



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62

A	File No.	VIII/48-18/Adj./ADC/MP&SEZ/2016-17
B	Order-in-Original No.	MCH/ADC/GPM/53/2017-18
C	Passed by	Shri G.P. Meena, Additional Commissioner of Customs, Custom House, Mundra
D	Date of Order	12.09.2017
E	Date of Issue	12.09.2017
F	SCN NO. & Date	F.No. S/43-11/SIIB/2011-12 dated 02.04.2013
G	Noticee / Party / Importer / Exporter	M/s. Gamesha Wind Turbines Pvt. Ltd.,489, GNT Road, Thandal Kazhani, Vadagarai Post, Redhills, Chennai-600052.

P.O. 12/09/17
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OFFICE OF THE PRINCIPAL
COMMISSIONER OF CUSTOMS
6605
12 SEP 2017
Custom House, Mundra

01. This Order-in-Original is granted to the concerned free of charge.
 02. Any person aggrieved by this Order-in-Original may file an appeal under Section 128 of the Customs Act, 1962 read with Rule 3 of the Customs (appeals) rules, 1982 in quadruplicate in Form C.A. 1 to :
"THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA"
having his office at 7th floor, Mridul Tower, Near Times of India Building, Ashram Road, Ahmedabad – 380 009.
 03. Appeal shall be filed within sixty days from the date of communication of this order.
 04. The appeal should bear Court Fee Stamp of Rs.5/- (Rupees five only) under Court Fee Act and it must be accompanied by –
 05. A copy of the appeal , and
 06. This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs.5/- (Rupees Five only) as prescribed under Schedule-I, Item 6 of Court Fees Act, 1870.
 07. An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.
 08. Proof payment of duty/interest/fine/penalty etc. should be attached with the appeal memo.
 09. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
- Sub** – SCN issued to M/s. Gamesha Wind Turbines Pvt. Ltd.,489, GNT Road, Thandal Kazhani, Vadagarai Post, Redhills, Chennai-600052 vide F.No. S/43-11/SIIB/2011-12 dated 02.04.2013 issued by the Additional Commissioner of Custom, Custom House Kandla.

BRIEF FACTS OF THE CASE:

M/s Gamesa Wind Turbines Pvt. Ltd., 489, GNT Road, Thandal Kazhani, Vadagarai Post, Redhills, Chennai – 600052 (hereinafter called “Importer”) had filed various bills of entry for components/parts of wind mill i.e. Shipping Racks, Generator Tower, Blade cage etc. Under the above said bills of entry they have imported the goods on returnable basis (re-export) and claimed exemption Notification No.: 104/94 dated 16.03.1994. The importer has imported the said goods through their authorized CHA M/s. Purshotam Chaturbhuj Thacker, M/s Bon Freight & M/s. NTC Shipping Services P. Ltd.

2. Intelligence was gathered by the officers of SIIB, Custom House, Kandla that the importer has imported parts of wind mill under various bills of entry on returnable basis claiming benefit of Notification No.: 104/94-Cus., however, they have not re-exported the goods within the stipulated time i.e. within six months. As per Notification No.: 104/94 dated 16.03.2004, period for re-export of imported goods is six months only from the date of import. Hence, the importer has wrongly availed the benefit of exemption Notification No.: 104/94, hence, the duty appears to be recoverable along with interest as per applicable rate.

2.1. Notification No. 104/94-Cus., dated 16-3-1994 as amended by Notification No. 101/95-Cus., dated 26-5-1995 is as under:

“In exercise of the powers conferred by sub-section (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 container of a durable nature falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from,

(a) the whole of the duty of customs leviable thereon under the said First Schedule; and

(b) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act:

Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so :

Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit.”

