CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT No. I

Customs Appeal No. 40284 of 2024

with

Customs Miscellaneous Application No. 40106 of 2026

(Arising out of Order-in-Original No. 104830/2024 dated 30.01.2024 passed by the Commissioner of Customs (Preventive), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Vestas Wind Technology India Pvt. Ltd. **...Appellant**
Tower 1, 9th Floor, International Tech Park,
Chennai-Radial Road (ITPC RR),
Zamin Pallavaram,
Chennai – 600 117.

Versus

Commissioner of Customs **...Respondent**
Chennai III (Preventive) Commissionerate,
No. 60, Rajaji Salai,
Custom House,
Chennai – 600 001.

<u>APPEARANCE:</u>

For the Appellants : Mr. T. Viswanathan, Advocate
For the Respondent : Mr. Anoop Singh, Authorised Representative

<u>CORAM:</u>
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

<u>FINAL ORDER No. 41025 / 2026</u>

DATE OF HEARING : 20.04.2026
DATE OF DECISION : 18.09.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal has been filed by M/s. Vestas Wind Technology India Pvt. Ltd. (hereinafter referred to as "the appellant") against Order-in-Original No.104830/2024 dated 30.01.2024 (hereinafter referred to as "the impugned order") passed by the Principal Commissioner of Customs, Chennai III(Preventive), whereby differential duty amounting to Rs.39,84,80,470/- along with interest, redemption fine and penalties under the Customs Act, 1962 were confirmed against the appellant.

2. The facts, in brief, are that M/s. Vestas Wind Technology India Pvt. Ltd. (hereinafter referred to as "the appellant"), engaged in the manufacture and supply of Wind Operated Electricity Generators (WOEGs), imported various parts of WOEGs, classifiable under CTH 85030090, from China through several Bills of Entry. The Department formed a view that the imported goods constituted "castings for wind operated electricity generators" falling within the scope of Notification No. 01/2016-Customs (Countervailing Duty) dated 19.01.2016 and Notification No. 42/2017-Customs (Anti-Dumping Duty) dated 30.08.2017. Accordingly, Show Cause Notice was issued proposing recovery of differential duty under Section 28 of the Customs Act, 1962.The appellants contested the proceedings, *inter alia*, contending that a substantial number of the imported goods comprised forged components, machined assemblies, fabricated structures, electrical systems and other non-casting products, which fell outside the scope of the Product Under Consideration (PUC). It was further contended that the imports were effected under valid Advance Authorisations;

that the export obligations prescribed thereunder had been duly fulfilled; that Export Obligation Discharge Certificates (EODCs), Redemption Certificates, Chartered Accountant's Certificates and bond discharge orders had been issued by the competent authorities certifying such compliance; and that an earlier Show Cause Notice dated 29.01.2018, covering substantially similar imports, demonstrated that the Department was already aware of the nature of the imported goods. Consequently, it was contended that the invocation of the extended period of limitation in the present proceedings was legally unsustainable. The Show Cause Notice was adjudicated vide Order-in-Original No. 104830/2024 dated 30.01.2024, whereby differential duty amounting to Rs. 39,84,80,470/-, together with applicable interest under Section 28AA of the Customs Act, 1962, was confirmed against the appellant. The adjudicating authority further held that the subject goods were liable to confiscation under Section 111(m) of the Customs Act, 1962 and, in lieu of confiscation, imposed a redemption fine under Section 125 of the said Act. Penalties were also imposed upon the appellant under Sections 114A of the Customs Act, 1962. Aggrieved by the said Order-in-Original, the appellant has preferred the present appeal before this Tribunal.

3. During the pendency of the appeal, the appellants filed a Miscellaneous Application seeking leave of the Tribunal to urge certain additional grounds. At the time of hearing, the Ld. Counsel appearing for the appellants submitted that the additional grounds contained in paragraphs A6 to A11 were not pressed and were accordingly given up. The said submission was duly recorded. The remaining additional grounds arise purely from legal submissions founded upon the existing and undisputed facts already available on record. They involve only questions of law and do not necessitate any investigation into fresh facts or the production of additional evidence. Since the determination of these grounds can be undertaken on the basis of the pleadings, the impugned order and the documents already forming part of the record, the Miscellaneous Application deserves to be allowed to that extent. Accordingly, the additional grounds contained in paragraphs A1 to A5, A12 to A22 and B1 to B4 are taken on record for consideration, whereas the additional grounds contained in paragraphs A6 to A11 stand dismissed as not pressed. The appeal shall, therefore, be decided on the basis of the original grounds of appeal read together with the surviving additional grounds, and the findings recorded in this Final Order are confined to those issues alone.

4. The Ld. Counsel Shri T. Viswanathan appearing for the appellant, submitted that the imports effected under valid Advance Authorizations are specifically exempt from the levy of duties under Section 9 and Section 9A of the Customs Tariff Act, 1975, by virtue of Notification No. 18/2015-Customs dated 01.04.2015 read with the relevant provisions of the Foreign Trade Policy, 2015–2020.

4.1 The Ld. Counsel submitted that the appellant had duly fulfilled the export obligations prescribed under the Advance Authorisations and that the DGFT had issued Export Obligation Discharge Certificates (EODCs) certifying such fulfilment. It was contended that, once the competent licensing authority has issued the EODCs, the Customs authorities cannot disregard or reopen the issue on the basis of mere assumptions regarding non-fulfilment of the export obligations.

4.2 It was further submitted that the jurisdictional Customs authorities themselves had discharged and cancelled the bonds executed by the appellant after due verification and upon being satisfied regarding fulfilment of the export obligations. In such circumstances, it was argued that the continuation of the present proceedings is wholly unsustainable in law.

4.3 The Ld. Counsel further contended that the imported goods were not entirely "castings", as alleged by the Department. In support of this contention, reliance was placed on the technical catalogues and engineering literature produced by the appellant. Reliance was also placed upon the test report issued by the CSIR–National Metallurgical Laboratory, which, according to the appellant, establishes on technical examination that some of the imported goods. It was, therefore, contended that the impugned demand erroneously includes forged parts, machined assemblies, fabricated structures, electronic components and other non-casting items which fall outside the scope of respective CVD/ADD Notifications.

4.4 The Ld. Counsel further submitted that the proceedings initiated by issuance of the Show Cause Notice after the expiry/sunset of Notification No. 01/2016-Customs (CVD) and Notification No. 42/2017-Customs (ADD) are legally unsustainable in view of the additional grounds raised in application and judgments of the Hon'ble Supreme Court in *Union of India v. Kumho Petrochemicals Co. Ltd., 2017 (351) E.L.T. 65 (S.C.),* and *Kolhapur Canesugar Works Ltd. v. Union of India, 2000 (119) E.L.T. 257 (S.C.).*

4.5 It was also submitted that the entire demand is barred by limitation, as all the imports were effected through regularly assessed Bills of Entry and all material facts, including the nature, description and particulars of the imported goods, were fully and truly disclosed to the Customs authorities at the relevant time. It was, therefore, contended that there was neither suppression of facts nor any wilful misstatement so as to justify invocation of the extended period of limitation under Section 28 of the Customs Act, 1962.

4.6 Apart from the above, the Ld. Counsel reiterated several other contentions, as set out in the grounds of appeal. It was, inter alia, contended that imports effected under valid Advance Authorisations are exempt from the levy of Countervailing Duty (CVD) and Anti-Dumping Duty (ADD) in terms of Notification No. 18/2015-Customs; that CVD and ADD are leviable only on castings falling within the scope of the Product Under Consideration and not on other parts or components used in the manufacture of Wind Operated Electricity Generators (WOEGs); that the extended period of limitation is not invocable since the dispute pertains to the interpretation of the applicable notifications, an earlier Show Cause Notice covering substantially similar goods had already been issued, and there was neither wilful suppression nor misstatement of facts; and that the appellant had correctly declared the correct description and all relevant particulars of the imported goods before the Customs authorities.

