CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Customs Appeal No. 42771 of 2014

(Arising out of Order-in-Appeal No. 164/2014 dated 18.09.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), No. 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

M/s. Suzlon Energy Ltd. **...Appellant**
Corporate Office: One Earth,
Sadesatra Nalli, Hadapsar,
Pune – 411 028.

Versus

Commissioner of Customs (Preventive) **...Respondent**
No. 1, Williams Road,
Cantonment,
Tiruchirapalli – 620 001.

APPEARANCE:

For the Appellant : Mr. J. Shankar Raman, Advocate
For the Respondent : Mr. Anoop Singh, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 41256 / 2024

DATE OF HEARING : 06.08.2024
DATE OF DECISION: 30.09.2024

Order :- Per Mr. VASA SESHAGIRI RAO

Customs Appeal No. C/42771/2024 has been filed by the Appellant being aggrieved by the Order-in-Appeal No. CMB-CEX-000-APPP-164/2014 dated 18.09.2014 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore rejecting the appeal filed by the Appellant and upholding the assessment of Bills of Entries assessed by the specified officer.

1.2 Brief facts emerging from this appeal are that the Appellant engaged in the manufacture of Wind Operated Electricity generators (WOEG) of different capacities, have been importing various components and parts *Viz*. Gear Box and its Oil Cooling system from M/s. Hansen Drives, SEZ Unit in Synefra Engineering & Construction Limited, Coimbatore. The Appellants claimed benefit of concessional rate of Customs duty and CVD under Customs Notification No. 21/2002-Cus dated 01.03.2002 (Sl.No. 224) and Central Excise Notification No. 06/2006-CE dated 01.03.2006 (Sl.No.84), respectively, for imports of Gear Box and its parts. The appellant also obtained and presented to the Customs Department a recommendation certificate from the Government of India, Ministry of New and Renewable Energy Sources as per condition No.35 of the said Notification. Accordingly, the Appellant was extended concessional rate of basic Customs duty of 5% instead of merit rate of 7.5%. The relevant portion of the Notification No. 21/2002-Cus during the relevant period reads as follows: -

224.	*84 or any Chapter*	*The following goods, namely :-*		
		(1) Wind operated electricity generators upto 30 KW and wind operated battery chargers upto 30 KW	*2.5%*	*35*
		(2) Parts of wind operated electricity generators, for the manufacture or the maintenance of wind operated electricity generators, namely :-	"	*35*
		(a) Special bearings		
		(b) Gear box,		

(c) Yaw components,

(d) Wind turbine controllers, and

(i) Parts of the goods specified at (a) to (d) above

(3) Blades for rotor of wind operated electricity generators, for the manufacture or the maintenance of wind operated electricity generators

(4) Parts for the manufacture or the maintenance of blades for rotor of wind operated electricity generators

(5) Raw materials for the manu-facture of blades for rotor of wind operated electricity generators.

35. If the importer at the time of importation,-

(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

(b) furnishes an undertaking to the said Deputy Commissioner or Assistant Commissioner to the effect 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;

(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.

Relevant portion of Notification No.6/2006-CE reads as follows: -

84.	*Any Chapter*	*Non-conventional energy devices/systems specified in List 5*	*Nil*

List 5
(See S.No. 85 of the Table)

(1) Flat plate solar Collector (2) Black continuously plated…………..
……..
***(13) Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller** (14) Water pumping windmill,……………………………………"*

1.3 The Department was of the view that the WOEG parts imports do not qualify for duty exemption as the Oil Cooling system does not have a direct relation with the gear box as the item cleared was an independent oil cooling system and not to be considered as part of the gear box. Thereafter, the department directed the Appellant to pay at the merit rate of duty for the oil cooling system cleared along with the gear box which was paid by the Appellant under protest as intimated *vide* letter dated 14.06.2011. Aggrieved, the Appellant filed an appeal before the Commissioner (Appeals) who vide order dated 18.09.2014 rejected the appeal of the Appellant and upheld the assessment made by the department. Hence the present appeal by the Appellant before this forum.

2. The main Grounds of Appeal filed by the Appellant are as specified below: -

i. It was averred that the Gear Box along with imported oil cooling system constitutes one integrated unit as per the specifications of the Appellant so as to suit the assembly of WOEG and the said oil cooling system could be used only in the gear box model imported as it provides the right oil flow for internal lubrication of the gear box at the right pressure valve, cleans the oil particles such as dust/ metal particles and cools the oil within the specified limits of the gear box, lest the gear box could mal function and would result in failure of wind turbine. It was submitted that the oil cooling system was an integral part of the gear box of WOEG and was designed to be used solely and principally to suit the technical requirement of the gear box and has no independent function as its sole function was to lubricate the gear box and function as a component of the gear box system as the gear box required adequate cooling system.

ii. It was submitted that the gear box and the oil cooling system forms part of one assembly set for WOEG though due to dimensional and logistics constraints, the cooling system was not assembled with the gear box at the supplier's factory.

iii. Reliance was placed on the ratio of the decision in the case of *Eureka Forbes Vs. Commissioner of Central Excise [2001 (130) ELT 146]* wherein it was held that a hose, specifically designed for a particular product cannot be capable of general use and would be classified as part of the machines and not as a hose. Reliance was also placed on the ratio of the decision in the case of *Commissioner Vs. Associated Cement Companies Ltd. [2001 (133) ELT 400]* wherein it was held that the item gear box and lubricating oil unit falls under the sub-heading 848390 on the ground that Gear Box is totally dependent upon the lubricating oil and both function simultaneously and not independently.

3. The Ld. Counsel Shri Shankar Raman for the Appellant recapitulated the averments in the grounds of appeal and further submitted that the Oil Cooling System is used in the manufacture of WOEG and once it is a part of the WOEG/Gear Box then the benefit of the notification should be allowed even if it is used only for maintenance. It was pointed out that the Commissioner (Appeals) failed to see that the classification of the product is not relevant to enjoy the notification as it was clearly stated in the notification that it can fall under Chapter 84 or any chapter. Reliance in this regard was placed on the ruling of the Hon'ble Supreme Court in the case of CCE -Vs- Hyundai Unitech Electrical Transmission Ltd. 2015 (323) ELT 220 (SC) wherein it was held as follows:

> *"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."*

It was not disputed by the Department that Oil Cooling System was not used in WOEG as it was held in the case *of Commissioner of Customs Vs. Hine Hydraulics India Pvt. Ltd. [2016 (333) ELT 327 (T)]* as follows: -

> *"5. There is nothing on record to show that the goods imported by the respondent were used elsewhere other than by specific use thereof in hydraulic systems used in windmills. There was no practical demonstration or testing of the goods imported done to rule out that respondent's case does not fall under Sl. No. 13 under list 8 to the notification above. Sl. No. 13 deals with the goods "wind operated*

electricity generator, its components and parts thereof including rotor wind turbine controller."

6. It is noticed that respondent being a manufacturer of hydraulic systems used in windmill, parts of the hydraulic systems used in wind mill was to generate non-conventional energy devices or systems. The goods characterized as 'non-conventional energy devices or systems' specified under list 8 appended to the notification is exempt from ACD on import. Therefore moot question that comes up is whether the parts used in the hydraulic systems meant for manufacture of non-conventional energy device or system shall enjoy or eligible to exemption of ACD. When the entry under Sl. No. 13 under list 8 of the notification is read minutely that throws light that non-conventional energy devices itself is exempt from ACD. So also systems specified under list 8 appended to that notification is exempt from levy of ACD. What is called systems is elaborated in Sl. No. 13 under list 8 to the notification. The systems are wind operated electricity generator with its components and parts thereof including rotor and wind turbine controller. This clearly throws light that not only a complete system is exempt but also the components and parts thereof are equally entitled to be exempt from ACD"

It was submitted that in the light of the above decision of the Tribunal and the views expressed in the case of *Vestas Wind Technology India Pvt. Ltd. Vs. Commissioner of Customs [2015 (327) ELT 195 (T)]* the appellant is entitled for the benefit of exemption.

4.1 The Ld. Authorised representative Shri Anoop Singh representing the Department affirmed the findings of the lower Appellate Authority. He has drawn our attention to the fact that the Gear Boxes manufactured by the supplier of the Appellant are complete in all aspects and the gear boxes manufactured are capable of functioning fully even without the oil cooling system. It was stressed that the Oil Cooling System was not an integral part of the Gear Box. It was put forth that the Oil Cooling System was not manufactured by the SEZ supplier of the Appellant, but was procured from DTA or imported by the SEZ supplier for supplying the same along with Gear Box to make it look as a part of the Gear Box which revealed that they are independent of each other and not eligible for the concession. It was also pointed out in this regard that the oil cooling systems were cleared as such without fitting it on to gear box and the SEZ supplier was not supplying Oil Cooling Systems to other buyers to whom they were supplying gear boxes and therefore it was established that the Oil Colling system was not a part of Gear Box and not so entitled to exemption. He has further argued that the oil cooling system is not even an accessory without which the Gear Box is not capable of functioning. The cooling systems procured from overseas suppliers or DTA are not being supplied to other buyers evidencing that these are not specifically designed for any particular product without which the Gear would not function. The oil cooling system has to be taken as an individual function and not as a part of Gear Box.

4.2 He has supported the findings of the Appellate Authority, that the Oil Cooling system has to be appropriately classified under CTH84199090 and cannot be included under CTH 84834000 meant for Gear Box and Parts, thus making them ineligible for the exemption.

5. Heard both sides and carefully considered the submissions and evidences on record.

6. The issue which arises for decision in this appeal is Whether the Oil Cooling System procured by the Appellants along with the gear box from the SEZ supplier, could be considered as a part of the gear box for the purpose of availment of exemption under Notification No. 21/2002-Cus dated 01.03.2002 and Notification No. 06/2006 CE dated 01.03.2006?

7. We find that the appellant is engaged in manufacture of WOEG for which import of Gear Boxes was made from M/s. Hansen Drives, a SEZ supplier who had supplied Oil cooling system along with the gear box claiming it to be an integral part of the Gear Box. The appellant claimed the benefits of Notification No. 21/2002-Cus. dated 01.03.2002 and Notification No. 6/2006-CE dated 01.03.2006 as amended for availing concessional rate of basic Customs duty of 5% instead of merit rate of 7.5%, in respect of Gear Box and Oil Cooling system cleared from SEZ. However, the benefit of exemption under the cited Notifications, in respect of oil cooling system, was denied by the department resulting in duty payment under protest. The appellant had obtained gear boxes from the SEZ unit from 29.09.2008 to 22.03.2011 by availing the above exemptions. It was submitted that the oil cooling system was an integral part of the gear box of WOEG as it was designed to be used solely and principally to suit the technical requirements of the gear box, and the Oil Cooling System has no independent function as its sole function was to lubricate the gear box.

8. On the other hand, the department is contesting that the oil cooling system supplied by the SEZ Unit along with the gear box was not manufactured by them but procured either from DTA units or imported and supplied along with the manufactured gear box to make it appear that the oil cooling system formed an integral part of the gear box. It was also pointed out that the oil cooling systems were cleared as such without fitting it on to the gear boxes and the SEZ supplier was not supplying the Oil Cooling Systems to other buyers to whom they were supplying gear boxes and the

Appellant could have themselves independently procured the Oil Cooling System from open market instead of procuring it from the SEZ supplier therefore stressing that the Oil Cooling system was not a part of Gear Boxes and not entitled to exemption. It was further submitted that Oil Cooling system merits classification under CTH 84199090 and cannot be included under CTH 84834000 meant for Gear Box and Parts, thus making them ineligible for the exemption.

9. From the records and documents in the Appeal, it is evident that the purpose of the Gear Box unit is to transmit power. A gearbox is typically used in a wind turbine to increase rotational speed from a low -speed rotor to a high-speed electrical generator. In general, the gearbox is a power transfer system whose function is to distribute engine power to other engine parts. The goal is that these components can produce a movement either in the form of shifts or rotations. A basic gearbox has the following main components: gear housing, gears, shafts and bearings. Each has its own function. For example, bearings are present on shafts, reducing friction, while gears help in the speed depending on the type of the engaging gears, the input torque and speed, and the designed speed and torque ratios, the energy converting efficiency of gearboxes may be as low as 35% or as high as 90%.Therefore, somewhere between 10% and 65% of the power supplied to the gearbox is turned into heat. This may cause a rapid rise in gearbox temperature, resulting in a breakdown of the lubricating properties of the gear oil. Unless a high rate of cooling is maintained during operation, this loss of lubrication may lead to damage which can result in the failure of the gearbox. Thus, Oil cooling systems in windmills serve a vital purpose in maintaining the efficiency of these renewable energy sources. They are

primarily responsible for cooling the lubricating oil that circulates through the turbine's gearbox. The gears connect the low-speed rotating rotor and increase the rotational speeds from around 50 rpm up to 1800 rpm. This major jump in rotational speed requires a huge assembly of industrial gears that depend on gear oil to ensure smooth rotations and to keep temperature stable. As this oil is critical to the gearbox's function, there are normally separate compartments for the gearbox cooling system and the oil filtering system to remove any impurities. Another problem that occurs inevitably is the contamination of gear oil and/ or lubrication, which increases in dustier conditions. Dust will mix into tight spaces (like bearings) and acts as an abrasive, wearing away critical components. Turbines have oil filtering or servicing to make sure there is minimal disruption but, in some cases, pitting can lead gradually to oil leaks and catastrophic failures.

10. These are the submissions of the appellant that the Gear Box units heat up when the oil inside is contaminated or damaged or if the flow of the oil is not smooth and as per specifications of the relevant Gear Box. Therefore, in order to facilitate smooth functioning of the Gear Box, suitable cooling system is required for lubrication of Gear Box which would ultimately result in performance of the wind turbine without any malfunction. In fact, the oil cooling system apparently is designed to suit the technical requirement of the Gear Box and it has no independent function and its sole function is to lubricate the Gear Box and function as a component of the Gear Box system. Hence a Gear Box cannot function without the oil cooling system. A reading of the Notification No. 21/2002-Cus. would show that parts of Gear Box are also covered by the above aforesaid Notification and entitled for the benefit. The fact that the Oil Cooling System is used for the

manufacture of WOEG is not under dispute. The said Oil Cooling System is used as a part of the Gear Box. It is not a decorative piece or an embellishment. It is very vital for the functioning of the Gear Box as stated by the supplier. This has not been disputed by the Commissioner (Appeals). It is an admitted fact that every time a Gear Box is purchased then an Oil Cooling System is also purchased. Therefore, it is an essential part of the Gear Box.

11. The main functions of the Oil Cooling System are explained to be that: -

i. It provides the right oil flow for the concerned gearbox internal lubrication points at the right pressure value.

ii. It cleans the oil from particles (dust, metal particles due to wear and tear).

iii. It cools the oil within the specified limits of the gearbox specification in order to maintain the optimal lubrication capability and a long-lasting use of the oil.

Without the oil treatment in the gearbox would result in mall functioning of gearbox and function of the wind turbine would also fail.

12. We find that in terms of the said notifications, parts of WOEG which are used for manufacture or maintenance are entitled for the benefit of the Notifications. The fact that Oil Cooling System is used in the manufacture of WOEG is not under dispute. Once it is a part of the WOEG/Gear Box then the benefit of the notification should not be disallowed.

It is not necessary that all the parts should be manufactured by the supplier. Even if it is used for maintenance then also the appellant is entitled for the benefit of the Notification. The impugned order failed to see that the classification of the product is not relevant to enjoy the notification as it has been clearly stated in the notification that it can fall under Chapter 84 or any chapter. From the above discussion, the Oil Cooling System is very much necessary for the functioning of WOEG. All parts are entitled for the benefit of the above notifications. The wordings contained in this Notification are wide enough to cover the Oil Cooling System and therefore the benefit of exemption under the above notification ought to be extended.

13. The benefit of Notification No. 21/2002-Cus. dated 01.03.2002 is further extendable only on production of 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. In this case, the appellant has produced such a certificate before the customs while clearing the Gear Boxes along with the cooling systems. Though, we have asked for a copy of the certificate obtained from the Deputy Secretary in the Ministry of Non-conventional Energy recommending exemption, the same could not be made available for our perusal.

14. Further, from where M/s. Hansen Drives, SEZ, Coimbatore is procuring the oil cooling system and whether from the DTA or importer is also not coming forth. However, the appellant's reliance on the Hon'ble Supreme Court's decision in the case of *Commissioner of Central Excise Vs. Hyundai Unitech Electrical Transmission Ltd. [2015 (323) ELT 220 (SC)]* wherein it was held that windmill doors / towers doors are parts of the Windmill Operated Electricity Generator on the premise, the tower is held as a part of generator and so door thereof has to be necessarily a part of generator is applicable to the facts of the case. Further, in the case of *Commissioner of Customs Vs. Hine Hydraulies India Pvt. Ltd. [2016 (333) ELT 327 (T)],* the Tribunal Chennai held that parts of the hydraulic systems used in windmill meant for manufacture of non-conventional energy devices were eligible for exemption from Additional Customs Duty (ACD). The above exemption Notification grants benefit to Wind Operated Electricity Generator and for its components and parts thereof, including rotor and wind turbine controller.

15. Appreciating the ratio of the above decisions and also after analysing the facts obtaining in this appeal, the cooling system which is used to lubricate the Gear Box is to be considered as a part of Gear Box and thus becoming eligible for exemption under the Notification No. 21/2002-Cus. dated 01.03.2002 (Sl.No. 224) and also under Central Excise Notification No. 06/2006-CE dated 01.03.2006 (Sl.No.84).

16. In the result, the appeal filed by the appellant is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 30.09.2024)

Sd/-	Sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

MK