CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89395 OF 2014

[Arising out of Order-in-Appeal No: 2678 (Gr.VA/B)/2014(JNCH)/IMP-2547 dated 4th July 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

VA Tech Wabag Limited
'WABAG House', No. 17, 200 Ft Radial Road
S Kolathur, Nr Kamakshi Hospital, Chennai - 600017 … ***Appellant***

versus

Commissioner of Customs (Imports)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Suresh Kumar, Advocate for the appellant

Shri Ram Kumar, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86006/2025

DATE OF HEARING: 25/04/2025
DATE OF DECISION: 25/04/2025

PER: C J MATHEW

M/s VA Tech Wabag Limited is in appeal against upholding of classification of imported goods, for levy of duty of customs at the rate corresponding to tariff item 8502 3990 of First Schedule to Customs Tariff Act, 1975, that would, thereby, disentitle them to benefit of exemption under notification[1] at (serial no. 332) on goods imported *vide* bill of entry no. 4758844/27.02.2014; the goods, declared to be valued at ₹ 6,32,75,087, were confiscated under section 111 of Customs Act, 1962, with option to redeemed under section 125 of Customs Act, 1962 on payment of fine of ₹ 6,00,000, besides imposition of penalty of ₹ 2,00,000 under section 112 of Customs Act, 1962. The consequent differential duty of ₹ 71,38,316, along with other detriments, was challenged before the first appellate authority whose order[2] upheld the liability and other detriments in entirety leading to the present appeal before us.

2. We have heard Learned Counsel for the appellant and Learned Authorized Representative.

3. The impugned exemption notification permits 'additional duty of customs' to be exempted subject to goods of any chapter being 'non-conventional energy devices or systems' enumerated in list 8 which, *inter alia* incorporates 'bio-gas plant and bio-gas engine' at serial no. 15 therein. The appellant had classified goods as aptly conforming to description corresponding to tariff item 8501 6410 of First Schedule to Customs Tariff Act, 1975 while customs authorities

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[1] [no.12/2012-Central Excise dated 17th March 2012]
[2] [order-in-appeal no. 2678 (Gr.VA/B)/2014(JNCH)/IMP-2547 dated 4th July 2014]

preferred classification under residuary category of ‘generating sets and rotary convertors other than those with spark ignition and compression-ignition internal combustion piston engines’ to be more appropriate description.

4. The claim of importer was for fitment within ‘generators that are not generating sets’ and we find that order of the original authority has held

> *‘7. From the product literature/catalogue, I find that the goods are electric generator sets and use biogas as fuel. The importer has claimed classification of the goods under CTH 8501 which covers electric motors and generators (excluding generator sets). I find that HSN note (c) to CTH 8501 excludes electric generators combined with prime moves from CTH 8501. In this case, the goods are a combination of biogas engine (prime moves) and generator (alternator). Thus, the goods are rightly classifiable under CTH 85023990. As regards notification no 12/2012 C. Ex Sl No 332, I find that the goods exempted as per Sr. No. 332 of Notification No. 12/2012 (C. Ex) are "Bio Gas Plant and Bio Gas engine". In this case, electric generating sets comprising of a biogas Engine and a generator (alternator) have been imported. The goods are not bio gas engines. Therefore, the benefit of Notification No. 12/2012-CE Sr. No. 332 is not admissible. During the course of personal hearing, the importer has submitted that the invoices indicate the individual value of the generator (alternator) and the engine and the Bill of Entry may be amended accordingly. However, as the goods imported are electric generating sets and the goods as*

presented/imported are electric generating sets, these can not be split into two items.'

and that the impugned order has affirmed it thus

> *'8. I find that the lower authority after going through the literature/catalogue found that the goods are electric generator sets which uses biogas as fuel and are not bio gas engines. The benefit of CEX duty exemption vide S.No. 332 of Notification No. 12/2012 (C.Ex) is meant only for biogas plant and bio gas engine since the imported goods are generating sets the benefit of exemption is not admissible. The lower authority found that the goods are correctly classifiable at CTH 85023990 and the CEX (C.Ex) duty exemption claimed vide S.No. 332 of Notification No 12/2012 (C.Ex) was not admissible. Since the appellant had made a wrong declaration and therefore contravened Section 46(4) of the Customs Act were confiscated under Section 111(m) of the Customs Act which was subsequently redeemed under Section 125(1) of the Customs Act on payment of Rs. 6,00,000/- as redemption fine. Penalty of Rs 2,00,000/- was also imposed on the appellant under section 112(a) of the Customs Act.'*

5. The prime motive for re-classification appears to have been made on the premises that 'generating sets' would not be covered by the exemption notification. There is nothing on record either in the notification[3] or anywhere else that goods within 8502 of First Schedule to Customs Tariff Act, 1975 or 8501 of First Schedule to Customs Tariff Act, 1975 would not get the benefit of exemption. Even if the goods were covered by the re-determined tariff item and,

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[3] [no.12/2012-Central Excise dated 17th March 2012]

more especially, as these were, admittedly, not ‘internal combustion piston engines’, it was necessary to examine the characteristics of the imported goods to determine if these be non-conventional energy devices or systems.

6. In the absence of such finding, the re-classification and consequent denial of benefit of exemption, as well as detriments under section 111 and section 112 of Customs Act, 1962 does not find favour. In view of the deficiency in the adjudication, we set aside the impugned order and remand the matter back to the original authority for a fresh decision after hearing the appellant herein on coverage by the impugned notification.

7. This appeal is thus allowed by way of remand.

(Operative part of the order pronounced in the open court on 25th April 2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*