CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Customs Appeal No. 40779 of 2017

(Arising out of Order-in-Original No. 24/2016 dated 16.12.2016 passed by the Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin – 628 004)

Commissioner of Customs **...Appellant**
Tuticorin Commissionerate,
Custom House,
New Harbour Estate,
Tuticorin – 628 004.

Versus

M/s. Vestas Wind Technology (I) Pvt. Ltd. **...Respondent**
No. 298, Old Mahabalipuram Road,
Solinganallur,
Chennai – 600 119.

APPEARANCE:

For the Appellant : Mr. Anoop Singh, Authorised Representative
For the Respondent : Mr. Sivarajan K., Consultant
Mr. Krishnakumar J. Consultant

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

FINAL ORDER No. 41034 / 2026

DATE OF HEARING : 01.06.2026
DATE OF DECISION : 22.09.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal has been filed by the Department (hereinafter referred to as the appellant) assailing Order-in-Original No. 24/2016 dated 16.12.2016 passed by the Commissioner of Customs, Tuticorin (hereinafter referred to as the impugned order), whereby proceedings initiated against M/s Vestas Wind Technology

India Pvt. Ltd. (hereinafter referred to as the respondent) were dropped. The dispute concerns import of parts of Wind Operated Electricity Generators (WOEG) in respect of which the respondent had availed concessional duty benefit under Notification No. 21/2002-Cus dated 01.03.2002 and Notification No. 12/2012-Cus dated 17.03.2012.

2. The Department alleged that the respondent violated Condition Nos. 35 and 45 of the exemption notifications, particularly the stipulation that the importer shall use the goods for the specified purpose. According to Revenue, transfer of imported WOEG parts to customers prior to erection and commissioning disentitled the respondent from availing exemption. Accordingly, Show Cause Notice dated 31.12.2015 was issued proposing recovery of differential duty of Rs.2,71,44,813/- along with interest, confiscation and penalty. The adjudicating authority, however, dropped the proceedings holding that the imported goods were admittedly used for manufacture and installation of WOEG and that the notifications did not prohibit transfer of goods prior to erection or assembly.

3. Aggrieved by the said order, Revenue has filed the present appeal.

4. The Ld. Authorized Representative Shri Anoop Singh appearing for the Department reiterated the grounds of appeal and submitted that the exemption notifications consciously employ the expression "he shall use them for specified purpose", thereby requiring the importer himself to remain the actual user of the imported goods. It was argued that once the imported goods stood sold to the customer under separate supply agreements, the respondent divested itself of ownership and right of use. According to Revenue, the legislative intention behind the exemption was not merely end-use based exemption but actual-user based exemption requiring the importer himself to utilize the goods. It was therefore argued that transfer of title before actual installation constituted violation of notification conditions and the adjudicating authority erred in dropping proceedings. Reliance was placed upon the review order and grounds of appeal forming part of departmental challenge.

5. *Per Contra*, the Ld. Consultants Shri K. Sivarajan and Shri J. Sivakumar appearing for the respondent submitted that the respondent is engaged in turnkey supply, installation, erection and commissioning of wind operated electricity generators. It was argued that due to the large size and technical nature of windmill components such as blades, controllers and allied parts, assembly cannot

physically take place within factory premises and necessarily occurs at the customer's project site. The respondent submitted that although separate supply agreements and erection agreements were executed, the respondent alone retained technical responsibility for erection, commissioning and bringing into existence the final windmill system. It was argued that the imported goods were admittedly used only for manufacture and installation of wind operated electricity generators and therefore the condition stood fully satisfied. The respondent further relied upon the judgment of the Hon'ble Madras High Court in Nordex India Pvt Ltd and subsequent Tribunal decision in GE India Industrial Pvt Ltd which directly govern the controversy in favour of the respondent.

6. Having considered the rival submissions and examined the records, the following questions arise for determination: -

i. Whether transfer of imported WOEG parts to customers under supply agreements prior to erection and commissioning results in violation of Condition Nos. 35 and 45 of the exemption notifications requiring that the importer shall use the goods for the specified purpose?

ii. Whether Revenue has made out any legal ground warranting interference with the impugned Order-in-Original?

7. We now proceed to examine the issues arising for determination in the present appeal, having regard to the facts and circumstances of the case, the rival submissions, the relevant provisions of the Customs Notifications and judicial precedents cited by both the sides.

8. The respondent imported parts of Wind Operated Electricity Generators and availed concessional duty benefit under Notification No. 21/2002-Cus dated 01.03.2002 and Notification No. 12/2012-Cus dated 17.03.2012. The exemption was subject, *inter alia*, to production of the prescribed Ministry's certificate and an undertaking by the importer that the imported goods would be used for the specified purpose, failing which the importer would be liable to pay the differential duty foregone.