3. During the course of investigations, statement of Shri S Velmurugan, General Manager- Logistics & Procurement of M/s Gamesa Wind Turbines Pvt. Ltd., Chennai was recorded on 03.09.2012 under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that:

- i. "They are importing the goods from their suppliers and group companies situated in Europe, Korea, Indonesia and China to Indian port at Kandla, Mundra, Chennai, Tuticorin, Mumbai, etc. they have authorized M/s. NTC Shipping Services Pvt. Ltd., Indev Logistics, Paramount Shipping, Bon Freight and Damani Shipping at various Ports in India, for the Custom clearances of imported goods.
- ii. That they are importing Components / Assemblies for Wind Operated Electricity Generator. These packing materials i.e. frame and blade cages specifically designed are used for transportation of towers and blades of Wind Operated Electricity Generator and can be re used. Since these are durable in nature, these cages/frames are used repeatedly for safe transportation of blades/towers;
- iii. That they have started their own blade manufacturing facility in India, these purchased blade cages are being used for transportation of locally manufactured blades also. Out of 2 lots of blade and 3 lots of tower imported in Kandla/Mundra Ports, they have already re-exported 1 lot of blade cage and paid duty for another lot of blade cage at the time of import. With regard to tower frames, they have re-exported the entire quantity for one lot and partially re-exported for 2 lots of import. The delay in re-exporting the balance quantity is due to delay in their Project execution and they have not got any extension for the remaining goods (packing materials).
- iv. That in their opinion, since both SOC and transportation frames are used for transporting goods on a reusable basis, both can be considered as similar in nature. Based on the decision taken during the time of import, they either pay the duty for the cages and clear the material for local utilization or clear the cages under notification 104/1994. For the frames they have cleared all under notification 104/1994, meaning that these will be re-exported. They are aware about the provision under Section 74 of the Customs Act, 1962 for re-export of imported goods.
- v. That the transportation frames are imported with identification marks and the same has been mentioned in packing list. However, the same has not been endorsed/ mentioned in the BoE. But these identification marks are not attested during the time of import but re-export bond is submitted at the time of import. Identification marks are available on the frames but due to prolonged exterior storage in some of the frames the marks would have been covered by rust.
- vi. That out of 4 lots cleared under notification 104/94, they have re-exported 2 lots in total and for balance 2 lots partial quantity has been re-exported. As on date total 1126 Pcs (501+625=1126 pieces) of returnable packages are pending for re-export, which were received under BoE No. 5005939 dated 24.10.2011 & 5027148 dated 27.10.2011. Further, he stated that they have not re-exported the

said goods within the stipulated time limit of six months; hence they are bound to pay the duty on the same.

4. Whereas it is seen that the said packing materials on which exemption benefit of Notification No. 104/94-Cus dated 16.03.1994 is claimed were actually purchased by the importer under a commercial transaction. Once the goods are bought, claim of exemption under Notification No.104/94-Cus cannot be allowed to the importer.
5. As discussed above, Shri S Velmurugan, General Manager- Logistics & Procurement of M/s Gamesa Wind Turbines Pvt. Ltd, in his statement dated 03.09.2012 has confirmed that the transportation frames are imported with identification marks and the same has been mentioned in packing list. However, the same has not been endorsed/ mentioned in the BoE. But these identification marks are not attested. Therefore, the identity of the goods can not be established at the time of export.
6. From the Notification No. 104/94-Cus dated 16.03.1994 as discussed at para 2.1, it appears that the imported goods i.e. packing materials by M/s Gamesa Wind Turbines Pvt. Ltd., Chennai during the period 2011-12 to 2012-13 cannot satisfy the condition viz. exemption is not applicable. As stated above the transportation frames have been imported with identification marks and the same has been mentioned in packing list. However, the same has not been endorsed/ mentioned in the BoE. But these identification marks are not attested during the time of import but re-export bond is submitted at the time of import. Identification marks are available on the frames but due to prolonged exterior storage in some of the frames the marks would have been covered by rust. Therefore the packing materials imported by M/s Gamesa Wind Turbines Pvt. Ltd., Chennai will not be eligible for the benefit of Notification No.: 104/94-Cus dated 16.03.1994. These facts have been admitted by Shri S Velmurugan, General Manager-Logistics & Procurement of M/s Gamesa Wind Turbines Pvt. Ltd., Chennai in his statement recorded on 03.09.2012 under Section 108 of the Customs Act, 1962.
7. The importer M/s Gamesa Wind Turbines Pvt. Ltd., Chennai has availed the benefit of exemption Notification No.: 104/94-Cus dated 16.03.1994, and total 4(four) consignments valued at Rs. 3,59,95,813/- involving duty amounting to Rs.96,64,406/- have been imported by them between February - 2011 to October - 2011(As per annexure "A").
8. Various provisions of Customs Act, 1962, relevant to the present case are Section 28, Section 28(4), Section 28 AA, Section 28 AB, Section 110(o), Section 112(a)

