

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

EXCISE APPEAL No. 41839 OF 2017

(Arising out of Order-in-Original No.03/2017 dated 28.04.2017 passed by Commissioner of Central Excise, Chennai IV Commissionerate, No.692, M.H.U. Complex, Nandanam Chennai 600 035)

M/s.Barga India Private Ltd.
A-7, SIPCOT Industrial Growth Centre,
Oragadam 602 105.

... Appellant

Versus

The Commissioner of GST & Central Excise,
Chennai Outer Commissionerate
No.2054, I Avenue, II Block,
12th Main Road, Anna Nagar,
Chennai 600 040.

...Respondent

APPEARANCE :

Mr. Tarun Jain Advocate, Advocate
Mr. Harsh Shulkla, Advocate
For the Appellant

Ms. Anandalakshmi Ganeshram, Superintendent (A.R)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. AJIT KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING : 28.06.2023
DATE OF DECISION : 11.07.2023

FINAL ORDER No.40547/2023**ORDER : Per Ms. SULEKHA BEEVI, C.S.**

Brief facts are that the appellant is registered with Central Excise Department and is engaged in the manufacture of excisable goods falling under Chapter 7610-9090 -'Other - as articles of aluminium' of CETA 1985. During the course of audit of accounts of the appellant on 14.10.2014 and 15.10.2015, it was noticed that the appellant had cleared goods viz. structures of aluminium etc. falling under CETH 7610-9090 and the appellant had not paid central excise duty on such clearances claiming exemption under Notification No.12/2012-CE dated 17.03.2012. Such goods collectively bundled and called as 'Assembly pallets' or 'Tower Internals' were claimed by appellant to be parts of Wind Mills / Wind Operated Electricity Generators (WOEG). The department was of the view that such goods are general purpose equipment and are not specific parts of the WOEG. The audit team objected to the availing of exemption. Subsequently, show cause notice was issued to the appellant proposing to demand duty on the goods for the period July 2014 to March 2016 along with interest and also for imposing penalties. After due process of law, the original authority held that the above goods are not eligible for exemption and confirmed demand along with interest and imposed penalties. Aggrieved by such order, the appellant is now before the Tribunal.

2. Ld. Counsel Sri Tarun Jain Advocate along with Harsh Shukla Advocate appeared and argued for the appellant. It is submitted that the goods manufactured by the appellants are (a) Aluminium Platforms and (b) Steel/Aluminium Structures. Along with these manufactured items, the appellant is also supplying bought out items namely (c) Ladders (d) cables (e) LEDs (f) Fasteners (g) Rubber Profiles and (h) Locks and other accessories as mentioned in the Bill of Materials. All these are manufactured / supplied by the appellant on the basis of purchase orders received from M/s.Gamesa Wind Turbines Pvt. Ltd. and Vestas Wind Technology India Pvt. Ltd. in accordance with the drawing and designs provided by them. These buyers have confirmed to the appellant that they were engaged in manufacture of WOEG and the goods supplied by the appellant were exclusively meant for manufacture of WOEG. This fact was also confirmed independently by a third party Chartered Engineer vide certificate dt.21.02.2017.

3. On such premise, the appellant has claimed exemption from payment of central excise duty on its activities in terms of Notification No.12/2012-CE dated 17.03.2012 at Sl.No.332 read with list 8 which unconditionally exempts the following :

Sl.No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
332	Any Chapter	Non-conventional energy devices or systems specified in List 8	Nil	-