9. We first proceed to examine the true scope of the exemption notifications. The entire case of Revenue proceeds upon an interpretation that the words "he shall use" necessarily imply that the importer must himself remain owner of the imported goods throughout and cannot transfer

title under any circumstances. We are unable to accept such an interpretation. The notifications in question are incentive notifications intended to promote renewable energy generation by granting concessional duty for import of parts used in manufacture and maintenance of wind operated electricity generators. The substantive requirement under the notification is that the imported goods must ultimately be used for the specified purpose, namely manufacture or maintenance of Wind Operated Electricity Generators. Nothing in the notification expressly prohibits movement of goods to the project site or transfer under a contractual arrangement forming part of a larger turnkey execution project.

10. The admitted factual position is that the respondent imported blades, controllers and allied parts exclusively for windmill projects. The respondent simultaneously entered into supply agreements and separate erection and commissioning agreements with project developers. The technical process involved erection, assembly and commissioning at the customer’s site because of the large physical dimensions of the imported components and practical impossibility of assembly within factory premises. The final windmill system came into existence only after installation carried out by the respondent itself. Thus,

the respondent never abandoned the intended use of the imported goods nor diverted them for any alternative commercial purpose.

11. We find considerable force in the submissions advanced by the learned counsel for the Respondent, who has placed reliance upon the judgment of the Hon'ble Madras High Court in *Nordex India Pvt Ltd. v. Commissioner of Customs* reported in *2022 (382) E.L.T. 195 (Mad.).* We note that the Hon'ble High Court, while examining an identical issue arising under the very same exemption notification, rejected the Department's contention that sale of imported rotor blades prior to assembly disentitled the importer from claiming exemption. The Hon'ble High Court categorically held that where imported goods are used in execution of turnkey contracts for erection and commissioning of windmills, mere raising of invoices or transfer of possession would not amount to violation of the condition requiring use for the specified purpose. The Court further observed that the notification cannot be interpreted in a manner that defeats the larger objective of promoting renewable energy infrastructure. The relevant portion of the decision of Hon'ble High Court of Madras reads as under: -

> *"**28**.Considering the rival submissions and on perusal of the materials produced by both the petitioner and respondent, it is seen that in the impugned order, the respondent admits that the petitioner is engaged in the business of manufacture and installation of Wind Operated*

Electricity Generators, for which, they have imported Rotor Blades - Parts of Wind Operated Electricity Generators and filed three bills of entry through their Customs Broker, by availing Basic Customs Duty [BCD] concession under Sl.No.362(3) of the Customs Notification No.12/2012-Cus., dated 17.03.2012 (read with Condition No.45) and exemption from additional duty of customs under Sl.No. 14-C of the Customs Notification No.21/2012-Cus, dated 17.03.2012, as amended (read with condition No.46 of the Customs Notification No.12/2012- Cus, dated 17.03.2012). The petitioner have obtained certificates from the Ministry of New and Renewable Energy on the ground that the Rotor Blades will be used for the manufacture of WOEGs. Further, they have also executed undertaking bonds to the Assistant Commissioner with an undertaking that the said goods, namely, Rotor Blades of Wind Operated Generator falling under CTI 85030090 are imported for the manufacture of wind operated power generators. It is seen that nowhere in the Notification, it is stated that the goods should not be sold before it is utilized by the importer in assembly and erection of the Wind Operated Energy Generator, which is done at the site of their customer, to whom it is sold. Further, the sale of Rotor Blades does not bar the importer to avail credit benefits, who sells it to his customer. The importer still have the contractual responsibility of manufacturing (assembly, erection and installation) of the Windmill at the customer's site, as they are the manufactures of Wind Turbines. As per the contract terms, the full value of the invoices paid only on successful commissioning of Windmills, not by invoice wise.

***29**.The adjudicating authority admitted the above aspects and has given no contra version. It is not in dispute that the goods imported were used in the manufacture of Wind Operated Electricity Generators at the site of the customer. Thus, the goods have been used for specific purpose is confirmed. The only objection seems to be once the goods are sold by the petitioner to their client, the client becomes the manufacturer of Wind Operated Electricity Generators. It is incidental that the petitioner themselves had undertaken the job of fabrication assembly and erection. Thus, the petitioner had not violated the condition that ''he should use the goods for specific purpose'', since the Rotor Blades have already been sold and straightaway taken to the petitioner's client, who used the imported Rotor Blades in the manufacture of the Windmill.*

