


<p>आयुक्त का कार्यालय / केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद, 380009.</p>		<p>Office of the Commissioner of Central Goods &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Asarwa, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:oaahmedabad@ceat.gov.in">oaahmedabad@ceat.gov.in</a></p>		

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. V.84/15-33/OA/2018

आदेश की तारीख / DIN  
जारी करने की तारीख / Date of Order : 30.04.2021  
Date of Issue : 30.04.2021

द्वारा पारित/Passed by -

अमरजीत सिंह / AMARJEET SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-004/2021-22**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

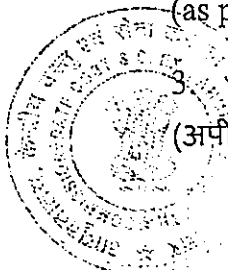
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा



हस्ताक्षर किए जाएंगे। उक्त अपील को  
विरुद्ध अपील की गई हो, उसकी भी  
एक प्रति प्रमाणित होनी चाहिए।  
किए जाने चाहिए।  
The Appeal should be  
specified in sub-rule (2) of  
filed in quadruplicate  
order appealed

चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के  
उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम  
अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अंग्रेषित

filed in Form No. E.A.3. It shall be signed by the persons  
Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be  
and shall be accompanied by an equal number of copies of the  
document against (one of which at least shall be certified copy). All supporting  
documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल  
उसकी भी एक ही प्रतियाँ संलग्न की जाएंगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो  
उनमें से कम से कम एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be  
filed in quadruplicate and shall be accompanied by an equal number of copies of the  
order appealed against (one of which at least shall be a certified copy).)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा  
विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे  
कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely  
and under distinct heads of the grounds of appeals without any argument or narrative and  
such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ  
स्थित है, वहाँ के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक  
रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट  
अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid  
through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the  
Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is  
situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 की अनुसूची 1-मद 6 के अंतर्गत निर्धारित किए  
अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना  
चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00  
as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice no. V.84/15-33/OA/2015 dated  
21.08.2018 issued to M/s. Inox Wind Limited, Plot No. 128, Village: Rohika,  
Ahmedabad- Rajkot Highway, Dist: Ahmedabad.



**Brief facts of the case:**

M/s. Inox Wind Limited, Plot No. 128, Village: Rohika, Ahmedabad- Rajkot Highway, Dist: Ahmedabad, (hereinafter referred to as 'M/s Inox') engaged in the manufacture of "Wind Operated Electricity Generators" which includes Tower, Nacelle, Rotor, Wind Turbine Controller, Nacelle Controller and Control Cables and were holding Central Excise Registration No. AACC10597BEM002. (Presently registered under GST)

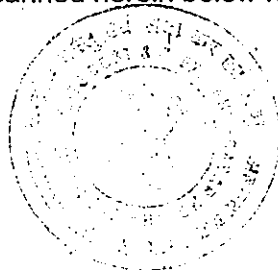
2. "Wind Operated Electricity Generators" which includes Tower, Nacelle, Rotor, Wind Turbine Controller, Nacelle Controller and Control Cables manufactured by M/s Inox are exempted from payment of Central Excise Duty vide Sr. No. 332 of Notification No. 12/2012 C.E dated 17.3.2012 as amended by Notification No. 12/2014 C.E dated 11.05.2014.