and Section 113. From the evidences gathered during investigations and the legal provisions, as discussed above, it appears inter alia that :-

9. M/s Gamesa Wind Turbines Pvt. Ltd., Chennai with an intention to evade customs duty, indulged in willful mis-statement of facts. The very claim of the exemption under Notification No.: 104/94-Cus dated 16.03.1994, was a willful mis-statement to avail duty exemption. Shri S Velmurugan, General Manager- Logistics & Procurement of M/s Gamesa Wind Turbines Pvt. Ltd., Chennai in his statement recorded on 03.09.2012 under Section 108 of the Customs Act, 1962 admitted to the wrong availment of the benefit of exemption under Notification No.: 104/94-Cus dated 16.03.1994. Admitting their wrong claim of exemption, M/s Gamesa Wind Turbines Pvt. Ltd., Chennai made a voluntary payment of **Rs.9,18,718/-** towards Customs duties (Rs. 7,30,444/-) and interest (Rs.1,88,274/-) vide Challan No. RD-51 dated 14.03.2013, for delayed payment of Customs duties, on the packing materials imported by them from Kandla port.

10. The importer M/s Gamesa Wind Turbines Pvt. Ltd., Chennai has imported the goods (packing material) viz Shipping Racks, Frame, Blades cage packing material etc. on returnable basis (re-export) and claimed exemption Notification No.: 104/94-Cus dated 16.03.1994 between February-2011 to October-2011, valued at Rs.3,59,95,813/- involving duty amount of Rs. 96,64,406/-. Out of which, the goods (packing material) imported in 3 Bills of entries (**As per annexure "B"**) have not re-exported the full quantity. Hence proportionate assessable value of Rs. 1,71,48,956/- involving duty amount of Rs. 46,04,271/- is to be paid by the importer. As the importer has already paid duty amount of Rs. 7,30,444/- and therefore total differential duty of Rs. 38,73,827/- is required to be paid along with the interest at the applicable rate. The statement of Shri S Velmurugan only reconfirmed the factual position brought out above.

11. Now, therefore, M/s. Gamesa Wind Turbines Pvt. Ltd., Chennai are hereby called upon to show cause in writing to the Additional Commissioner of Customs, Kandla having his office situated at New Custom House, Near Balaji Temple, Kandla within thirty days from the date of receipt of this notice, as to why:

- (a) The benefit of duty exemption as claimed under Notification No. 104/94-Cus dated 16.03.1994 should not be denied to the importer and Customs duty amounting to Rs. 46,04,271/-, should not be demanded under section 28(4) of the Customs Act, 1962.
- (b) The amount of Rs. 7,30,444/- deposited by the importer vide Challan No. RD-51 dated 14.03.2013 during investigation should not be appropriated against the demand of the Customs duty.