5. *Per contra*, the Ld. Authorized Representative Shri Anoop Singh, appearing for the Revenue, reiterated the findings recorded in the impugned Order-in-Original and submitted that the imported goods squarely fall within the description of "Castings for Wind Operated Electricity Generators" covered by Notification No. 01/2016-Customs (Countervailing Duty) dated 19.01.2016 and Notification No. 42/2017-Customs (Anti-Dumping Duty) dated 30.08.2017. It was submitted that exemption notifications are required to be construed strictly and that the burden of establishing eligibility to exemption rests entirely upon the importer. According to the learned Authorised Representative, the appellant failed to establish the requisite one-to-one correlation between the imported goods and the fulfilment of export obligations under the Advance Authorisations. It was further contended that machining, drilling or partial processing did not alter the essential character of the imported goods as "castings", and that such goods continued to remain liable to Countervailing Duty and Anti-Dumping Duty under the aforesaid notifications. The Ld. Authorized

Representative further submitted that proceedings initiated under Section 28 of the Customs Act, 1962 are maintainable notwithstanding the expiry or sunset of the levy notifications, since the liability, if any, had accrued on the date of importation, i.e. the time of taxable event, and Section 28 merely provides the statutory machinery for demand of duties not levied, short-levied or short paid. It was also contended that the appellant had failed to correctly declare the true nature and classification of the imported goods, thereby justifying invocation of the extended period of limitation under the proviso to Section 28(4), confiscation of the goods under Sections 111(m), and imposition of penalties under Section 114A of the Customs Act, 1962.

5.1 In support of the aforesaid submissions, the Ld. Authorized Representative placed reliance upon *State of Punjab v. Mohar Singh, AIR 1955 SC 84; State of Orissa v. M.A. Tulloch & Co., AIR 1964 SC 1284; Fibre Boards (P) Ltd. v. Commissioner of Income Tax, (2015) 10 SCC 333 (Three-Judge Bench); Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO, (2007) 5 SCC 447; Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise, 2016 (332) E.L.T. 769 (S.C.); Commissioner of Income Tax v. Mahindra & Mahindra Ltd., (2018) 16 SCC 79; Sunita Mehta v. Union of India (Delhi High Court);* and *Jai Jai*

Ram Manohar Lal v. National Building Material Supply, AIR 1969 SC 1267, to contend that accrued rights and liabilities ordinarily survive the repeal or expiry of a statutory instrument unless the legislative scheme manifests a contrary intention, and that Section 28/142 of the Customs Act, 1962 constitutes the machinery provision for demand and recovery of duties lawfully leviable respectively. The Ld. Authorised Representative further sought to distinguish the decisions of the Hon'ble Supreme Court in *Rayala Corporation (P) Ltd. v. Director of Enforcement, AIR 1970 SC 494; Kolhapur Canesugar Works Ltd. v. Union of India, 2000 (119) E.L.T. 257 (S.C.);* and *Union of India v. Kumho Petrochemicals Co. Ltd., 2017 (351) E.L.T. 65 (S.C.),* on the ground that those decisions were rendered in different statutory contexts and did not govern demand proceedings initiated under Section 28 of the Customs Act, 1962 or recovery proceedings under Section 142 of the Customs Act,1962, in respect of imports effected during the currency of valid levy notifications.

5.2 The Ld. Authorized Representative accordingly prayed that the appeal be dismissed and the impugned Order-in-Original be upheld. It was submitted that the imported goods are correctly classifiable as "Castings for Wind Operated Electricity Generators" covered by Notification

Nos. 01/2016-Customs and 42/2017-Customs and are, therefore, liable to Countervailing Duty and Anti-Dumping Duty. It was further submitted that the appellant had failed to establish its entitlement to exemption under Notification No. 18/2015-Customs or compliance with the conditions governing the Advance Authorisations and, therefore, the confirmation of duty demand, interest, confiscation, redemption fine and penalties is fully justified. The learned Authorised Representative also prayed that the additional grounds challenging the maintainability of the proceedings on account of the expiry of the levy notifications be rejected.

6. We have carefully considered the appeal records, the impugned Order-in-Original, the Show Cause Notice, the documentary and technical evidence placed on record, and the rival submissions advanced by the both sides. Upon such consideration, the following issues arise for our determination: -

i. Whether the additional grounds permitted to be raised under the Miscellaneous Application, challenging the maintainability of the proceedings initiated after the expiry of Notification No. 01/2016-Customs (Countervailing Duty) dated 19.01.2016 and Notification No. 42/2017-Customs (Anti-Dumping Duty) dated 30.08.2017, are legally sustainable?

ii. Whether the subject imports effected under valid Advance Authorisations are entitled to exemption from Countervailing Duty and Anti-Dumping Duty in terms of extant Notification No. 18/2015-Customs?

iii. Whether the imported goods, other than those covered by valid Advance Authorisations, are liable to Countervailing Duty and Anti-Dumping Duty as "Castings for Wind Operated Electricity Generators" in terms of Notification No. 01/2016-Customs (CVD) and Notification No. 42/2017-Customs (ADD)?

iv. Whether the duty demand is sustainable with reference to the normal period of limitation, the extended period under the Section 28(4) of the Customs Act, 1962, and the period beyond the statutory limit of five years; and, consequently, whether the confiscation, redemption fine, interest and penalties imposed under the Customs Act, 1962 are legally sustainable?

7. We now proceed to examine the issues framed for determination sequentially.

8. The present appeals involve questions relating to the applicability of the Advance Authorisation Scheme, the scope and ambit of the Product Under Consideration (PUC) under the Countervailing Duty and Anti-Dumping Duty

Notifications, and the consequential duty liabilities. Since the determination of these issues principally turns upon the interpretation of the relevant statutory provisions, the exemption and levy notifications, the Foreign Trade Policy, and the Final Findings recorded by the Designated Authority, it is appropriate to first examine the statutory and legal framework governing the controversy.

9. The exemption claimed by the appellants is founded upon Notification No. 18/2015-Customs dated 01.04.2015, issued under Section 25 of the Customs Act, 1962. The levy of Countervailing Duty arises under Notification No. 01/2016-Customs (CVD) dated 19.01.2016, whereas the levy of Anti-Dumping Duty arises under Notification No. 42/2017-Customs (ADD) dated 30.08.2017, both issued under the Customs Tariff Act, 1975. The scope of the Product Under Consideration (PUC) is delineated in the Final Findings of the Designated Authority, which constitute the very foundation for the imposition of the aforesaid trade remedial duties. Since the rights and liabilities of the parties are governed by the interplay of these statutory provisions, notifications and the Final Findings, they are required to be read harmoniously.

10. The portion of Notification No. 18/2015-Cus. dated 01.04.2015 reproduced in the order reads as follows: -

> *G.S.R. 254(E).- In exercise of the powers conferred by subsection (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon 12 under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act, subject to the following conditions, namely:-*
>
> ******(iv) that in respect of imports made before the discharge export obligation in full, the importer at the time of clearance the imported materials executes a bond with such surety security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials respect of which the conditions specified in this notification are not complied with together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials:******
>
> *(ix) that the importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, within a period of sixty days of the expiry of period allowed for fulfilment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow:"*

11. The relevant extracts of the Final Findings issued by the Designated Authority vide Notification No. 17/6/2013-

DGAD dated 27.01.2015, delineating the scope of the Product Under Consideration (PUC), are reproduced below: -

> *"D.4. Examination by the Authority*
> *10. The meaning and scope of the product under consideration was defined by the Authority in the initiation notification as follows:*
> *"5. The product under consideration in the present investigation is "Castings for Wind Operated Electricity Generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators". A Windmill requires a number of casting parts, including the Hub, Rotohub, Rotor Nabe, Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation, Bearing Housing, Bearing Support, Hollow Shaft, Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft, Lateral Suspender, Pitch Stop, Stator, Generator castings, Part of Generators, Rotor, Torque Arm support, etc. The basic function of a casting is in a wind turbine, to be used in a wind mill along with some other noncasting parts and components like blades, etc. which leads to the generation of electricity.*
> ****."*
> *11. Following are the observations made by the Authority in regard to the product under consideration:*
> ******* x. In view of the above, the Authority holds that the scope of the product under consideration defined in the notice of initiation is appropriate and defines the scope of the product under consideration for final determination as follows: "Castings for wind-operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators"*

12. The relevant extracts of the Final Findings issued by the Designated Authority vide Notification No. 14/28/20163-DGAD dated 28.07.2017, delineating the scope of the Product Under Consideration (PUC), are reproduced below: -

> *"9. The meaning and scope of the product under consideration was defined by the Authority in the initiation notification as follows:*