***30**.It is an admitted fact that the petitioner used the Rotor Blades only in the manufacturing of Wind Operated Electricity Generators and further, Rotor Blades is not used for any other purpose. The only objection is that, clause (b) of Condition No.45 of Notification No.12/2012-Cus, dated 17.03.2012, is not followed for the reason that the petitioner/importer, shall not use them for specific purpose. In this case, it has been used for the specific*

purpose in the Windmill. It is only the word ''he'' is stressed against the petitioner. This cannot be looked into in isolation and it has to be considered as a whole. The petitioner had been awarded Turnkey project and there were two contracts and one of the contracts is for erection, installation and commission. This needs expertise. The petitioner having expertise applied with the Ministry of New and Renewable Energy, got approval, and then imported Rotor Blades and thereafter, transported the same, erected and commissioned the same at the customer's site. It is a known fact that the Windmill has to be necessarily erected only in the site. It cannot be assembled in a factory and thereafter, moved to the site, which is impracticable. The imported Rotor Blades, thus, need no customization and mechanization. Hence, by raising an invoice in the name of his client namely, Sun Photo Voltaic Energy Private Limited after import and thereafter, transporting the same to the customer's site is only an notional exercise, by that alone, it cannot be said that the petitioner is not the importer and he is the person, who has used the same for a specific purpose, for which, it was imported. The payment to the petitioner is not on invoice to invoice basis, it is a turnkey project, wherein, the payments made at stages, which is no way correlated to the invoices raised. This Court as well as the Hon'ble Apex Court held that the purport of investigation not to be diluted by imparting meanings to frustrate the purpose of notification. The exemption cannot be denied unless it is seen that it has been made to evade duty, it leads to evasion of duty. In this case, it is not so. The Rotor Blades has been fixed in the Windmill, which is an vital component for completion of the Windmill project. The specific purpose is the key word to be looked into, which is completed in the above case.

***31**.In view of the above, the impugned order passed by the respondent, dated 19.12.2018, is quashed. This Writ Petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed."*

12. We further note that reliance has also been placed by the respondent on the decision of this Tribunal in *Commissioner of Customs v. GE India Industrial Pvt. Ltd.* reported in *2023 (7) TMI 667 (CESTAT Chennai).* In the said case, the Department had raised an identical contention that sale of imported WOEG parts prior to site assembly violated

the actual user condition prescribed under the exemption notification. The coordinate Bench, after following the ratio laid down by the Hon'ble Madras High Court in Nordex India Pvt Ltd., held that exemption cannot be denied merely because title in the goods passes to the customer before physical assembly, so long as the importer retains responsibility for fabrication, erection and commissioning of the wind operated electricity generator. The departmental appeal was accordingly dismissed.

13. The factual matrix before us is materially indistinguishable. Here too, the imported goods were admittedly used exclusively for erection and commissioning of wind operated electricity generators. There is no allegation of diversion, clandestine removal or alternative end use. Revenue's entire case rests solely on the proposition that transfer of ownership before installation defeats the notification condition. That exact proposition now stands conclusively rejected by the jurisdictional High Court as well as by the coordinate Bench of this Tribunal.

14. It is a settled principle of judicial discipline that once the jurisdictional High Court has interpreted the cited notification and settled the controversy, the issue is no more *res integra*. In such circumstances, the Tribunal is bound to

follow the law so declared. The reasoning adopted by the adjudicating authority in the present case stands fully reinforced by the subsequent judicial pronouncements referred to above.

15. We further note that the Department has not placed any distinguishing factual feature which would justify departure from the ratio laid down in Nordex India Pvt Ltd or GE India Industrial Pvt. Ltd. The respondent had furnished the requisite certificates issued by the Ministry of New and Renewable Energy, executed undertakings at the time of import and ultimately used the imported goods exclusively for erection and commissioning of windmills. The essential object of the notification therefore stands fully satisfied.

16. We therefore hold that the expression “he shall use them for specified purpose” cannot be interpreted in the rigid and literal manner suggested by Revenue so as to require continuous ownership of imported goods till final commissioning. The condition stands satisfied so long as the imported goods are ultimately used by the importer in execution of the specified windmill project in terms of the turnkey contractual arrangement. Consequently, transfer of goods under supply contracts prior to final assembly does not amount to breach of notification conditions.

17. In view of the settled legal position emerging from the above decisions, we find complete agreement with the reasoning adopted by the adjudicating authority while dropping the proceedings and find no justification to take a view contrary to the binding precedents.

18. Accordingly, we hold that the impugned Order-in-Original suffers from no legal infirmity whatsoever warranting appellate interference.

19. In view of the foregoing discussion, we hold that the respondent has not violated the conditions prescribed under Notification No. 21/2002-Cus dated 01.03.2002 and Notification No. 12/2012-Cus dated 17.03.2012. The imported goods were undisputedly and admittedly used for the specified purpose in execution of turnkey windmill projects and mere transfer of goods prior to final erection and commissioning does not defeat the exemption. The issue stands conclusively settled by the judgment of the Hon'ble Madras High Court in Nordex India Pvt Ltd and the subsequent decision of this Tribunal in GE India Industrial Pvt Ltd. We therefore find no merit in the appeal filed by Revenue and uphold the impugned Order-in-Original.

20. Thus, the appeal filed by the Revenue is dismissed.

(Order pronounced in open court on 22.09.2026)

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

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

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