- (c) The interest under section 28 AB (till 08/04/2011) and 28 AA (from 08.04.2011) of the Customs Act, 1962 should not be demanded and recovered at the appropriate rate.
- (d) The goods declared as packing materials i.e. Shipping Racks, Frame, Blades cage packing material etc. on returnable basis (re-export) under 3 bills of entry valued at Rs. 1,71,48,956/- should not be confiscated under Section 111(o) of the Customs Act, 1962.
- (e) Penalty should not be imposed on the importer M/s Gamesa Wind Turbines Pvt. Ltd., Chennai for their willful Acts and omissions as discussed above, under section 112 (a) of the Customs Act, 1962;

DEFENCE REPLY:

12.1. The assessee vide their letter dated 27.06.2013 submitted reply to the SCN and stated as under:

12.1.2. They normally imports parts for wind turbines which are sophisticated and sensitive in nature. These parts and components come in the form of finished goods hence they are required to be transported in safe and secured manner. The length of blade, tower, hub and other items are large in nature, hence, towers and blades are imported by keeping them on-dock of the vessel. In order to transport in a safe and secured manner, necessarily, these equipments require protection from the surface and edges, as such, as an inevitable events, parts and components are packed in specific mode and these packing materials are re-exported to the overseas consignor.

- A. When Duty paid for non-re-export of items with specified time limit under notification no. 104/94 dated 16.03.1994.
- They stated that duty has been paid by them along with interest for the items not re-exported within stipulated time specified under notification no. 104/94 dated 16.03.1994. They also refer judgment of Mumbai Tribunal in **Pol India Agencies Ltd vs. Commissioner of Customs in (2008-TIOL-1969-CESTAT-MUM)**
 - The facts of the judgement referred above are very similar to their case where the assessee had paid the duty with interest where for the items which was not been able to be re-exported within the stipulated time and in other cases the items were actually re-exported.
 - They further stated that the items in question were mandatorily required by them to safely handle the components imported. As explained in detail the components of WEOG imported were in the form of finished goods and are of very high value which needs adequate packing material. Therefore, they request that they had genuine difficulty to re-export the same and also submit that the intention was always to re-export the packing material.

- It is therefore submitted by them that except for delay in re-exporting the packing material the conditions specified in aforesaid notification were satisfied and therefore exemption cannot be denied for procedural defect which was subsequently satisfied.

B. Demand barred by limitation

- They stated that as per Explanation 2 of Section 28, issue of notice under Section 28 of the Act within one year as against six months is applicable only for imports made on or after 08.04.2011. the imports made prior to 08.04.2011 are covered by then existing provisions. The notice has been issued under extended period of time invoking proviso to Section 28 which is not applicable to notice on the following facts:
 1. No specific reasoning what act of assessee amounted to misstatement or suppression which ought to have been recorded
 2. Just because there was a delay in compliance of the condition provided in the exemption notification it cannot be said the duty was willfully evaded or same cannot amount of suppression.
 3. A mere non-compliance with time frame cannot be treated as willful misstatement or suppression since the notice had paid the duty along with interest for the cases where the re-export of the items were not been made.
 4. The given case cannot be treated as a deliberate default as there was no default existed as on the date of notice since there is neither an inadvertent non-payment nor any default which existed at the time of issuance of notice. They refer the judgment of Honorable Supreme Court of India in *M/s Uniworth Textile Ltd V/s Commissioner of Central Excise*.
 5. The notice issued beyond time specified in Section 28(1) of Customs Act, 1962 and the extended time as specified in the proviso for the case involving suppression or willful misstatement shall not apply in the given facts and therefore the notice is barred by limitation of time and for this reason itself the impugned notice merits to be dropped. They relied upon the following judgment in support of their defense:
 - *Collector of Central Excise V/s. H.M.M Ltd- 1995(1) TMI 70-SUPREME COURT OF INDIA*
 - *Cosmic Dye Chemical V/s Collector of Central Excise, Bombay- 1994(9) TMI 86-SUPREME COURT OF INDIA*
 - *Pushpam Pharmaceuticals Company V/s C.C.E 1995(3) TMI 100- SUPREME COURT OF INDIA.*
 - *Anand Nishikawa Co Ltd V/s Commissioner of Central Excise, Meerut-2005(9) TMI 331- SUPREME COURT OF INDIA*