> _"The product under consideration in this investigation is "Castings for wind operated electricity generators also known as castings for windmills or wind turbines, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component, meant for windoperated electricity generators"._
>
> _4. A Windmill requires a number of casting parts, including the Hub, Rotohub, Rotor Nabe, Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, 10 Nacelle Foundation, Bearing Housing, Bearing Support, Hollow Shaft, Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft, Lateral Suspender, Pitch Stop, Stator, Generator castings, Part of Generators, Rotor, Torque Arm support, etc. These castings are used in the wind turbines along with some other non-casting parts and components like blades, etc. which leads to the generation of electricity. All such castings, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component, meant for wind-operated electricity generators are covered in the present investigation."_
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> _***11**(v)In view of the above, the Authority holds that the scope of the product under consideration defined in the notice of initiation is appropriate and defines the scope of the product under consideration as follows: "Castings for wind-operated electricity generators also known as castings for windmill or wind turbine, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators"_

13. On a perusal of the Final Findings issued vide Notification No. 14/28/2013-DGAD dated 28.07.2017, it is evident that the Product Under Consideration (PUC) for the purpose of levy of Anti-Dumping Duty under Notification No. 42/2017-Customs (ADD) dated 30.08.2017 is identical to the Product Under Consideration specified in the Final Findings issued vide Notification No. 17/6/2013-DGAD dated 27.01.2015, which formed the basis for the levy of Countervailing Duty under Notification No. 01/2016-Customs

(CVD) dated 19.01.2016.In other words, the goods falling within the scope of the Product Under Consideration and attracting Countervailing Duty under Notification No. 01/2016-Customs (CVD) are also liable to Anti-Dumping Duty under Notification No. 42/2017-Customs (ADD). An examination of the Customs Act, the Customs Tariff Act, the aforesaid notifications and the Final Findings of the Designated Authority shows that while the expression "Product Under Consideration" has been specifically defined, the expressions "casting", "forging", "sub-assembly", "equipment" and "component" have not been separately defined in either the Customs Act or the notifications. Consequently, those expressions must receive their ordinary technical meaning having regard to the context in which they are employed, the object sought to be achieved by the notifications and the accepted principles governing tariff interpretation.

14. Equally significant is the language consciously employed by the Designated Authority while defining the Product Under Consideration (PUC). The PUC is not described as "all parts of Wind Operated Electricity Generators", nor does it encompass every article capable of being used in a wind turbine. Instead, its scope is expressly confined to "Castings for Wind Operated Electricity Generators, whether

or not machined, in raw, finished or sub-assembled form, or as part of a sub-assembly, or as part of an equipment/component meant for Wind Operated Electricity Generators." The emphasis, therefore, is on the essential character of the article as a casting. The expressions "sub-assembly", "equipment" and "component" merely describe the form or stage in which the casting may exist or be incorporated. They do not expand the scope of the levy so as to encompass every component or part used in a Wind Operated Electricity Generator irrespective of its manufacturing process or intrinsic character. Consequently, only those goods which retain the essential character of a casting fall within the ambit of the Product Under Consideration, whereas components manufactured through other processes, such as forging, fabrication, machining or assembly, cannot be brought within its scope merely because they are ultimately used in a Wind Operated Electricity Generator.

15. The description of the Product Under Consideration (PUC), as set out in the relevant notifications and the Final Findings of the Designated Authority, assumes considerable significance. The levy is expressly confined to "Castings for Wind Operated Electricity Generators" and does not extend to all parts, components or accessories used in

such generators. Consequently, the applicability of the notifications is determined by whether the imported goods satisfy the description of "castings" within the meaning of the Product Under Consideration, and not merely by their intended or actual end use in the manufacture or assembly of Wind Operated Electricity Generators. Mere use of a product in a Wind Operated Electricity Generator is, therefore, insufficient to attract the levy unless the product itself possesses the essential character of a casting.

16. It is equally well settled that the burden lies upon the Department to establish that the imported goods satisfy the statutory description attracting the levy. This burden assumes greater significance where the imports comprise technically distinct products manufactured through different processes such as casting, forging, machining and fabrication. A general or sweeping conclusion that all the imported goods are "castings" is legally impermissible. The Department is required to establish, on the basis of cogent evidence, component-wise and Bill of Entry-wise, that each imported article answers the description of the Product Under Consideration as defined in the relevant notifications and the Final Findings of the Designated Authority. In the absence of such evidence, no duty liability can be fastened merely on

the basis of the end use of the goods or broad assumptions regarding their nature.

17. Having examined the statutory framework governing the controversy, the relevant notifications, the Final Findings of the Designated Authority, and the settled principles governing the interpretation of fiscal statutes and exemption notifications, we now proceed to consider the issues framed for determination.

ISSUE (i) Whether the additional grounds permitted to be raised under the Miscellaneous Application, challenging the maintainability of the proceedings initiated after the expiry of Notification No. 01/2016-Customs (Countervailing Duty) dated 19.01.2016 and Notification No. 42/2017-Customs (Anti-Dumping Duty) dated 30.08.2017, are legally sustainable?

18.1 It is pertinent to note that the charge levelled against the appellant is one of short levy/short payment of customs duties, and the Show Cause Notice proposes recovery of the duties alleged to have escaped collection at the time of clearance of the imported goods. The substantive provision governing such recovery, namely Section 28 of the Customs Act, 1962, remains unamended. The allegation of short levy/short payment is founded upon the Revenue's contention that the imported goods are covered by the relevant CVD/ADD Notifications and were, therefore, liable to the duties specified therein.

18.2 In contradiction to the above contention, the appellant placed reliance upon *Rayala Corporation (P) Ltd. versus Director of Enforcement, New Delhi (1969) 2 SCC 412* and *Kohlapur Cane Sugar Works Ltd. versus Union of India (2000) 2 SCC 536. Per contra*, the Ld. Authorized Representative for the Revenue relied upon *Fibre Boards Pvt. Ltd., Bangalore versus Commissioner of Income Tax, Bangalore (2015) 10 SCC 333* and *Shree Bhagwati Steel Rolling Mills versus Commissioner of Central Excise (2016) 3 SCC 643.*

18.3 Having considered the rival submissions, we are of the considered view that the controversy can be resolved on a short but determinative point. The essence of the charge against the appellant is the alleged short levy/short payment of customs duties. The issue for consideration is whether proceedings initiated after the expiry of the relevant Notification are rendered non-maintainable solely on that ground.

18.4 In our view, the answer must be in the negative. The foundational allegation in the Show Cause Notice is the recovery of duties alleged to have been short levied or short paid. The taxable event is the importation of goods into India. It is an undisputed position that, on the date of import, the relevant CVD/ADD Notifications were in force and the imported goods were accordingly liable to the levy of such duties. The liability to duty, therefore, stood validly attracted upon importation of the goods. The expiry, omission, repeal or cessation of operation of a procedural provision or notification cannot, by itself, obliterate or defeat the substantive liability, nor can it extinguish the statutory power to recover duties otherwise lawfully recoverable under Section 28 of the Customs Act, 1962. Acceptance of the appellant's contention would amount to holding that the expiry of a procedural mechanism confers immunity from recovery of duties otherwise legally due, a consequence which neither flows from the statutory scheme nor is in accordance with settled principles of law.

18.5 The appellant's contentions are devoid of merit as the notification imposing antidumping duty under Section 9A of the Customs Tariff Act was neither repealed, rescinded, amended, nor superseded, but merely expired upon completion of its prescribed tenure. Consequently, Section 6 of the General Clauses Act has no application to such expiry, and its expiry cannot be construed as obliterating the notification or rendering it non-existent for the period during which it remained in force. Accepting such an argument would produce anomalous results by unsettling concluded actions undertaken during the notification's validity. Since the goods were imported while the notification was operative, the subsequent issuance of a show cause notice after its expiry does not invalidate the demand, which is independently sustainable under the demand mechanism provided in Section 28 of the Customs Act and recovery mechanism provided in Section 142. Further, by virtue of Section 9A(8) of the Customs Tariff Act, Section 159A of the Customs Act is also attracted, rendering the appellant's objection on that ground untenable. The present case concerns recovery of duty in respect of imports made during the currency of the notification and not any action relating to a period after its expiry.

18.6 Accordingly, we find no merit in the contention that proceedings for recovery of shortpaid duties could not have been initiated merely because the relevant Notification had ceased to remain in force. Such an interpretation would defeat the object of Section 28/142, which continues to provide the substantive authority for demand/recovery of duties that have escaped assessment or collection.