3. M/s Inox had applied for the benefit of exemption of excise duty on the procurement of Plates HR (Steel plates) from M/s Essar Steel India Ltd. for the purpose of manufacturing of Tower under Notification 12/2012 C.E (Sr No 332A) dated 17.03.2012 by referring to the decision in the case of M/s Rakhoh Enterprises / Gemini Infratech Pvt Ltd V/s CCE, Pune as reported in 2016-TIOL-1671-CESTAT-MUM-LB and filed application on 16.8.2016, 07.09.2016, 13.09.2016 and 19.10.2016. M/s Inox had mentioned in their application that Plates HR as a part of Tower. The said application was examined and permission was given to procure Plates HR subject to the conditions as laid down under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016. M/s Inox was given the following permissions to procure Tower Plates under the letter of undertakings for procuring excisable goods for manufacture at concessional rate of duty under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016:

*Table 1: Form I's which were given Permissions earlier and later withdrawn*

Sr.No.	Application number # Form I	LUT-1 (Letter of Undertaking) issued for the procurement
1	001/16-17/Inox/Rohika	UT-1/AR-V/Inox/58/16-17 dated 04.09.2016
2	008/16-17/Inox/Rohika	LUT-1/Dhok-V/Inox/70/2016-17 dtd 20.09.2016
3	003/16-17/Inox/Rohika	LUT-1/Dhok-V/Inox/71/2016-17 dtd 20.09.2016
4	004/16-17/Inox/Rohika	LUT-1/Dhok-V/Inox/72/2016-17 dtd 20.09.2016
5	002/16-17/Inox/Rohika	LUT-1/Dhok-V/Inox/73/2016-17 dtd 20.09.2016
6	002A/2016-17/Inox/Rohika	UT-1: 86/2016-17 dtd 25.10.2016
7	008A/2016-17/Inox/Rohika	UT-1: 88/2016-17 dtd 25.10.2016
8	004A/2016-17/Inox/Rohika	UT-1: 89/2016-17 dtd 25.10.2016
9	003A/2016-17/Inox/Rohika	UT-1: 90/2016-17 dtd 25.10.2016

3.1 Meanwhile, M/s Inox was asked to provide Chartered Engineer's certificate with regard to the consumption of Plates HR in manufacture of Wind Operated Electricity Generators (WOEG). Accordingly, a Chartered Engineer's certificate dated 14.11.2016 was submitted by them. The said certificate is scanned herein below for reference:



**D. M. Vaidya & Associates**

• Civil & Structural Engineer  
 • Computer Aided Design & Drawing  
 • Consultant & Inspector Engineer

C-101, Panchsheel Complex, Opp. Bani Park, Sarangpalli, Vadodra - 3  
 Ph: 079-2241251 / 2241173 / 22466555  
 E-mail: dmva@dmva.com

Certificate Reference No: RW/11/01

Date: 14/11/2016

**TO WHOMSOEVER IT MAY CONCERN**

This is to certify that Inox Wind Limited (IWL) is engaged in the business of Manufacturing of Wind Operated Electricity Generators (WOEG) and manufacture of said WOEG inter alia includes following parts:

- Tower: It supports the nacelle and rotor assembly of WOEG;
- Nacelle: It consists of gear-box, generator, yaw components, flexible couplings, brake hydraulics, brake callipers, sensors, nacelle cover and other smaller components;
- Rotor: It consists blades, pitch mechanism, main shaft, special bearings; and
- Wind turbine controller, nacelle controller and control cables.

Based on the request made by IWL, we have analyzed the process of manufacturing tower and evaluated specifications and technical requirements of the steel plates used as part of the Tower.

Accordingly, specifications made available for our analysis and found to be required for manufacture of Tower are tabulated below:

ITEM	DESCRIPTION
HR Plates	5.35mm - S355Q+H
HR Plates	4.00mm - S355Q+H
HR Plates for door frame	5.00mm - S355Q+H
HR Plates for door frame	6.00mm - S355Q+H / S355Q+H

We have also verified that the specifications tabulated above are as prescribed by the Turbine Technology and Design Division of IWL i.e. 'AMSC Windtec GmbH'.

The certification made hereinabove is based on the information and data made available by IWL for the verification.

We do not have direct or indirect interest and the certificate is issued without prejudice.