12.1.3. They request to consider the intention of the noticee and the necessity of the packing materials such as blade cage etc and those materials were imported with the intention to only re-export thereby claiming exemption notification. The materials are durable and qualify for the exemption under such notification at the time of importation. Just because there was a delay in compliance of the condition provided in the exemption notification it cannot be said the duty was willfully evaded or the same cannot amount of suppression. In the cases where the items were re-exported it only amounts to delay in re-exporting.

12.1.4. They requested to appreciate the intention laid down in the said notification is only to provide exemption on re-exportation of durable goods. The timing limitation is only a procedural lapse one. A mere non-compliance with the time frame cannot change their intention and same cannot be treated as willful misstatement or suppression. They also stated that they had paid the duty alongwith interest for the cases where the re-export of the items were not been made.

C. Imported goods are not liable for confiscation

- They reiterated that mere non-compliance with time frame cannot be treated as willful misstatement or suppression since the noticee had paid the duty along with interest for the cases where the re-export of the items were not been made. They requested to drop the proposal for confiscation of goods under Section 111(0) of the Customs Act, 1962.

D. Penalty not imposable

- They stated that imposition of penalty under Section 112(a) and Section 114A of Customs Act, 1962 on the noticee is not sustainable since the demand of duty itself is not sustainable in law. Once the demand of duty is found to be non-sustainable, the question of levy of penalty does not arise. They rely on the judgment of case of Collector of Central Excise vs H.M.M Limited, 1995(76) ELT 497 (SC) & Commissioner of C.EX& Cus vs. Nakoda Textile Industries Ltd, 2009(240) ELT 199 (Bom).
- They further submitted that conduct of the assessee was totally bonafide. They neither had any intention to evade payment of duty nor had any knowledge of the liability of goods to confiscation. In the absence of any malafide on the part of them, no penalty is imposable.

E. Demand of Interest not sustainable

- They reiterated that levy of interest under Section 28AA of Customs Act, 1962 on the noticee is not sustainable since the demand of duty itself is not sustainable in law. As submitted above, since the demand of duty against the noticees is not sustainable and the demand is also time barred, therefore, the question of levy of any interest under Section 28AA(1) does not arise at all.

12.2. In view of above submission, they prayed that the impugned show cause notice may be dropped forthwith and an opportunity of personal hearing may please be granted to them before adjudication.

12.3.1. They further submitted their reply along with documents relied by them vide their letter dated 26.08.2015 and reiterated earlier facts. Also stated that during the period February 2011 to October 2011, the company had imported blades and towers from Kousa International, LLC and accordingly 2619 units of the support structures, like, blades cages and returnable packages have also been received. The details of the said goods are as under:

B/E No. and date	Date	Qty of support items
2756364	11.02.11	940 units
5027148	27.10.11	810 units
2715447	04.02.11	840 units
505939	24.10.11	29 units
	Total	2619 units

12.3.2. Out of 2619 units, 1493 units were exported back to the vendor in terms of various Bills of Lading. The balance 1126 units were being retained in India, as they are still used to hold the material to the vehicles or on to the ground. As the statutory time of 06 months have been passed since their importation, the noticee has voluntarily paid the duty payable on these remaining un-exported units, amounting to Rs.9,18,718/- lakh on 09.03.2013.

