession of the noticee,

(x) Next document, appearing at serial number 33 of that table, is any panchnama evidencing re-examination on 09.12.2015, Vide letter dated 14.09.2016, the Assistant Commissioner (SIIB), Custom House, Kandla informed the noticee that examination report dated was supplied to them under and it was received by the noticee on 01.08.2016, On going through the record I find that no panchnama was drawn on 09.12.2015 and there was no reference in the show cause notice regarding drawing any panchnama on that day. Therefore, there is no question of supply of the same.

(xi) Next document, appearing at serial number 34 of that table, is statement dated 18.11.2015 of the Chartered Engineer as mentioned in Para 11.3 of the show cause notice. I find that a corrigendum to the impugned. show cause notice was issued on 08.09.2016 wherein it was mentioned to read the date 18.11.2015' as 19.11.2015. Vide letter dated 14.09.2016 this fact was reiterated and the noticee was informed that the examination was done by the Chartered Engineer on 19.11.2015 but due to typographical error in Para. 11.3 of the show cause notice, the date was mentioned as 18.11.2015 and therefore, a corrigendum to the show cause notice was issued. However, vide letter dated 14.12.2017, the noticed again insisted for supply of statement dated 18.11.2015 of the Chartered Engineer. The facts were informed to the noticee, despite it the noticee has continued to demand the same. A document which is not in existence cannot be supplied but it appears that the noticee is determined not to understand the same,

(xii) Next document, appearing at serial number 35 of that table, is Chartered Engineer's report consequent upon re-examination on 09.12.2015. Vide letter dated 14.09.2016 the Assistant Commissioner informed the noticee that it was supplied to them and also received by them on 01.08.2016. However, vide letter dated 14.12.2017, the noticee again insisted for supply of the same, I find that copies of the same documents were demanded again and again by the noticee.

(xiii) Next document, appearing at serial number 36 of that table, is copy of carlier certificate issued by the Chartered Engineer which is claimed to have been cancelled. I find that the noticee was informed that the said certificate was not relied upon by the department and hence the same was not supplied to them. I also find that copy of the said certificate was available with the noticee as they have also claimed in their reply (said to be interim reply) that they were having copy of the said certificate being provided by the Chartered Engineer and it was also submitted before Hon'ble Gujarat High Court in Special Civil Application No. 20487 of 2015. When copy of the certificate was available with them there was no point for demanding the same from the department and stalling

the adjudication proceedings for the same. However, as a matter of natural justice, I took up the matter and on my directions, a copy of the same was again supplied to them during the adjudication proceedings.

(xiv) Next document, appearing at serial number 37 of that table, is letter dated 03.12.2015 issued by the noticee stating that they were willing to make duty payment under merit assessment and accordingly they paid duty of Rs. 4,24,20,473/-. Further, document, appearing at serial number 38 of that table, is also a letter dated 10.12.2015 issued by the noticee addressed to the department. As these letters were issued by the noticee, copies of the same must be available with them. However, vide letter dated. 14.09.2016, copies of these two demanded letters were supplied to the noticee. Despite it, vide letter dated 14.12.2017, the noticee again requested to supply the same. There was no logic in demanding the same again and again when the same is their own issued letters and are available with them, Despite it as per my directions copies these letters were again sent to the noticee."

7. The impugned order holds that the appellant did not avail the opportunity to cross examine Shri N J Lalwani using excuse of non-supply of document when all the documents were already supplied or were in custody of the appellant. Therefore, it holds that the request of cross-examination and non-availment of the opportunity of cross examination granted was merely to delay the adjudication process. The impugned order thereafter holds that the revised report of Shri N J Lalwani is the correct report and proceeds to confirm the demand of duty. The impugned order also holds that the appellants are not entitled to use the SHIS Scheme as the product did not qualified to be called product of plastic sectors and therefore the benefit of Notification No. 109/2004 cannot be granted to the appellant. The impugned order also revises the value of goods for the purpose of assessment treating the same as new and unused. We find merit in the impugned order. The impugned order clearly lays out, that all the efforts were made by revenue to provide the documents and also to provide the opportunity to the appellants to cross examine Shri N J Lalwani.

8. The entire issue hinges on the report of Sh N.J. Lalwani, the Government Approved valuer. We find that in the instant case Shri N J Lalwani, the government approved value has changed his stance and *suo-moto* revised on the report. In that background, cross-examination of Shri N J Lalwani becomes relevant to find the reasons why the report was changed and what was the fact which resulted in change of stance. The appellants were seeking cross examination of Shri N.J. Lalwani, however prior to cross examination they wanted certain documents. There was a lot of correspondence about the fact if the documents are already supplied or already available with appellants. The appellants were insisting on supply of documents whereas revenue believed all documents are supplied/ available with appellant. From Para 6 above, we find that Revenue has made all efforts and provided all the documents necessary to the appellant to enable the cross-examination Shri N J Lalwani. Para 3.2 of the impugned order, goes item wise and gives evidence that the documents being asked by the appellant are already in their possession and have been given, in some cases at numerous times.

9. We have examined the facts stated in para 3.2 of the impugned order. We hold that all necessary documents have been provided to the appellant. In the interest of justice, we give one last opportunity to the appellant to cross-examine Shri N J Lalwani. From the record, it is apparent that there was a deliberate delay on the part of the appellant to cross-examine the Shri N J Lalwani. The reasons why shri N J Lalwani change his strance will be helpful in reaching proper conclusion in this case. In this background, in the interest of justice we set aside the order and remand the matter back to the Commissioner. The commissioner will give two dates for cross-examination of Shri N J Lalwani and the appellant can avail any one of the dates. The Commissioner will follow the principle of natural justice and grant personal hearing to the appellants.

10. Appeal is allowed by way of remand for fresh adjudication with above directions.

(Pronounced in the open Court on 29.02.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha