

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Customs Miscellaneous Application No.40100 of 2025
(on behalf of Appellant)

&

Customs Appeal No. 40848 of 2013

(Arising out of Order-in-Original No.20027/2013 dated 31.12.2012
passed by Commissioner of Customs (Seaport-Import), Custom House,
60, Rajaji Salai, Chennai 600 001)

**M/s.Siemens Gamesa Renewable
Power Private Limited**

... Appellant

(earlier known as Gamesa Wind Turbines Private Limited)
No.489, GNT Road,
Thandal Kazhani Village,
Vadagarai Post,
Red Hills,
Chennai 600 052.

VERSUS

**The Commissioner of Customs
(Seaport-Import)**

... Respondent

Custom House,
60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Ms. Shobhana Krishnan, Advocate for the Appellant
Shri N. Satyanarayana, Authorized Representative
for the Respondent

CORAM :

**HON'BLE SHRI P. DINESHA, MEMBER (JUDICIAL)
HON'BLE SHRI M. AJIT KUMAR, MEMBER (TECHNICAL)**

FINAL ORDER No.40336/2025

DATE OF HEARING : 11.02.2025
DATE OF DECISION : 12.03.2025

Per: Shri P. Dinesha

The above MA has been filed by the petitioner-appellant seeking to amend the cause title from "M/s.Gamesa Wind Turbines Private Limited." to "**M/s.Siemens Gamesa Renewable Power Private Ltd.**". Copy of Incorporation Certificate issued by the Registrar of Companies, Chennai is placed on record. The request is allowed. MA for change of cause title is allowed. Registry is directed to amend the cause title accordingly.

2. The SCN dated 12.03.2012 issued by the DRI reveals that the assessee – importer had imported and cleared two consignments of tower by classifying the same under CTH8503, the details/descriptions as per the relevant Bills of Entry have been reproduced in Table-1 of the SCN. The description of the items imported is thus very clear. It is the case of the DRI that on verification of the declaration made by the importer insofar as the classification is concerned, the importer had misclassified the said Towers under CT Item 8503 0090, availed benefit of 7.5% of Basic Customs Duty and 'Nil' rate of duty under Central Excise Notification No. 06/2006, Serial No. 84. The DRI appears to have investigated into the issue during the course of which, they appear to have summoned general manager of the importer to record his statement, including some of the other

employees of the importer-company. Upon analysis of the statements in the context of the classification admitted by the importer, the DRI appears to have felt that the goods in question were appropriately classifiable under CTH 7308 as according to them, there is a specific heading for classification of towers.

3. It was thus alleged that the importer had misclassified the goods in question and, consequently, it was proposed *vide* show cause notice dated 12.03.2012 to re-classify the as Tariff Item 7308 2020 of Customs Tariff Act, 1975. The differential duty along with applicable interest was also proposed to be recovered, apart from proposal to confiscate the goods in question under Section 111(m) *ibid* and penalty under Section 112(a) *ibid*.

4. It appears that the importer filed a detailed reply along with relevant documentary evidences in response to the above SCN, but however, not satisfied with the same, the Original Authority *vide* OIO No.20027/2013 dated 31.12.2012 rejected both the explanation as well as the classification declared by the importer and confirmed the proposed demands for the normal period. In the impugned order, the commissioner has *inter alia* observed that the goods in question were not the actual working parts of the turbine generator; do not provide any operational or mechanical interaction with the generator, CTI 73082019 specifically covered towers and hence, the classification adopted by the importer cannot be accepted. It was also found that the towers in question cannot be considered as

either the parts are components of the WOEK set and therefore cannot be classified under heading 8503.

5. It is against this order that the present appeal has been filed before us, however, since the Commissioner has dropped the demand for the larger period, the scope of the appeal as explained by the Id. Advocate is restricted to the normal period alone.

6. Heard Ms. Shobhana Krishnan, Ld. Advocate for the Importer–Appellant and Shri N.Satyanarayana, Ld. Assistant Commissioner for the Commissioner-Respondent.

7. We have carefully considered the documents placed on record and we have also considered the judicial precedents relied upon during the course of arguments before us. Upon considering the rival contentions, the only issue to be decided by us is, “Whether the Revenue is justified in re-classifying the Towers in question under CTI 7308 as against that declared by the appellant under CTH 8503 ?”

8. The CTI 7308 refers to “*Structures and parts of structure, (for example bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of Iron or Steel*”). Further, Notes to Section XVI under 2 (b) indicates that other parts, if suitable for use solely or principally with a

particular kind of machine or with a number of machines of the same heading are to be classified with machines of that kind or in Heading 8503. It is the case of the importer that the towers in question were for specific use as could be seen from the very description in the Bill of Entry, which says that the towers are exclusively used as parts of WOEG, we have perused the copy of the Bills of Entry placed on record and we find that the description as explained by the appellant is correct. Against this, the Revenue is of the view that the 'Tower' is specifically and more appropriately classifiable under 7508 since there is a specific Heading under the same. Further, the Chapter Heading 8503 specifically refers to parts suitable for use solely or principally with the machines of Heading 8501 or 8502.

9. CTH 8502 specifically refers to *Electric Generating Sets* and *Rotary Converters* and 8502 3100 refers to '*wind powered*'. CTI 7308, as indicated by us in the above paragraphs refers to '*structures or parts of structures* (including towers, etc.) and hence, the structure is more a General Term [civil in nature], but what makes the difference is the reference to 'Wind Power Generator'. There is no doubt that right from the importation, the import was clear that the goods in question were used solely and exclusively as 'Tower' part of WOEG. In fact, from Circular No. 1008/15/2015-CX dated 20.10.2015 which is relied upon by Ms. Shobhana Krishnan refers to a decision of the Hon'ble Apex Court in the case of **M/s. CCE Nagpur Vs Hyundai Unitech Electrical Transmission Ltd.**– 2015 (323) ELT 220 (SC) wherein, it has been held clearly that

Customs Misn. Application No.40100 of 2025
Customs Appeal No. 40848 of 2013

the 'Tower' is a part of the Generator and hence, door thereof has to be necessarily a 'part of the Generator'. The said Board's circular reads as under: –

Wind Operated Electricity Generators (WOEG) — Tower, Nacelle, Rotor, Wind Turbine Controller, Nacelle Controller and Control cables eligible for exemption under Notification No. 12/2012-C.E. — Clarification

Circular No. 1008/15/2015-CX, dated 20-10-2015

F.No. 201/08/2015-CX. 6

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Clarification regarding tower and blades constitute an essential component of Wind Operated Electricity Generators (WOEG) - Regarding

A large number of references have been received from the trade as well as the field formations to clarify whether exemption Notification No. 12/2012-Central Excise, dated 17-3-2012 covers part/components of Wind Operated Electricity Generators (WOEG). References have been received in relation to tower, tower doors, blades and electrical boxes.

2. The matter has been examined. In the aforesaid notification serial no. 332 read with List 8 exempts 'Wind operated electricity generator, its component and parts thereof including rotor and wind turbine controller' from Central Excise duty. In this regard, attention is invited to the judgement of Hon'ble Supreme Court dated 13th August, 2015 in case of *M/s. Gemini Instratech v. Commissioner of Central Excise, Nashik* in Civil Appeal No. 1218 of 2006, [2015 (323) E.L.T. 220 (S.C.)] wherein Hon'ble Apex Court (while deciding the eligibility of wind mill doors and electrical boxes of WOEG for exemption) has held that -

"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 unauthorized access and preventing entries of reptiles, insects, etc., inside the tower. This, according to us, would be sufficient to make it part of 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 opinion that there is no case of interference made out by the Department.

The appeal is accordingly dismissed"

3. Ministry of New and Renewable Energy had earlier clarified to CBEC on the subject that the following are parts of Wind Operated Electricity Generators.

- (i) *Tower* : which supports the nacelle and rotor assembly of a wind operated electricity generator.
- (ii) *Nacelle* : which consists of gear-box, generator, yaw components, flexible couplings, brake hydraulics, brake calipers, sensors, nacelle plate, nacelle cover and other smaller components.
- (iii) *Rotor* : consists of blades, hub, nosecone, main shaft, special bearings.
- (iv) Wind turbine controller, nacelle controller and control cables.

4. In view of the judgment of Hon'ble Supreme Court and clarification received from the administrative ministry, parts/components referred in Para 3 above may be treated as parts and components of wind operated electricity generators eligible for exemption under serial no. 332 of Notification No. 12/2012-Central Excise, dated 17-3-2012.

5. For any clarification regarding parts and component of WOEG, not covered in para 3 above, opinion of Ministry of New and Renewable Energy would be sought by the Board, if required. Issues relating to exemption of parts and components of WOEG not covered in para 3 above may be referred to Board through the Chief Commissioner concerned, if required.

6. Difficulty experienced, if any, in implementing the circular should be brought to the notice of the Board. Hindi version would follow.

10. From this, it is clear that the 'tower' in question, as understood by the Board is clearly a part of the Wind Electric Generator and not a General/Civil Structure as understood by the Commissioner in the impugned order. The Commissioner is clearly in error in misunderstanding that the 'tower' in question is not a part of Wind Energy Generator, nor do we see any justification for generalizing

the 'tower' in question. The conclusion drawn is therefore bereft of any merits and hence, the said finding cannot sustain, which we set aside. Further, the Id. Advocate has relied upon various decisions which support the contentions of the appellant. In one of the cases, viz. **CC Chennai Vs Suzlon Towers and Structures Limited**, Chennai Bench vide Final Order No.40093/2024 dated 25.01.2024 (in Appeal No.C/41383/2014) has even considered the classification of 'tower flanges' against rival tariffs *vis-à-vis* the eligibility for exemption benefit of Notification No.12/2012. The Bench has after a detailed analysis, concluded that the tower flanges are clearly parts of WOEI classifiable under 8503. Further, the other orders of the Benches are on the same line. In view of the above, therefore, we are of the view that the classification declared by the importer is correct and hence, the Revenue has erred in re-classifying the same. Accordingly, we set aside the impugned order and allow the appeal with consequential benefits, if any as per law.

(Order pronounced in the open court on 12.03.2025)

sd/-

(M. AJIT KUMAR)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)