19. The above view also stands fortified by the decision of the Hon'ble Supreme Court in *Chandpaklal Ramanlal Shah and Anr. Versus Reliance Industries Ltd. 2017 (354) E.L.T. 289 (SC),* wherein the earlier decisions in *Rayala Corporation (P) Ltd. versus Director of Enforcement, New Delhi (1969) 2 SCC 412* and *Kohlapur Cane Sugar Works Ltd. versus Union of India (2000) 2 SCC 536,* relied upon by the appellant, were also placed before and considered by the Hon'ble Supreme Court. The relevant paragraphs of the judgment are extracted below: -

> *"6. It is not necessary to go into all the rival contentions. In our view, the matter can be decided on a short point. The charge against the respondent is of evasion of duty. The ingredient of the offence is the evasion. The omission of a procedural rule for availing the credit cannot in any manner affect the said charge. The prosecution cannot be deprived of opportunity to prove evasion which by itself is an offence. In this view of the matter, there was no justification for the High Court to quash the charge merely on the ground of Rule 56A having been omitted."*

19.1 The above view also stands fortified by the recent decision of the jurisdictional Hon'ble High Court of Madras in the *Sachin Bansal Versus The Directorate of Enforcement and others -2025 (2) TMI 17 - MADRAS HIGH COURT,* wherein again the earlier decisions in *Rayala Corporation (P) Ltd. versus Director of Enforcement, New Delhi (1969) 2 SCC 412* and *Kohlapur Cane Sugar Works Ltd. versus Union of India (2000) 2 SCC 536*, relied upon by the appellant, were also placed before and considered by the

Hon'ble High Court. The relevant paragraphs of the judgment are extracted below: -

*"Para 7. ***** In support of the said contention, the learned Senior Counsel appearing for the petitioners relied on the following judgments: (i) Rayala Corporation. (P) Ltd. and another v. Director Enforcement reported in (1969) 2 SCC 412; of (ii) Kolhapur Cane Sugar Works Limited and another Vs Union of India and others reported in (2000) 2 SCC 536.*

*It is further submitted by the learned counsel appearing for the petitioners that since there was no saving clause in Finance Act of 2015 which omitted Section 6(3) of FEMA, the impugned communication issued by the second respondent has no sanctity of law. ********

10. The learned Additional Solicitor General appearing for the Enforcement Directorate by drawing the attention of this Court to judgment of the Apex Court in Fibre Boards Private Limited Vs. Commissioner of Income Tax reported in (2015) 10 SCC 333 submitted that there is no difference between the expression "repeal" and "Omission". The decision of the Apex Court in Fibre Board case rendered the earlier decisions in Rayala Corporation case and Kolhapur Cane Sugar case as per incuriam as the effect of Section 6 (A) of General Clauses Act had not been discussed in those two judgments.

19. Thus the Apex Court in Fibre Board case cited supra by referring to Section 6(A) of General Clauses Act came to the conclusion that the expression 'repeal' would include 'omission'. In Fibre Board case, the Apex Court has gone to the extent of saying that the earlier two judgments in Royala Corporation and Kolhapur Cane Sugar Vs Union of India were rendered without considering the effect of Section 6(A) of General Clauses Act and therefore, those two judgments shall be treated as per incuriam.

20. The law laid down by the Apex Court in Fibre Board was reiterated in subsequent judgment of Apex Court in Shree Bhagwati Steel Rolling Mills Vs Commissioner of Central excise and another reported in (2016) 3 SCC 643.

21. The relevant observation of the Apex Court reads as follows:

"15. It is clear, therefore, that when this Court referred to Section 6-A of the General Clauses Act in Fibre Board case and held that Section 6-A shows that a repeal can be by way of an express omission, obviously what was meant was that an amendment which repealed a provision could do so by way of an express omission. This being the case, it is clear that Section 6-A undisputedly leads to the conclusion that a repeal would include a repeal by way of an express omission. (emphasis supplied) ......

23.Fibre Board case is a recent judgment which, as has correctly been argued by Shri Radhakrishnan, learned Senior Counsel on behalf of the Revenue, clarifies the law in holding that an omission would amount to a repeal. The converse view of the law has led to an omitted provision being treated as if it never existed, as Section 6 of the General Clauses Act would not then apply to allow the previous operation of the provision so omitted *or anything duly done or suffered thereunder. Nor may a legal proceeding in respect of any right or liability be instituted, continued or enforced in respect of rights and liabilities acquired or incurred under the enactment so omitted. In the vast majority of cases, this would cause great public mischief, and the decision of Fibre Board case is therefore clearly delivered by this Court for the public good, being, at the very least a reasonably possible view. Also, no aspect of the question at hand has remained unnoticed. For this reason also we decline to accept Shri Aggarwal's persuasive plea to reconsider the judgment in Fibre Board case. This being the case, it is clear that on point one the present appeal would have to be dismissed as being concluded by the decision in Fibre Board case."*

19.2 The above view also stands fortified by the recent decision of the Hon'ble High Court of Gujarat in the *Tonira Pharma Ltd. Versus The Union of India & Ors.- 2026 (6) TMI 1248 - GUJARAT HIGH COURT,* wherein again the earlier decisions in *Rayala Corporation (P) Ltd. versus Director of Enforcement, New Delhi (1969) 2 SCC 412* and *Kohlapur Cane SugarWorks Ltd. versus Union of India (2000) 2 SCC 536*, relied upon by the appellant, were also placed before and considered by the Hon'ble High Court. It is worthwhile to mention that the said decision has been rendered in the context of the ADD liability arising on importation of the goods during the subsistence of the notification issued under Section 9A(1). The relevant paragraphs of the judgment are extracted below: -

"22. Placing the judgment of Kolhapur Canesugar Works Ltd. vs. Union of India [(2000) 2 SCC 536], it was vehemently argued that the Apex Court therein has categorically held that the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book completely as if it had never been passed. The statute must be considered as a law that never existed. The only exception to this rule of common law is engrafted by the provisions of Section 6(1) of the General

Clauses Act, which provides for saving of the pending proceedings under the repealed enactment.

*23. It was argued that since there is no saving provision in favour of the proceedings initiated under the notification in question, which had expired on 15.04.2003, in the facts of the present case, the action for levying anti-dumping duty could not have been initiated by the show-cause notice issued on 26.08.2003 after expiry of the notification dated 21.07.2000 issued under Section 9A(1) of the Customs Tariff Act by, efflux of time. *****

*32. The submission is that Section 159A of the Customs Act would apply only to rule, regulation, notification or order made under the Customs Act, 1962. However, the notification dated 21.07.2000 was issued under Section 9A(1) of the Customs Tariff Act, 1975 and not under the Customs Act, 1962. So far as Section 9A(8) of the Customs Tariff Act, 1975, it was argued that the said provision borrows only certain specific provisions of the Customs Act, 1962, relating to non-levy, levy, refunds and appeal and Section 159A of the Customs Act is not borrowed and hence, the Tribunal has committed a grave error of law in holding that since Section 28 of the Customs Act is applicable to the Customs Tariff Act, 1975, and, therefore, notification dated 21.07.2000 is applicable even after its expiry. *****

34. It was, thus, argued that on expiry of the notification by efflux of time, it must be considered as if it was never enacted except for the transaction closed or completed during the subsistence of the notification. There being no saving clause or analogous provision as contemplated under Section 6 of the General Clauses Act, the show-cause notice having been issued after expiry of the tenure of the notification, is liable to be quashed outrightly. Section 9A of the Tariff Act cannot be invoked to exercise the enabling power of the Government to levy antidumping duty, inasmuch as, such power is subject to issuance of a notification under the said provision. In absence of the notification, there cannot be any levy of anti-dumping duty.

IV Arguments on behalf of the Revenue / Department:-
*****
*62. It was urged that the contention of the appellant that on expiration of the notification, the show-cause notice cannot be issued even when the import was during the subsistence of the notification is wholly misconceived. The arguments made by the learned counsel for the appellant based on the saving clause of the statute and Section 6 of the General Clauses Act, are wholly misconceived. ****

V Analysis and Findings:
****
83. While dealing with the said question, the Tribunal observed that Section 6 of the General Clauses Act has no application in respect of the notification and hence, the contention canvassed on the basis of the said provision are not to be dealt with.

However, considering the effect of Section 159A of the Customs Act, 1962, it was held that any rule, regulation, notification or order made or issued under the Act once amended, repealed, superseded or rescinded, unless a different intention appears, such amendment, repeal, supersession or recession shall not affect the previous operation of such rule, regulation, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder.