D. M. Vaidya  
 Chartered Engineer  
 M-22/181/8



3.2 Perusal of the said chartered engineer's certificate revealed that HR Plates, which were shown as part of WOEG by M/s Inox (shown as Tower Plates in proforma invoices submitted with the applications for example, IWPL/ROHIKA/15092016/001 dated 15.09.2016), did not form part of WOEG. Thus it appeared that HR Plates were consumed for manufacture of parts of WOEG.

4. M/s Inox have later vide application dated 6.12.2016 applied for permission for procurement of 6054.636 MT of Plates HR from M/s Jindal Steel & Power Ltd., Raigarh. M/s Inox further submitted following three applications dated 13.02.2017 for procurement of H R Plates at concessional rate of duty under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016 for manufacture of Towers.

Table 2: Further applications filed by M/s Inox

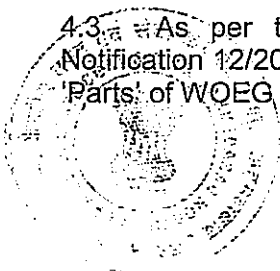
Sr.No.	Item	Quantity	Duty Foregone	Date of application
1	Plates H R	6054.636 Metric Tons	30878737.00	6.12.2016
2	Plates H R	2935.156 Metric Tons	15644428.00	13.2.2017
3	Plates H R	1298.895 Metric Tons	6997251.00	13.2.2017
4	Plates H R	1283.084 Metric Tons	6911733.00	13.2.2017

4.1 On perusal of purchase order no. 5100011485 dated 18.11.2016 issued by M/s Inox to M/s Jindal it revealed that:

- Plate HR was shown as parts of Wind Turbine Generator
- As per "Standard Terms and Condition" the "product" shall mean goods to be manufactured / supplied based on the specifications for use in Wind Turbine Generators as per purchase order issued.

4.2 On perusal of the proforma invoice No. JSPL/PI/2016-17/Dec/18 of M/s Jindal, it revealed that the product they would be supplying for the above purchase orders were Steel Plates of different sizes and thickness only. It appeared that there was no particular specification according to which the HR Plates were manufactured to say that 'Plates HR' is a part of Tower/WOEG.

4.3 As per the clarification given by Board vide Circular No 1008/15/2015-CX and Notification 12/2014 C.E dated 11.05.2014, the excise duty exemption had been granted only to 'Parts' of WOEG and its 'Parts and Components'. No such exemption had been provided for raw



materials consumed in the manufacture of 'Parts' or 'Part of parts' of WOEG. Therefore the applications mentioned at Table 2 with the Original Bonds were returned to M/s Inox and the permissions given for procurement of 'Plates HR' from M/s Essar Steel Ltd. for manufacturing of Tower under the letter of undertakings as detailed in Table 1 were withdrawn by the Assistant Commissioner vide letter F.No III/Inox/B-1 Bond/47/15-16 dated 01.03.2017 stating that the said exemption is not available to them.

5. M/s Inox have claimed the benefit of Sl. No. 332A of Notification No. 12/2012 – CE as amended (in List 8 Sr. No. 13) by filing application for procuring H R Plates at concessional rate of duty under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016. The relevant portions i.e Sr. No. 332 of Notification No. 12/2012 C.E dated 17.3.2012 and Sr. No. 332A inserted vide Notification No. 12/2014 C.E. dated 11.05.2014 are reproduced herein below along with the relevant portion of List 8 for reference:

Sr. No. 332 of Notification No. 12/2012 C.E dated 17.3.2012

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
332	Any Chapter	Non-conventional energy devices or systems specified in LIST 8	Nil	Nil

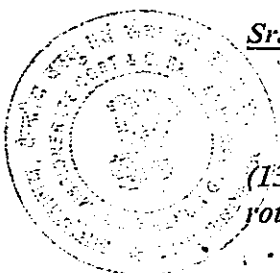
Sr. No. 332 A inserted vide Notification No. 12/2014 C.E dated 11.05.2014

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
332A	Any Chapter	Parts consumed within the factory of production for the manufacture of goods specified in LIST 8	Nil	2

Condition No.	Condition
2.	Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, is followed.