12.3.3. The balance quantities of 1126 units were also exported to the vendors. The noticee has filed refund claim of taxes paid, before the Chennai customs, being port of exit in respect of 1126 units. One portion had been exported to the vendor within the stipulated period of 6 months and duty paid off for the balance. The details of import and export of the returnable packages (shipping racks/ shipping frames for wind tower) are as under:

Sr. No.	BOE No.	BOE Date	Qty imported	SB No.	SB Date	Qty in exported	Export from
1	5005939	24.10.11	940 Nos	8072660	09.03.11	315 Nos	Mundra
				127619	25.07.13	625 Nos	Chennai
2	5027148	27.10.11	810 Nos	8073450	09.03.11	309 Nos	Mundra
				127619	25.07.13	501 Nos	Chennai
3	2756364	11.02.11	29 sets	3150289	08.04.11	15 sets	Mundra
				7137401	16.01.12	12 sets	Mundra
				7698052	23.02.12	2 sets	Mundra

They also requested to grant an opportunity of personal hearing before adjudicating the matter.

12.4. Personal hearing has been fixed on 17.08.2015, 19.08.2015 and 26.08.2015 by the Additional Commissioner of Customs, Kandla wherein Shri Ramakrishnan V Iyar, Company Secretary and Shri N Sivaprakash, Asstt. Manager EXIM of the said importer appeared and submitted a copy of invoice no. 53-27-T-2011-0222 dated 05.09.2011 showing transaction as NCV (No commercial Value) only for customs purpose. They stated that as on date they have re-exported all the goods and claimed refund of part duty payment made by them when certain Qty could not be re-exported; that since demand itself is not sustainable there cannot be any penalty, fine and hence requested to drop SCN. They also stated that within 10 days they will submit documentary evidences of the above submissions. They have, *inter aila*, in addition to the defence submission reiterated that entire demand of duty and interest has been paid by them, SCN is not legally tenable.

12.5. Again Personal hearing has been fixed on 24.06.2016 and 04.08.2016 wherein Shri S Ramagandran, DGM, Taxation and Shri N S Parameshwaran, Deputy G M of the said importer appeared and reiterated the written submission already made vide letter dated 26.08.2015 and 27.06.2013. They also preyed that they have already paid entire duty alongwith the interest, SCN is legally not tenable and deserves to be dropped. Personal hearing has been fixed on 17.08.2017 and 31.08.2017, but nobody appeared in the hearing.

Discussions and Findings:-

13. I have carefully gone through the facts of the case as narrated under the Show cause Notice along with the documents submitted by the importer and defense submission and the submission made at the time of personal hearing. The issue to be decided in the instant case is whether the benefit of duty exemption as claimed under Notification No. 104/94-Cus. Dated 16.03.1994 is available to the importer or otherwise and whether the importer is required to pay duty alongwith interest or otherwise. Importer is liable for penal action or otherwise.

14.1. To decide the issue whether the importer is entitled for benefit of duty exemption under Notification No. 104/94-Cus. Dated 16.03.1994. First I go through the exemption notification No. 104/94-Cus. Dated 16.03.1994 as amended which reads as under:-

Exemption to containers of durable nature

In exercise of the powers conferred by sub-section (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 containers which are of durable nature, falling within the First Schedule to the Customs Tariff Act, 1975 (51 of

1975), when imported into India, from, -

(a) the whole of the duty of customs leviable thereon under the said First Schedule; and

(b) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act :

Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so :

Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit.

14.2. On perusal of said notification it is clear that the said exemption is available subject to condition that importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs binds himself to **re-export the said containers within six months from the date of their importation** and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner.

14.3. It is facts that the importer fails to re-export the goods imported within the six months from the date of import. Further as per the said notification in any particular case if importer shows sufficient reason for not exporting the imported goods within six month in such case the said period can be extended by the Assistant Commissioner for such further period, as he may deem fit. In the present case Importer had sufficient reason for not exporting the imported goods with in six month and only lapse on their part to approach the respective authority with sufficient reason why they fail to export the imported goods within six month.