84. It was observed that the amendment, repeal, supersession or recession shall also not affect any penalty, forfeiture or punishment incurred in respect of any offence committed or in violation of any rule, regulation, etc. so amended repealed, superseded or rescinded.

85. It was noted that Section 159A has been inserted by the Finance Act, 2001 with effect from 11.05. 2001. It was also held that by Section 114 of the Finance Act, 2001, it was also inter alia provided that any action or omission in any notification, etc. shall be deemed to be and to have been for all purposes as validly and effectively taken or done as if the amendment by Section 113 of the Finance Act, 2001 have been enforced at all material time and that recovery shall be made of all such amounts of duty or interest or penalty or fine or other charges which have not been collected, as if the amendment made by Section 113 of the Finance Act had been in force at all material time. It was, thus, held that any obligation or liability that was incurred under the notification imposing antidumping duty prior to the expiry of the notification dated 21.07.2000, uptil 15.04.2003, shall continue to remain in force and, as such, enforceable against the appellant in respect of the imports made during the currency of the notification.

86. The contention that Section 159A of the Customs Act, 1962 was inapplicable because the notification in question was issued under the Customs Tariff Act, 1975 and not under the Customs Act, 1962 has been upturned noticing the provisions of sub-section (8) of Section 9A of the Customs Tariff Act, extracted hereinabove.

87. The third member of the Tribunal in the judgment impugned, has further observed that the basic customs duties are leviable under Section 12 of the Customs Act at such rates as may be specified in the Customs Tariff Act, 1975. The Central Government has power to grant exemption from duty by issuing notification in the official gazette under Section 25 of the Customs Act. However, in such cases, the question about the liability to pay duty would arise when the exemption notifications are issued and withdrawn. Such liability for non-levy, short levy, etc. could be enforced under Section 159A of the Act, which specifically lays down that the obligation or liability accrued or incorporated inter alia under a notification is not affected after the notification is repealed, superseded or rescinded and that it could be enforced. The position will be the same even prior to 11.05.2001 when Section 159A was inserted because of the *provisions of Section 114 of the Finance Act, 2001, which saves recoveries of all amounts under any notification which had been collected, as provided under clause (c) of Section 114.*

88. Further, noticing Section 28 of the Customs Act, which provide for recovery mechanism when any duty levied or had been short levied or erroneously refunded, it was held in para 9.1 of the judgment impugned dated 20.10.2006 passed by the President, CESTAT, the third member, as under:-

> *"9.1. In any event, the expiry of notification imposing anti-dumping duty did not at all obliterate the liability that had already arisen upon importation of the articles under the notification by virtue of section 9A(1)(5) of the Act 6 which continued to remain in force to create and continue the liability arising under the notification which could be enforced under Section 28 of the Customs Act by virtue of sub-section (8) of Section 9A, which incorporated the provisions of the Customs Act, having bearing on non-levy, short levy, refunds etc. The case of the appellant, who did not pay the anti-dumping duty was clearly a case of non-levy and therefore, recovery could be affected under the provisions of Section 28 of the Customs Act read with Section 9(A)(5)(8) of the Custom Tariff Act in respect of the liability to pay anti dumping duty that had arisen upon importation of the articles on which the duty was imposed and had remained operative till 15.4.2003. Since the liability arising under the provisions of the statute which continued to remain operative could be enforced under Section 28 of the Customs Act read with Section 9A(1) (5) of the Customs Tariff Act, it would not be open for the appellant to argue that the liability incurred, which was enforceable till 15.4.2003 suddenly become unenforceable on dis-continuance of the duty from that date. It is thus clear that the recovery proceedings were correctly initiated in made during the period of currency of the said notification till 15.4.2003 and the order recovering anti dumping duty upon the imports made during the period of currency of the said notification till 15.4.2003 and the order recovering anti dumping duty cannot be challenged on the ground that the notification expired from 15.4.2003." …..*

104. The extensive arguments made by the learned counsel for the appellant vehemently before us on the applicability of Section 6 of the General Clauses Act agitating on the principles of saving clause are liable to be rejected as misconceived, outrightly. As rightly held by the Tribunal, the demand of anti-dumping duty being for the period when the goods were imported during the subsistence of the notification dated 21.07.2000, the submissions based on Section 6 of the General Clauses Act are misconceived arguments.

105. By virtue of Section 159A of the Customs Act, 1962, which has been imported under sub-section (8) of Section 9 of the Customs Tariff Act, 1975, even the amendment, repeal, supersession or recession of any notification will not affect its *previous operation. Moreover, in the instant case, the notification dated 21.07.2000 issued by the Central Government in exercise of the power conferred under sub-section (1) of Section 9A has not been amended, repealed, superseded or rescinded, rather it has expired after a period of 5 years from the date of its issuance. The initial notifications being of the year 1998 and 2000, the notification being mid-term extension of the 1998 notification, the tenure of the notification admittedly came to an end after 15.04.2003.*

106. The levy, in the instant case, is with regard to the goods imported by the appellant during the subsistence of the notification under Section 9A(1), i.e. prior to 15.04.2003. The appellant, as such, cannot be permitted to argue that even for the period during which the notification was in subsistence, the demand of duty would not be maintainable by the mere fact that the show-cause notice raising demand was issued after expiry of the notification.

107. The submissions made by the learned counsel for the appellant that as the notification has expired after 15.04.2003, when its tenure has come to an end, it would result in leading to an presumption that it has never been in existence as there is no saving clause, with the aid of Section 6 of the General Clauses Act, are wholly misconceived, and hence liable to be rejected. In the instant case, the notification levying anti-dumping duty issued under sub-section (1) of Section 9A lived its life to the fullest and came to an end upon the expiry of its tenure and it was not even rescinded or amended or repealed.

108. If the arguments of the learned counsel for the appellant that with its expiry, it would be presumed that the notification issued under sub-section (1) of Section 9A was never in existence or obliterated, it would lead to an incongruous situation as it would result in unsettling of even all concluded actions during the subsistence of the notification as well. The present is not a case where the action is initiated with respect to the period after expiry of the notification."

20. Accordingly, we find no merit in the contention advanced by the appellants that proceedings for recovery of duties short levied or not levied or short paid could not have been initiated merely because the relevant levy notification had ceased to remain in force prior to the issuance of the Show Cause Notice. Acceptance of such a contention would defeat the very object and purpose of Section 28 of the

Customs Act, 1962, which constitutes the statutory machinery for demand of duties that have escaped assessment or have been short levied, notwithstanding the subsequent expiry of the levy notification.

21. Accordingly, our conclusions on Issue No. (i) are summarized as follows: -

i. Section 6 of the General Clauses Act, 1897 has no application to the facts of the present case. The notification in question was neither repealed, rescinded, superseded nor amended. It merely expired upon completion of the period for which it was issued. Consequently, the contention founded upon Section 6 of the General Clauses Act is inapplicable misconceived and clearly devoid of merit.

ii. The notification issued by the Central Government in exercise of the powers conferred under Section 9A(1) of the Customs Tariff Act, 1975 remained valid and operative throughout the period during which the subject goods were imported. The levy of Anti-Dumping Duty is attached to those imports on the respective dates of importation. Merely because the Show Cause Notice came to be issued after the notification had expired does not extinguish the liability, if otherwise lawfully arises, nor does it render the recovery proceedings unsustainable.

iii. The submission that expiry of the notification should be treated as equivalent to repeal, omission or rescission, thereby attracting the principles embodied in Section 6 of the General Clauses Act, cannot be accepted. Expiry by efflux of time is conceptually distinct from repeal or rescission. Acceptance of such an argument would amount to treating the notification as though it had never existed, an interpretation which is contrary to settled principles of statutory construction and therefore liable to be rejected.

iv. In the present case, the notification levying Anti-Dumping Duty under Section 9A(1) of the Customs Tariff Act completed the tenure for which it was issued and thereafter expired by operation of its own terms. It was neither rescinded nor repealed before the expiry of its prescribed duration.

v. Even otherwise, acceptance of the appellants' contention would lead to manifestly anomalous and unintended consequences. If expiry were to obliterate the notification altogether, it would unsettle not only pending proceedings but also completed assessments, refunds, exemptions, demand, recoveries and all actions lawfully taken during the period when the notification remained in force. Such an interpretation cannot be attributed to the legislature.

vi. Section 28 of the Customs Act, 1962 independently provides the statutory mechanism for demand of duties which have not been levied, have been short levied, have not been paid, have been short paid or have been erroneously refunded. The availability of such demand proceedings does not depend upon the continued existence of the levy notification on the date of issuance of the Show Cause Notice, provided the liability had accrued during the currency of the notification.

vii. We also find no merit in the contention that Section 159A of the Customs Act, 1962 is inapplicable merely because the notification was issued under the Customs Tariff Act, 1975. In view of Section 9A(8) of the Customs Tariff Act, the provisions of the Customs Act, including the machinery provisions relating to assessment and recovery, stand attracted to duties leviable under Section 9A. The said contention is, therefore, devoid of any substance.

viii. The present case does not concern imports effected after the expiry of the levy notification. On the contrary, the subject imports were admittedly made during the period when the notification remained in force and the levy was legally operative. The subsequent expiry of the notification does not extinguish the liability already incurred nor does it prohibit initiation of proceedings under Section 28 for recovery of duties, if otherwise found payable in accordance with law.

22. For the foregoing reasons, we hold that the expiry of the levy notification does not bar initiation or

continuation of proceedings under Section 28 of the Customs Act, 1962 for recovery of duties allegedly short levied or not levied in respect of imports effected during the currency of the notification. Any contrary interpretation would defeat the legislative scheme governing assessment and recovery under the Customs Act. Issue No. (i) is answered accordingly.

Issue No. (ii): Whether the subject imports effected under valid Advance Authorisations are entitled to exemption from Countervailing Duty and Anti-Dumping Duty?

23. The second issue which falls for our consideration relates to the availability of exemption under the Advance Authorisation Scheme for subject imported goods. The appellants contend that the imports in question were effected under valid Advance Authorisations issued under the Foreign Trade Policy; that the prescribed export obligations were duly fulfilled; that the competent licensing authority issued Export Obligation Discharge Certificates (EODCs) and Redemption Certificates acknowledging such fulfilment; that Chartered Accountant's Certificates evidencing utilisation of the imported materials for discharge of the export obligations were furnished; and that, upon being satisfied with such compliance, the jurisdictional Customs authorities discharged and cancelled the bonds executed by the appellants under Notification No. 18/2015-Customs. It is the appellants' contention that, once these

statutory requirements stood duly complied with and the competent authorities had accepted such compliance, the benefit of the exemption notification could not subsequently be denied. The Revenue, on the other hand, supports the findings recorded in the impugned Order-in-Original and contends that the appellants failed to establish strict compliance with the conditions prescribed under Notification No. 18/2015-Customs and the Advance Authorisation Scheme. It is, therefore, the Revenue's case that the exemption has been rightly denied.

24. The adjudicating authority has primarily proceeded on the premise that the appellants had failed to produce satisfactory evidence demonstrating fulfilment of the export obligations and that, consequently, there existed a possibility that the Countervailing Duty and Anti-Dumping Duty foregone at the time of importation might ultimately become recoverable if the export obligations remained unfulfilled. Proceeding on this premise, the Commissioner concluded that the benefit of exemption under Notification No. 18/2015-Customs was not available to the appellants. In our considered view, the reasoning adopted in the impugned Order-in-Original proceeds on an erroneous understanding of the statutory framework governing the Advance Authorisation Scheme. It overlooks the legal effect of the

statutory compliances and certifications issued by the competent authorities under the Foreign Trade Policy and, therefore, warrants a closer examination in the light of the relevant statutory provisions and the evidence available on record.

25. Before examining whether the appellants have fulfilled the conditions prescribed under Notification No. 18/2015-Customs dated 01.04.2015, it is necessary to first notice the scope of the exemption granted thereunder. The preamble to the said notification [G.S.R. 254(E)] expressly exempts materials imported against a valid Advance Authorisation from the whole of the duty of customs leviable under the First Schedule to the Customs Tariff Act, 1975; the additional duties leviable under Section 3; safeguard duty leviable under Section 8B; Countervailing Duty leviable under Section 9; and Anti-Dumping Duty leviable under Section 9A of the Customs Tariff Act, 1975, subject to fulfilment of the conditions stipulated therein. The legislative intent underlying the notification is, therefore, explicit. Imports effected under a valid Advance Authorisation are entitled not merely to exemption from Basic Customs Duty but also from the whole of the Countervailing Duty and Anti-Dumping Duty, provided the prescribed statutory conditions are satisfied. The controversy in the present appeals is,

therefore, not whether Notification No. 18/2015-Customs grants exemption from Countervailing Duty and Anti-Dumping Duty—which it unequivocally does—but whether the appellants have fulfilled the conditions prescribed therein so as to avail and retain the benefit of the exemption.

26. Equally significant is the statutory mechanism incorporated in Notification No. 18/2015-Customs for safeguarding the interests of the Revenue. The exemption granted at the time of import is in the nature of a conditional exemption, whereby the duties otherwise leviable are forgone subject to fulfilment of the prescribed export obligation. Clause (iv) of the notification mandates execution of a statutory bond by the importer, undertaking to pay, on demand, the entire duty foregone together with applicable interest, in the event of breach of any of the conditions stipulated in the notification. Clause (ix) further requires the importer to furnish, within the prescribed period, satisfactory evidence of fulfilment of the export obligation to the jurisdictional Customs authorities. The scheme of the notification thus strikes a balance between facilitating exports and protecting the interests of the Revenue. While it grants exemption from the levy of Countervailing Duty and Anti-Dumping Duty at the time of importation, it simultaneously incorporates a comprehensive statutory

mechanism to secure recovery of the entire duty foregone, together with applicable interest, in the event of non-fulfilment of the export obligation. The legislative design, therefore, ensures that the grant of exemption does not prejudice the interests of the Revenue, as the statutory bond remains enforceable until compliance with the prescribed conditions is duly established.

27. The statutory scheme is, therefore, complete in itself and leaves no scope for presumptions or apprehensions regarding any possible future loss of revenue. Where the importer fails to fulfil the prescribed export obligation, the statutory bond becomes enforceable and the entire duty foregone, including the Countervailing Duty and Anti-Dumping Duty exempted at the time of importation, becomes recoverable, together with applicable interest, in accordance with the provisions of Notification No. 18/2015-Customs.Conversely, once the export obligation stands duly fulfilled and the competent licensing authority issues the Export Obligation Discharge Certificates (EODCs) and Redemption Certificates, and the jurisdictional Customs authorities, upon due verification, discharge and cancel the statutory bonds, the very contingency contemplated for recovery of the duty foregone ceases to exist. In such circumstances, the rights and liabilities of the parties stand

conclusively governed by the statutory mechanism embodied in Notification No. 18/2015-Customs and cannot be determined on the basis of a mere apprehension or speculative possibility that the exempted duties may become irrecoverable at some future date.

28. The factual premise on which the adjudicating authority proceeded also does not withstand scrutiny in the light of the evidence placed before us. During the course of the appellate proceedings, the appellants have produced the Export Obligation Discharge Certificates (EODCs) issued by the competent Regional Authority of the Directorate General of Foreign Trade (DGFT) in respect of the Advance Authorisations under which the subject imports were effected. These certificates unequivocally record that the export obligations prescribed under the respective Advance Authorisations have been duly fulfilled. The appellants have also placed on record the Redemption Certificates issued by the competent licensing authority, together with Chartered Accountant's Certificates certifying the utilisation of the imported materials in the manufacture of the resultant export products. More significantly, the records further reveal that the jurisdictional Customs authorities, upon being satisfied with the fulfilment of the prescribed conditions under Notification No. 18/2015-Customs, have discharged

and cancelled the statutory bonds executed by the appellants. These statutory acts of the competent authorities furnish cogent evidence that the conditions governing the Advance Authorisation Scheme stood duly complied with and substantially displace the very factual premise on which the impugned order proceeds.

29. The legal significance of the aforesaid documents cannot be overstated. An Export Obligation Discharge Certificate (EODC) is not a mere declaration furnished by the exporter; it is a statutory certificate issued by the competent authority entrusted with the administration of the Foreign Trade Policy, after due verification of the exports and upon being satisfied that the prescribed export obligations have been duly fulfilled. Similarly, the discharge and cancellation of the statutory bond is not a mere administrative formality. It follows a verification by the jurisdictional Customs authorities that the importer has complied with the conditions subject to which the exemption under Notification No. 18/2015-Customs was granted. The discharge of the statutory bond, therefore, constitutes an official acknowledgment by the Customs authorities themselves that the contingency contemplated under Clause (iv) of Notification No. 18/2015-Customs—namely, recovery of the duty foregone on account of non-fulfilment of the export

obligation—has ceased to exist. Once the competent authorities under both the Foreign Trade Policy and the Customs Act have independently certified compliance with the prescribed conditions, the exemption cannot thereafter be denied on the basis of a mere apprehension that the export obligations may not have been fulfilled.

30. Equally significant is the fact that the Revenue has neither questioned the authenticity nor challenged the validity of the Advance Authorisations, the Export Obligation Discharge Certificates (EODCs), the Redemption Certificates or the bond discharge orders placed on record by the appellants. There is no material on record to indicate that the competent licensing authority has cancelled, suspended or modified any of the Advance Authorisations or withdrawn the Export Obligation Discharge Certificates issued in favour of the appellants. Likewise, the Revenue has not produced any order recalling or setting aside the discharge of the statutory bonds granted by the jurisdictional Customs authorities. These statutory documents, having been issued by the competent authorities in exercise of their statutory powers, continue to remain valid, subsisting and operative. So long as they are neither withdrawn nor set aside in accordance with law, they carry due legal sanctity and are entitled to full legal effect. In the absence of any material impeaching their

validity, the adjudicating authority could not have disregarded their legal consequences while determining the appellants' entitlement to exemption under Notification No. 18/2015-Customs.

31. The legal position on this issue is well settled. The Customs authorities cannot disregard or act contrary to licences and statutory certificates validly issued by the competent authority administering the Foreign Trade Policy so long as such licences and certificates remain valid and operative. In East India Commercial Co. Ltd. v. Collector of Customs, AIR 1962 SC 1893, the Hon'ble Supreme Court held that the Customs authorities are bound by licences validly issued under the Imports and Exports (Control) Act and cannot ignore or question their validity unless such licences are cancelled or modified in accordance with law by the competent licensing authority. The principle was reiterated by the Hon'ble Supreme Court in *Titan Medical Systems Pvt. Ltd. v. Collector of Customs, 2003 (151) E.L.T. 254 (S.C.),* wherein it was held that the Customs authorities cannot deny the benefit flowing from a licence validly issued by the licensing authority unless the licence itself is first cancelled or declared invalid by the competent authority. Until such cancellation or invalidation, the licence remains binding and its legal consequences are required to be given

full effect by the Customs authorities. The aforesaid principle has been consistently followed by various Benches of this Tribunal. In this regard, the appellants have rightly placed reliance upon the decision of the Delhi Bench of the Tribunal in *Bestech Hospitalities Pvt. Ltd and others vs CC (Preventive), New Delhi, 2025 (8) TMI 509 – CESTAT New Delhi* (paragraphs 24 to 28), wherein, after considering the decisions of the Hon'ble Supreme Court in Titan Medical Systems Pvt. Ltd., the Tribunal reiterated that, so long as a licence or statutory authorisation issued by the competent authority remains valid and has not been cancelled or withdrawn in accordance with law, the Customs authorities are bound to give full effect to it and cannot deny the benefits flowing therefrom in collateral proceedings.

32. The aforesaid principles apply with full force to the facts of the present case. The Advance Authorisations issued in favour of the appellants continue to remain valid and subsisting. The competent licensing authority has certified fulfilment of the prescribed export obligations by issuing Export Obligation Discharge Certificates (EODCs), and Redemption Certificates have also been issued. Further, the jurisdictional Customs authorities, upon being satisfied that the conditions prescribed under Notification No. 18/2015-Customs had been duly complied with, have

discharged and cancelled the statutory bonds executed by the appellants. So long as these statutory acts remain valid and operative, and have neither been withdrawn nor set aside in accordance with law, the Customs authorities cannot disregard their legal effect or proceed on the assumption that the export obligations remain unfulfilled. Any such approach would amount to a collateral challenge to statutory orders and certificates issued by the competent authorities, which is impermissible in law.

33. Having regard to the statutory scheme embodied in Notification No. 18/2015-Customs and the materials placed on record, we are satisfied that the appellants have duly fulfilled the conditions governing the Advance Authorisation Scheme. The Export Obligation Discharge Certificates (EODCs), Redemption Certificates, Chartered Accountant's Certificates and the bond discharge orders issued by the jurisdictional Customs authorities continue to remain valid and operative and have neither been withdrawn nor questioned by any competent authority. As noticed hereinabove, the preamble to Notification No. 18/2015-Customs expressly grants exemption to imports made under a valid Advance Authorisation from, inter alia, Countervailing Duty leviable under Section 9 and Anti-Dumping Duty leviable under Section 9A of the Customs Tariff Act, 1975,

subject to fulfilment of the prescribed conditions. Since the appellants have established compliance with those conditions, they are entitled to the benefit of the said exemption notification.

34. Accordingly, Issue No. (ii) is answered in favour of the appellants. We hold that where imports are effected under valid Advance Authorisations and the conditions prescribed under Notification No. 18/2015-Customs stand duly fulfilled, exemption from Countervailing Duty and Anti-Dumping Duty cannot be denied. Consequently, even if any of the imported goods are ultimately held to fall within the scope of Notification No. 01/2016-Customs (CVD) dated 19.01.2016 and Notification No. 42/2017-Customs (ADD) dated 30.08.2017, no Countervailing Duty or Anti-Dumping Duty shall be payable in respect of such imports covered by the valid Advance Authorisations. The contrary reasoning adopted by the adjudicating authority in paragraphs 22 to 26 of the impugned Order-in-Original, founded merely on an apprehension that the duty foregone may not be recoverable in the future in the absence of Export Obligation Discharge Certificates (EODCs) or redemption certificates, without first calling upon the appellants to produce the said statutory certificates or otherwise verifying the factual position, is contrary to the statutory scheme of Notification No.

18/2015-Customs. Such reasoning also overlooks the specific factual assertions and documentary evidence referred to in Grounds A16 and A17 of the appeal, which demonstrate that the export obligations had already been fulfilled and the statutory requirements stood duly complied with. The appellant's submission that differential duty involved on imports effected under advance authorizations amounted to Rs.18,40,04,330/- in the Grounds of Appeal is noted. The impugned findings, being founded on an erroneous factual premise and contrary to the statutory framework governing the Advance Authorisation Scheme, cannot be sustained. Issue No. (ii) is answered accordingly.

Issue No. (iii): Whether the imported goods, other than those covered by valid Advance Authorisations, are liable to Countervailing Duty and Anti-Dumping Duty as "Castings for Wind Operated Electricity Generators" under Notification Nos.01/2016-Customs (CVD) and 42/2017-Customs (ADD)?

35. In view of our findings on Issue No. (ii), the entitlement of the appellants to exemption under Notification No. 18/2015-Customs in respect of imports effected under valid Advance Authorisations stands concluded. The present issue is, therefore, confined to those imports which are not covered by valid Advance Authorisations or in respect of which the benefit of Notification No. 18/2015-Customs is

otherwise unavailable. The surviving question for determination is whether such imported goods answer the description of "Castings for Wind Operated Electricity Generators" within the meaning of Notification No. 01/2016-Customs (CVD) dated 19.01.2016 and Notification No. 42/2017-Customs (ADD) dated 30.08.2017.

36. The controversy centres around the scope and ambit of the Product Under Consideration (PUC) adopted in the aforesaid notifications. The Final Findings of the Designated Authority describe the PUC as "Castings for Wind Operated Electricity Generators, whether or not machined, in raw, finished or sub-assembled form, or as part of a sub-assembly, or as part of an equipment/component meant for Wind Operated Electricity Generators."

37. The Final Findings further clarify that only wind turbine castings fall within the scope of the Product Under Consideration and that, where a casting is imported as part of a sub-assembly, the levy is confined only to the casting portion thereof. Thus, the threshold enquiry is whether the imported article is a casting within the meaning of the notifications i.e., the product under consideration.

38. The notifications impose a product-specific levy and not an end-use based levy. Consequently, the determinative question is whether the imported article, at the time of importation, satisfies the statutory description contained in the notifications. The mere fact that a product is intended for use in a Wind Operated Electricity Generator does not, by itself, bring it within the scope of the Product Under Consideration. The burden squarely lies upon the Revenue to establish, by cogent technical and documentary evidence, that each disputed article answers the statutory description of a casting mentioned in the Notifications.