Sr.No. 13 of List : 8 of Notification No. 12/2012 – CE as amended

(13) Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller.



6.1 It is thus evident from entry No. 13 that the parts of "Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller" are eligible for exemption under Sr. No. 332A of Notn. No. 12/2012 CE.

7. The Central Board of Excise and Customs vide circular No. 1008/15/2015, dated 20.10.2015 to clarified that parts such as tower, nacelle, rotor, blades, wind turbine controller etc. of WOEG are eligible for exemption from Central Excise duty. The said circular is produced herein below for reference:

*CIR NO. 1008/15/2015-CX, DT. 20/10/2015*

***Clarification regarding tower and blades constitute an essential component of Wind Operated Electricity Generators (WOEG)-reg***

A large number of references have been received from the trade as well as the field formations to clarify whether exemption Notification No. 12/2012-Central Excise, dated 17.03.2012 covers part/components of Wind Operated Electricity Generators (WOEG). References have been received in relation to tower, tower doors, blades and electrical boxes.

2. The matter has been examined. In the aforesaid notification serial no. 332 read with List 8 exempts 'Wind operated electricity generator, its component and parts thereof including rotor and wind turbine controller' from Central Excise duty. In this regard, attention is invited to the judgement of Hon'ble Supreme Court dated 13th August, 2015 in case of M/s Gemini Instratech Vs Commissioner of Central Excise, Nashik in Civil Appeal No. 1218 of 2006, wherein Hon'ble Apex Court (while deciding the eligibility of wind mill doors and electrical boxes of WOEG for exemption) has held that-

"It is not in dispute that as far as windmill doors or tower doors are concerned, it is a safety device which is used as security for high voltage equipments fitted inside the tower, preventing unauthorized access and preventing entries of reptiles, insects, etc, inside the tower. This, according to us, would be sufficient to make it part of electricity generator. We further find that this was so held by the Commissioner of Central Excise and Customs, Raipur in order-in-original dated 28.02.2005 as well as by the Commissioner (Appeals), Raipur vide his orders dated 10.02.2003. The said orders were accepted by the Revenue as it is recorded by the CESTAT that the Revenue could not produce any evidence to show that those orders were challenged by it. Further, since the tower is held as part of the generator, door thereof has to be necessarily a part of the generator. We, therefore, are of opinion that there is no case of interference made out by the Department.

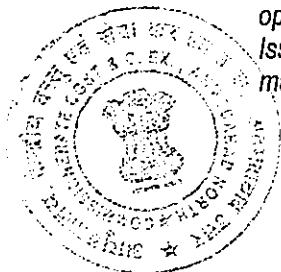
The appeal is accordingly dismissed"

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

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

4. In view of the judgement of Hon'ble Supreme Court and clarification received from the administrative ministry, parts/components referred in Para 3 above may be treated as parts and components of wind operated electricity generators eligible for exemption under serial no. 332 of Notification No. 12/2012-Central Excise, dated 17.03.2012.

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



7.1 It is thus evident from Circular No. 1008/15/2015-CX, dated 20-10-2015, 'Tower' had been clarified to be a part of the Wind Operated Electricity generator and certainly does not cover HR plates. In this case, M/s Inox applied for the exemption benefit of Sr 332A of Notification 12/2012 C.E for 'Plates HR' which does not appear to be 'Part' of Tower/WOEG as per clarification given in the Circular No. 1008/15/2015-CX, dated 20-10-2015.

8. The term 'parts' has been defined in Cambridge dictionary as "a separate piece of something, or a piece that combines with other pieces to form the whole of something OR one of the pieces that together form a machine or some type of equipment". In short 'part' is something which is straightway fitted to other pieces to form the desired product. In other words, 'part' would be something on which no further work is required to be undertaken but would be taken up in the assembly line for the purpose of fitting with other pieces/ parts.