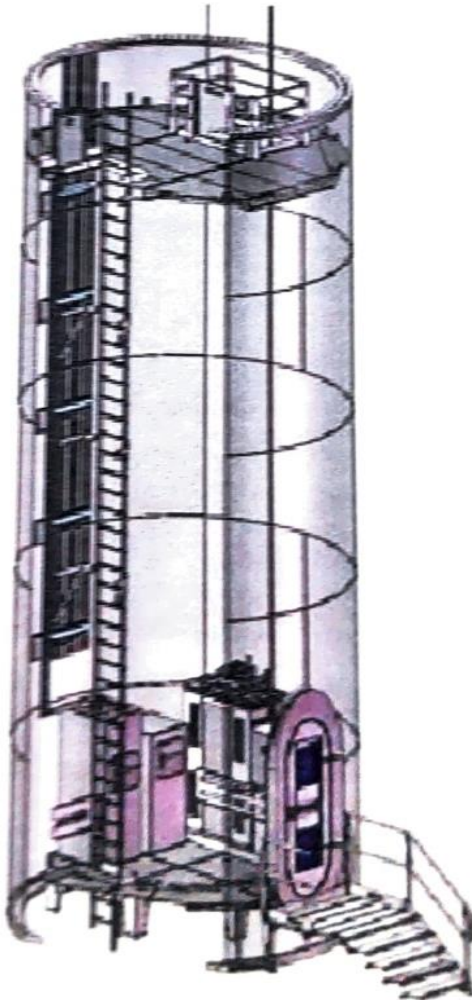
List 8

(See S.No.332)

(1) Flat plate solar Collector (2) Black continuously plated solar selective coating sheets (in cut length or in coil) and fins and tubes (3) Concentrating and pipe type solar collector (4) Solar cooker (5) Solar water heater and system (6) Solar air heating system (7) Solar low pressure steam system (8) Solar stills and desalination system (9) Solar pump based on solar thermal and solar photovoltaic conversion (10) Solar power generating system (11) Solar photovoltaic module and panel for water pumping and other applications (12) Solar crop drier and system (13) **Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller** (14) Water pumping wind mill, wind aero-generator and battery charger (15) Bio-gas plant and bio-gas engine (16) Agricultural, forestry, agro-industrial, industrial, municipal and urban waste conversion device producing energy (17) Equipment for utilizing ocean waves energy (18) Solar lantern (19) Ocean thermal energy conversion system (20) Solar photovoltaic cell (21) Parts consumed within the factory of production of such parts for the manufacture of goods specified at S.Nos. 1 to 20."

4. The impugned order has erroneously denied the benefit of the exemption to the appellant. The details of the goods manufactured by the appellant along with the specific use were furnished to the department. Furthermore, the appellant vide their letter dated 18.07.2014 had made detailed submission to the department wherein the technical write up along with photographs and explanation of the

goods supplied by them were fully made known to the department. The Ld. Counsel referred to the image of the Tower Internal for Wind Turbine Generator which is as under :



5. The major materials of assembly kit are Aluminium Platforms, Ladders, Electrical items like LED lights, Steel parts, Safety items, Elevator Fences etc. The above image would reveal that the goods supplied by the appellant are integral part of manufacturing of the WOEG and thus falls within the scope of exemption notification. This aspect is in addition to the fact that the claim of exemption made by

the appellant is based upon a declaration of the manufacturer of WOEG that the goods manufactured by the appellant are exclusively used for the manufacture of WOEG. This fact is also supported by the certificate of the Chartered Engineer.

6. It is submitted by the Ld. Counsel that in the appellant's own case, the issue stands settled. The appeal filed before Commissioner (Appeals) was allowed vide OIA No.100/2020 dated 29.10.2020 passed by the Commissioner (Appeals) Chennai with consequential relief and appellant has received the refund of duty.

7. Further, the Ministry of New & Renewable Energy vide its letter dated 20.03.2015 reiterated its clarification dated 01.09.2003 that such parts of WOEG are essential and integral parts for WOEG and should be considered eligible for exemption. CBEC has issued clarification vide circular No.1008/15/2015-CX dated 20.10.2015 confirming the eligibility of exemption under Sl.No.332 of the Notification No.12/2012-CE dated 17.03.2012.

8. In addition, the issue stands settled by the decisions in the case of *Gemini Instratech Pvt. Ltd. Vs CCE* 2014 (300) ELT 446 (T); *CCE Vs Hyundai Unitech Electrical Transmission Ltd. - 2015* (323) ELT 220 (SC) and *Rakhok Enterprises Vs CCE - 2016* (338) ELT 449 (Tri-LB) and affirmed by the Hon'ble Supreme Court as reported in 2018 (360) ELT A 180 (SC).