39. The appellants contend that the impugned demand erroneously includes forged components, machined products, fabricated structures, electrical systems and other non-casting items. In support of this contention, they have produced component-wise manufacturers' bifurcation statements, product catalogues, engineering drawings, metallurgical reports and detailed technical specifications. According to the appellants, these materials establish that several of the imported goods were manufactured through forging, fabrication or other manufacturing processes and never possessed the essential character of castings. Reliance has also been placed upon technical literature relating to products such as the Main Shaft, Base Frame, Main

Foundation, Hub I/O Box and Hub Control Cabinet to demonstrate that these are sophisticated engineered products and not castings simpliciter.

40. The Revenue, on the other hand, relies upon the descriptions contained in the Bills of Entry, product literature and the writtern submissions made by appellant to contend that the imported goods are castings falling within the scope of the Product Under Consideration. According to the Revenue, machining, drilling or other post-casting operations do not alter the essential character of the goods as castings and, therefore, the imported goods continue to attract Countervailing Duty and Anti-Dumping Duty under the relevant notifications. The learned Authorised Representative (AR) took us through the findings recorded in the impugned Order-in-Original, particularly paragraphs 17 to 20, and submitted that the appellants' case suffers from inherent inconsistencies. He questioned how the very same WOEG part, bearing the same product code, could be claimed to be a casting in some instances and a non-casting in others. He further submitted that the appellants had failed to furnish complete technical information in respect of four unique WOEG components, thereby preventing proper verification of their manufacturing process and nature. The learned Authorised Representative also pointed out various

discrepancies between the technical catalogues produced by the appellants and their written submissions, contending that the two were contradictory and, in certain respects, misleading. According to him, the information and technical documents furnished by the appellants before the Department were incomplete, inaccurate and misleading, as specifically recorded by the adjudicating authority in the impugned order at Para 20. He therefore submitted that the adjudicating authority had rightly rejected the appellants' claim that the disputed goods were not castings falling within the scope of the Product Under Consideration.

41. We have carefully examined the rival technical evidence placed on record. We find that the appellants have produced detailed technical material identifying the manufacturing process adopted in respect of several disputed components. Significantly, reliance has also been placed upon the report issued by the CSIR–National Metallurgical Laboratory, which, according to the appellants, concludes that the examined articles are forged components and not castings. No contrary metallurgical opinion, expert report or comparable technical evidence has been placed on record by the Revenue to rebut the said material. Where the dispute turns upon the manufacturing process and intrinsic character of technically specialised engineering products, such

scientific evidence constitutes relevant and material evidence which cannot be brushed aside without adequate reasons.

42. Another circumstance of considerable relevance is that disputes concerning certain forged components had arisen even in earlier proceedings. The records indicate that the appellants had consistently asserted that the imported goods were forged components and not castings.

43. We further find that the appellants had produced detailed component-wise bifurcation statements distinguishing castings from forged products, machined assemblies, fabricated structures and other non-casting items. It is seen that the appellant's contentions supported by the evidence adduced has not been controverted by the Adjudicating Authority in the impugned order. We find that it is a settled position in law that the burden to show that the appellant is exigible to tax as alleged is squarely on the Department. The reliance placed by the appellant on the decisions rendered in the cases of *CC Vs. National Cereal Product [2005 140 STC 69 (SC)], Union of India Vs. Garware Nylons Ltd. [1996 (86) ELT 12 (SC)], CIT Vs. Provident Investment Company [1957 (32) ITR 190], King Kaveri Trading Co. Vs. Commissioner of Customs (Imports), Nhava Sheva [2012 (276) ELT 371 (Tri.-Mumbai)], Suchitra Yarn*

Traders Vs. Commissioner of Customs, Tuticorin [2024 (12) TMI 1039-CESTAT CHENNAI], Commissioner of Customs Vs. Auto Ignition Ltd. [2008 (226) ELT 14 (SC)] and The Commissioner of Customs (Export) Vs. Navbharat Enterprises Ltd. [2022 (4) TMI 1218] is appropriate in this connection. We find that the Show Cause Notice has merely made a bald allegation that the imported goods declared as parts of WOEG/Wind Turbine are 'Casting Parts' of WOEG/Wind Turbine/Windmill and hence, Countervailing Duty (CVD) appears to be applicable without adducing any evidence, expert reports / test reports, statements etc.

44. Having considered the rival submissions, the technical evidence placed on record and the reasoning contained in the impugned order, we are of the considered view that inasmuch as the Department has not proved its case, the issue No. (iii) is to be held in the appellant's favor and we hold that no duty liability survives on the imported goods, in the instant case.

Issue No. (iii) is answered in the above terms.

Issue No. (iv): Whether the demands are sustainable with reference to the normal period of limitation, the extended period under Section 28(4) of the Customs Act, 1962, and the statutory outer limit of five years, and whether the

consequential confiscation, redemption fine, interest and penalties are legally sustainable?

45. The final issue relates to the sustainability of the demand from the standpoint of limitation under Section 28 of the Customs Act, 1962. The appellants contend that the impugned demand comprises imports falling within the normal period of limitation, imports sought to be covered by invoking the extended period under Section 28(4), as well as imports which had already crossed the statutory outer limit of five years on the date of issuance of the Show Cause Notice.

46. It is further contended that an earlier Show Cause Notice dated 29.01.2018 had already been issued in respect of substantially similar imports and that the Department was, therefore, fully aware of the nature of the imported goods, the classification adopted and the exemption claimed. Consequently, according to the appellants, the extended period of limitation cannot be invoked once again in respect of the same goods and transactions, in view of the law laid down by the Hon'ble Supreme Court in *Nizam Sugar Factory v. Collector of Central Excise, 2006 (197) E.L.T. 465 (S.C.).*

47. *Per contra*, the Ld. Authorized Representative submitted that the appellants had failed to correctly disclose

the true nature and character of the imported goods and that the alleged suppression came to light only upon detailed investigation undertaken by the Department. It was, therefore, contended that the ingredients necessary for invocation of the extended period under Section 28(4) of the Customs Act stood fully established.

48. Section 28 of the Customs Act, 1962 draws a clear distinction between the normal period of limitation and the extended period available only in cases involving collusion, wilful misstatement or suppression of facts with intent to evade payment of duty. The burden of establishing the existence of the statutory ingredients necessary for invoking the extended period rests squarely upon the Revenue. It is well settled that such burden cannot be discharged on the basis of mere assumptions or inferences. In *Cosmic Dye Chemical v. Collector of Central Excise, 1995 (75) E.L.T. 721 (S.C.),* and *Pushpam Pharmaceuticals Co. v. Collector of Central Excise, 1995 (78) E.L.T. 401 (S.C.),* the Hon'ble Supreme Court held that suppression must be deliberate, wilful and with an intention to evade duty. A mere dispute relating to classification, interpretation of tariff entries or exemption notifications cannot, by itself, constitute suppression of facts so as to justify invocation of the extended period.

49. We find considerable force in the appellants' reliance upon the earlier Show Cause Notice dated 29.01.2018. In *Nizam Sugar Factory v. Collector of Central Excise, 2006 (197) E.L.T. 465 (S.C.),* the Hon'ble Supreme Court held that where the Department has already issued a Show Cause Notice on certain facts, it cannot ordinarily invoke the extended period once again on the basis of the very same material, since suppression or wilful misstatement cannot be alleged in respect of facts already within its knowledge. We find that the nature of the appellant's imports was very well known to the Department at the time of issuance of earlier Show Cause Notice dated 29.01.2018, therefore, clearly the Department cannot invoke the extended period of limitation.

50. We also find substance in the appellants' contention that a part of the demand relates to imports which had already crossed the statutory outer limit of five years on the date of issuance of the present Show Cause Notice. Section 28 itself prescribes the maximum period within which proceedings may be initiated by invoking the extended period. Any demand travelling beyond the maximum period prescribed by the statute is *ex-facie* barred by limitation and cannot be sustained. The demand, insofar

as it relates to imports falling beyond the statutory outer limit prescribed under Section 28(4) of the Customs Act, is held to be barred by limitation and is accordingly set aside.

51. Inasmuch as we have already held in favor of the appellant on merits, the demand will not sustain even for the normal period. The findings in the impugned order on liability to confiscation, imposition of redemption fine, interest and penalties would therefore not sustain and are accordingly set aside.

52. In the result, the appeal is allowed. The impugned Order-in-Original No. 104830/2024 dated 30.01.2024 is set aside. The connected Miscellaneous Application is disposed of accordingly. The appellant is entitled to consequential relief in law, if any.

(Order pronounced in open court on 18.09.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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