

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

**CUSTOMS APPEAL No.42236 to 42238 of 2014  
[C/Cross/40465 to 40467/2015]**

(Arising out of Order-in-Appeal C.Cus No.1208 to 1210/2014 dated 21.07.2014 by Commissioner of Customs (Appeals), 60, Rajaji Salai, Customs House, Chennai 600 001).

**Commissioner of Customs (Port-Import)**

**...Appellant**

Customs House,  
60, Rajaji Salai,  
Chennai 600 001

Versus

**Gamesa Wind Turbine Pvt. Ltd.**

**...Respondent**

No.489, GNT Road  
Thandal Kazhani Village  
Vadagarai, Red Hill Post  
Chennai 600 052

**APPEARANCE:**

Shri R. Rajaraman, Assistant Commissioner (A.R)  
For the Appellant

Shri. Rohan Muralidharan, 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 & Decision:12.01.2024

**FINAL ORDER Nos.40053-40055/2024**

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

Brief facts are that the respondents imported 'Flanges' with specific part numbers along with the additional information that these flanges are parts required for Wind Operated Electric

Generators (WOEG) classifying them under CTH 85030010 and claiming the benefit of notification no.12/2012-CE (at Sl.No.332, List 8). The original authority denied the benefit of exemption holding that these items, namely, flanges cannot be considered as parts of WOEG and being of general use they are to be classified under 730791. Against such order, the respondent filed appeal before the Commissioner (Appeals), who vide order impugned herein allowed the appeal holding that the flanges are classifiable under CTH85030010 as parts of WOEG and are eligible for the exemption as per notification No.12/2012-CE dated 17/3/2012. Aggrieved by such order, the department is now before the Tribunal.

2. The Ld. AR Shri R. Rajaraman appeared and argued for the department. It is submitted that the flanges are used in the Tubular towers of the WOG. The other parts of such wind power plants are Lattice tower, Ferro-Concrete tower, Hybrid tower and Guyed tower. These towers are nothing but support structure for wind turbines. Though towers are part of WOEG, the flanges cannot be considered as part of WOEG and are just items of general use. These items merit classification under subheading 730791. It is thus argued by Ld. Respondent that the items are not eligible for the benefit of notification 12/2012 dated 17.3.2012. The Ld. AR prayed that the appeal may be allowed.

3. The Ld. counsel Shri Rohan Muralidharan appeared and argued for the respondent. It is submitted that the flanges are integral to and specifically designed for the construction of the towers of WOEgs. The CBIC vide circular no.1008/15/2015-CX dated 20/10/2015 has clarified that the tower, nacelle, motor, wind turbine controller are all parts of WOEg and would be eligible for exemption. The said clarification was based on the decision of the Hon'ble Supreme Court in the case of M/s. Gemini Instratech Vs. CCE in Civil Appeal no. 1218 of 2006 reported in 2015 323 ELT 220 (SC).

4. It is submitted by the Ld. counsel that recently the Tribunal in the case of M/s. Sew Eurodrive India Pvt. Ltd. Vs. Commissioner of Customs (2024-VIL-18-CESTAT-CHE-CU) had analysed the very same dispute with respect of classification of flanges and held that flanges are classifiable under CTH 8503 and eligible for benefit of notification. It is prayed that the appeal may be dismissed.

5. Heard both sides.

6. The issue to be decided is whether the flanges imported by the respondent are classifiable under 73072100 as contended by the department or under 8503 as confirmed by the Commissioner (Appeals).

7. The very same issue was decided by the Tribunal in the case of M/s Sew Eurodrive India Pvt. Ltd. (supra) and after considering the facts the Tribunal has held that the flanges are parts of WOEG and are classifiable under 8503 and not CTH 7307 as claimed by the department. It was also held that the flanges are eligible for the exemption as per notification no. 12/2012. The relevant para reads as under:

“12.3 If every ‘flange’ available in the market could be used in any industry, then perhaps the classification under a single CTH would have served that purpose, but since one size does not fit all, different classifications are provided. The classification thus depends on, inter alia, functionality as well. Hence, when an item is imported for a specific purpose, if the Revenue does not believe in the classification declared by such importer, then the same could be rejected on some palpable evidence and if required, the Revenue could always insist upon further details / explanation in so far as the function / end-use claimed by such importer is concerned, in order to ascertain the chief/primary function, to arrive at the proper classification, otherwise the purpose of having two Customs Tariff Headings loses its significance, which is not the intention of legislature.

13. In view of our above discussions, we do not find any substance or merits in the impugned order, to sustain the re-classification attempt made by the original authority as sustained in the impugned order, for which reason the same deserves to be set aside, which we hereby do.”

8. After appreciating the facts, evidence placed before us and following the decision of the Tribunal discussed above we are of the

considered opinion that the appeals filed by the department is without merits.

9. The appeals are therefore dismissed.

(dictated and pronounced in court)

**(VASA SESHAGIRI RAO)**  
Member (Technical)

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

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