8.1 Likewise the term 'component' has been defined in Cambridge dictionary as "a part that combines with other parts to form something bigger". Here again, the meaning almost remains the same as that discussed at para 8 above. The parts or components would be pieces which need no further work but are to be taken in the assembly line to make the desired product.

9 In the instant case, Plates HR, claimed as parts by M/s Inox, are used for manufacture of Tower. Thus, it appeared that such Plates HR are raw materials required for making a part i.e. Tower. Without undertaking the manufacturing process on Plates HR, they would be of no use. It is only after undertaking the process of manufacture that the HR Plates are converted to Tower. As per the letter dated 26.07.2016 given by M/s Inox, the Plates HR were subjected to the processing of Cutting & Beveling, Bending, Longitudinal Seam welding, Re-bending and Flange fit-up, 1+1 shell fitup and welding, progressive fitup and welding, fitment of weldable internals, Blasting and painting in the processing of manufacture of Tower.

9.1 Thus, HR Plates cannot be called as 'parts or components' of Tower or Wind Operated Electricity Generator especially in light of the meaning of the 'parts/ components'. It may be appreciated that Sr. No. 332A of Notn. No. 12/2012 CE exempts only 'parts' of Wind Operated Electricity Generator.

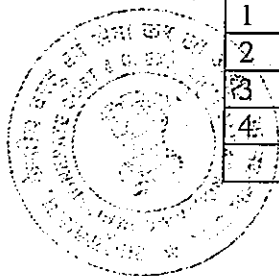
9.2. Further, M/s Inox is engaged in manufacture of WOEG falling under chapter 85023100 of Central Excise Tariff Act, 1985. The parts suitable for use solely or principally with the machines of heading 8501 and 8502 have been classified under 8503. However, in the instant case M/s Inox have been procuring Plates HR as parts of tower. The Plates HR procured by them have been classified by the suppliers under chapter sub-heading 72085110. Thus it appeared that 'Plates HR' are raw materials for manufacturing the Tower of WOEG. Hence such Plates HR do not appear to fall under the category of Parts of WOEG.

10. It appeared from para 9 and 9.1 supra, that M/s Inox is not eligible for the benefit of Sr. No. 332 of Notification No. 12/2012 C,Ex dated 17.3.2012 and Sr. No. 332 A inserted vide Notification No. 12/2014 C,Ex dated 11.05.2014 for the procurement of raw materials such as HR Plates etc. at concessional rate of duty under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016 is concerned.

11. Further, the details of procurement of 'Plates HR' by M/s Inox using the exemption certificates (which were later withdrawn by the Assistant Commissioner vide letter dated letter F.No III/Inox/B-1 Bond/47/15-16 dated 01.03.2017.) issued as given in Table 1 were obtained from the Supplier manufacturer i.e. M/s Essar Steel Limited, Hazira, Surat by the jurisdictional Range Superintendent. The procurement details of Plates HR against the invalidated exemption certificates are given in the following table as per the letter dated 09.05.2017 of Range Superintendent, AR-I, Div-II, Surat-II.

Table 3: Procurement details by M/s Inox against the invalidated exemption certificate

Sr.No.	Form I	Quantity Procured (MT)	Sum Assessable Value (Rs)	Duty Forgone
1	002/16-17/INOX/Rohika	2124.975	7,95,31,626.51	99,41,453
2	003/16-17/INOX/Rohika	1825.072	6,69,83,572.92	83,72,947
3	004/16-17/INOX/Rohika	1095.513	4,24,74,681.18	53,09,335
4	008/16-17/INOX/Rohika	951.596	3,54,24,033.84	44,28,004
TOTAL				2,80,51,739