14.4. I find that the importer imported the returnable packages (shipping racks/ shipping frames for wind tower) and the said returnable packages (shipping racks/ shipping frames for wind tower) exported by the said importer. The details are as under:

Sr. No.	BOE No.	BOE Date	Qty imported	SB No.	SB Date	Qty in exported	Export from
1	5005939	24.10.11	940 Nos	8072660	09.03.11	315 Nos	Mundra
				127619	25.07.13	625 Nos	Chennai
2	5027148	27.10.11	810 Nos	8073450	09.03.11	309 Nos	Mundra

				127619	25.07.13	501 Nos	Chennai
3	2756364	11.02.11	29 sets	3150289	08.04.11	15 sets	Mundra
				7137401	16.01.12	12 sets	Mundra
				7698052	23.02.12	2 sets	Mundra

From the above, I find that importer have imported the returnable packages (shipping racks/ shipping frames for wind tower) and the said returnable packages (shipping racks/ shipping frames for wind tower) exported.

14.5. In this regard I find that the Importer had executed necessary bond as per the requirement of the exemption notification No. 104/94-Cus. Dated 16.03.1994 as amended and exported the said goods as per the condition laid down in the said notification and also submitted the details of re-export the said containers. The importer had genuine difficulty to re-export the components of WEOG since the components are of very high value which needs adequate packing material. Accordingly, I find that it is not the case of the department that the importer has not re-exported the goods imported with in six month inasmuch as there appears to be a procedural infraction only to the extent of delay. Besides, the submissions put forth by the importer also clearly point out the fact that violation on the part of the importer rests on the prolonged stay of the goods and re-export after stipulated time period due to very high value components which requires adequate packing material.

15. I find that the reasons put forth by the importer are reasonable and beyond their control. The revenue involved in such imports had been always protected by way of Bank Guarantee under the Bond, as contemplated under the said Notification also. However, as regards to the prolonged exports of the goods, I am in full consonance with the facts stated under the Showcause Notice that proposes to charge the importer for violation of one the condition of the Notification and consequent penalties under Section 112(a) of the Customs Act, 1962, as there is an apparent violation of the proviso to the said Notification issued under Subsection (1) of the Section 25 of the Customs Act, 1962.

16. Since, the obligation of exports have already been met by the importer, the obligations under Bank Guarantee and Bond as proposed under the provisions of Section 143 of the Customs Act, 1962, needs to be treated accordingly inasmuch as no case has been made on the substantive part of the Notification viz., Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so. However, there exists a non-diligence on the part of the importer leading to the breach of proviso viz., the time constraint set forth

under the Notification on the part of the importer inasmuch as they failed to seek permission for such an extended period (beyond six months) from the competent authority for the exports of the part consignment.

17. In view of above, I pass the following order.

ORDER

I hereby drop the demand of Customs duty and impose Penalty of Rs.4,00,000/- (Rs.Four Lakhs only) on the importer M/s Gamesa Wind Turbines Pvt. Ltd., Chennai for violation of Notification No. 104/94-Cus. Dated 16.03.1994 issued under Section 25 of the Customs Act, 1962, under Section 112(a) of the Customs Act, 1962 and the Show Cause Notice F.No.S/43-11/SIIB/2011-12 dated 02.04.2013 is disposed off in above terms.

This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

12/09/17

(G.P.MEENA)

Additional Commissioner,
Customs House, Mundra.

BY REGD POST/SPEED POST

F.No. VIII/48-18/ADJ/ADC/MP&SEZ/2016-17

Dated: 12.09.2017

To
M/s Gamesa Wind Turbines Pvt. Ltd.,
489, GNT Road, Thandal Kazhani,
Vadagarai Post, Redhills,
Chennai – 600052

Copy to :

1. The Deputy Commissioner (SIIB), Custom House, Mundra.
2. The Deputy Commissioner, Import Group, Custom House, Mundra.
3. The Deputy Commissioner (RRA), Custom House, Mundra.
4. The Deputy Commissioner (Recovery), Custom House, Mundra.
- ✓ 5. The Deputy Commissioner (EDI), Custom House Mundra.
6. Guard File.