9. The Tribunal vide its recent decision in the case of *RRB Energy Ltd. Vs CC Chennai* vide Final Order No.40175/2013 dated 17.03.2023

(in Appeal C/40257/2013) has considered a similar issue and held that the goods are eligible for exemption. Ld. Counsel prayed that the appeal may be allowed.

10. Ld. A.R. Ms. Anandalakshmi Ganeshram supported the findings in the impugned order.

11. Heard both sides.

12. The issue is whether Aluminium structures and fabricated items used as towers are integral part of Wind Turbines or Wind Operated Electricity Generators (WOEG) so as to be eligible for exemption under Notification No.12/2012-CE dated 17.03.2012.

13. The details of the goods manufactured and how these form part of the WOEG is also explained by the write up as well as the image furnished above. Though the adjudicating authority has considered the details submitted by the appellant, has concluded that these items are general purpose equipment and therefore exemption cannot be granted. The very same issue has been settled by the Tribunal in the case of *Gemini Instratech Pvt. Ltd.* (supra) wherein it was held as under :

“4. The contention of the appellant is that the appellants are manufacturing doors which was specifically designed to be used for wind operated electricity generators. The doors are used with the tower on which the wind operated electricity generators are installed. The contention of the appellant is that the notification in question provides exemption in respect of wind operated electricity generators, its components and parts thereof. The tower which is part of wind operated electricity generators and the Revenue is not denying the benefit of notification in respect of tower, hence the doors which is part of tower cannot be denied the benefit of above mentioned notifications. The applicant relied upon the order dated 28-2-2005 passed by the Commissioner of Central Excise, Raipur, whereby the Commissioner has allowed the benefit of Notification No. 6/2002-C.E., dated 1-3-2002, which is under consideration in the present case also, in respect of towers. The Commissioner of Central Excise held that the towers support the propellers/rotors which are essential components of the wind operated electricity generators and the towers

manufactured by the assessee are part of the wind operated electricity generators. Hence, entitled for the exemption provided under Notification No. 6/2002-C.E., dated 1-3-2002. The appellants also relied upon another decision passed by the Commissioner of Central Excise (Appeals), Raipur, dated 10-12-2003 whereby the benefit of Notification No. 6/2000 was allowed in respect of the tower of the wind operated electricity generators.

... ..

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."

14. In the case of *CCE V Hyundai Unitech Electrical Transmission Ltd.*

(supra), the Hon'ble Supreme Court observed as under :

"5. The question which falls for consideration in this appeal is as to whether windmill doors and electrical boxes are components and/or parts of wind operated electricity generators. If the answer is in the affirmative, the respondent would be entitled to the benefit of exemption Notification No. 06/2002-C.E., dated 1-3-2002. List 5 of the said notification lists certain items and we are concerned with Item No. 13, which reads as under :-

"13. Wind operated electricity generators, their components and parts thereof."

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 28-2-2005 as well as by the Commissioner (Appeals), Raipur, vide his orders dated 10-2-2003. 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.”

15. The Larger Bench in the case of *Rakhoh Enterprises* (supra) had held that anchor rings consists of large rings with long bolts attached to it etc. as parts of tower specially designed for WOEG and are eligible for exemption under Notification NO.6/2006 dated 1.3.2006. Relevant para reads as under :

“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 appellants 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.”

The said Larger Bench decision has been affirmed by the Hon'ble Supreme Court. Recently, the Tribunal in the case of *RRB Energy Ltd.* (supra) had analysed the very same issue and held that the assessee is eligible for exemption .

16. After appreciating the facts and applying the ratio of the above decisions, we are of the considered view that the goods are eligible for exemption. The impugned order is set aside. Appeal is allowed with consequential relief, if any.

(Pronounced in court on 11.07.2023)

sd/-

(M. AJIT KUMAR)
Member (Technical)

sd/-

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

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