11.1 From the records it is revealed that M/s Inox had submitted seven applications (Form I No.s 009 to 015/16-17) vide letter dated 24.10.2016 and 25.10.2016 to the divisional office for procurement of goods from M/s Essar Steel Ltd. under the concessional rate of duty. However these applications were withdrawn by M/s Inox themselves vide letter dated 07.12.2016 on the grounds that they had a new purchase order with new rates. Thus these applications were not approved or accepted by the department. Further vide the letter dated 09.05.2017 of JRO, Surat, it was informed that as per the details obtained from M/s Essar Steel Ltd., they had supplied HR plates on the basis of the following Form Is to M/s Inox about which the JRO, Surat was not aware as they had not received the copies of the said Form I from the Jurisdictional Division Office. It was only when such a letter was received from the Surat Office, the Jurisdictional Division Office came to know about the procurement of such HR Plates under the Form Is which were originally withdrawn by M/s Inox vide their letter dated 07.12.2016. Thus it had come to the notice of the department that M/s Inox had also procured the following quantity of (mentioned at Table 4 below) 'Plates HR' from M/s Essar at concessional rate of duty without permission from the department. These procurements were done without following the procedure as stipulated in Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2016. Thus it appeared that the M/s Inox had fraudulently done the procurement of Plates HR to evade the payment of excise duty by providing fake/illegal information to M/s. Essar Steel India Ltd. The details of the procurement of 'Plates HR' without the permission of the department is given below,

*Table 4: Procurement of Plates HR without proper permission and documents*

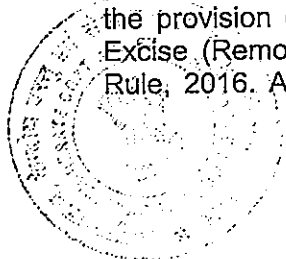
Sr.No.	Form I	Quantity Procured (MT)	Sum of Assessable Value (Rs)	Duty Forgone
1	009/16-17/INOX/Rohika	625.717	2,42,89,198.63	30,36,150
2	0010/16-17/INOX/Rohika	955.931	3,65,98,958.93	45,74,870
3	0014/16-17/INOX/Rohika	201.541	80,11,255.82	10,01,407
4	0015/16-17/INOX/Rohika	386.465	1,56,08,668.40	19,51,084
<b>TOTAL</b>				<b>1,05,63,511</b>

12. From the forgoing para, it was evident that M/s Inox had procured excisable goods against invalidated Form I's and undertakings as in Table 3 and without proper permission as per Table 4. M/s Inox procured excisable goods having assessable value of Rs 22,44,13,912 on which Central Excise duty works out to Rs 2,80,51,739 against invalidated Form I's and undertakings. Also M/s Inox had procured 'Plates HR' having assessable value of Rs 8,45,08,081 on which Central excise duty works out to Rs.1,05,63,511 illegally without proper permission and documents.

12.1 It appeared that M/s Inox had availed the inadmissible benefit of SI.No 332A of the Central excise exemption notification No. 12/2012-CE dated 17.03.2012 as amended despite knowing that the provision is not applicable to the excisable good i.e Plates HR which are not 'Parts' of the Tower or Wind Operated Electricity Generator (WOEG). M/s Inox appeared to have evaded payment of Central Excise duty by wrongly availing the benefit under exemption as per SI.No 332A of 12/2012-CE dated 17.03.2012, as amended.

12.2 From the facts discussed above for duty forgone in Table 3, it appeared that M/s. Inox was not entitled to avail the benefit of exemption as per SI.No 332A of Notification 12/2012-C.E dated 17.03.2012 for the procurement of 'Plates HR' from M/s. Essar, Surat. Therefore it appeared the amount of Rs.2,80,51,739/- as shown in Table 3 is required to be recovered from M/s Inox under the provision of Section 11A(1) of the Central Excise Act, 1944 read with Rule 7 of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016. Also all such procurements of excisable goods are illicit clearances of excisable goods without payment of appropriate Central excise duty on the basis of invalid and illegal Form I's and undertakings and it appeared that interest is also chargeable in terms of Section 11AA of the Central excise Act, 1944.

12.3 From the facts discussed above for duty forgone in Table 4, it's apparent that M/s Inox had procured 'Plates HR' from M/s Essar using Form I's which had not been approved and accepted by the jurisdictional Assistant Commissioner. It appeared that these are fraudulent procurements and had been done to avail exemption benefit illegally. Therefore it appeared the amount of Rs.1,05,63,511 as shown in Table 4 is required to be recovered from M/s Inox under the provision of Section 11A(1) of the Central Excise Act, 1944 read with Rule 7 of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016. Also all such procurements of excisable goods are illicit clearances of excisable





goods without payment of appropriate Central excise duty on the basis of fraudulent Form I's and it appeared that interest is also chargeable in terms of Section 11AA of the Central excise Act, 1944.

13 The above acts of M/s Inox appeared to have been done in contravention of the following provisions:

- i. Notification No 12/2012-CE dated 17.03.2012 as amended from time to time in as much as they had wrongly availed the benefit of exemption as per Sl. No. 332A of the aforesaid notification which is not applicable to the clearances of excisable goods of 'Plates HR' which are cleared to them
- ii. Rule 4 of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016 by providing wrong information that 'Plates HR' is a part of Tower/WOEG whereas it's a raw material for manufacturing tower.
- iii. Rule 6 of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016 for non-submission of the quarterly returns of procurement done through invalid Form Is.

14. All these acts of contravention on the part of M/s Inox appeared to have been committed to evade payment of duty of Central excise duty. Notification 12/2012-C.E is fully in public domain and M/s Inox is not entitled to procure the subject goods at Nil rate of duty as Sl. No. 332A of the said notification exempted only 'Parts' of WOEG/Tower. However in this case, the subject goods i.e 'Plates HR' which are procured by M/s Inox cannot be construed as 'Parts' of Tower/WOEG and appeared that this procurement is a blatant breach of notification 12/2012-C.E dated 17.03.2012.

14.1 M/s. Inox procured the excisable goods i.e Plates HR with invalid Form Is and without proper permissions. These procurements by wrongfully availing the exemption benefit made the goods liable for confiscation under Rule 25 of the Central Excise Rules, 2002. The above acts of contravention by M/s Inox constitute offences of the nature as described in Rule 25 of the Central Excise Rules, 2002 and therefore it appeared that they rendered themselves liable for penalty as provided under the said rule.

14.2 In the instant case, the Central excise duty forgone amounting to Rs 2,80,51,739 (as per Table 3) and Rs 1,05,63,511 (as per Table 4) appeared to be recoverable from them under Section 11A(1) of Central excise Act, 1944 read with Rule 7 of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016.

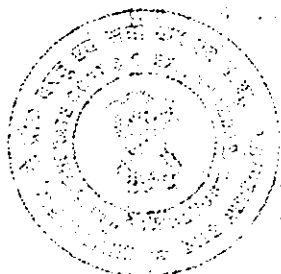
14.3 M/s Inox had fraudulently procured excisable goods without proper permission and undertakings for the procurement mentioned in Table 4. It appeared that this is a blatant breach of conditions mentioned in Notification 12/2012-CE dated 17.03.2012 to avail the exemption illegally. It appeared that these acts of M/s Inox invite penal action under Section 11AC(c) of the Central excise act, 1944 though this demand notice had been issued within limitation period.

14.4 The role of Shri Jitendra Mohananey, working as CFO and acting as authorized signatory of M/s Inox wind cannot be underplayed. The Form-Is which were withdrawn by M/s Inox were sent to M/s Essar for procuring the excisable goods illegally. It appeared that this activity of fraudulent procurement of H R Plates under exemption of central excise duty couldn't have been done by M/s Inox without the active participation and knowledge of the authorized signatory. Therefore it appeared that Shri Jitendra Mohananey, Authorised Signatory is liable for penal action under Rule 26 of Central Excise rules, 2002.

16. Therefore, M/s. Inox Wind Limited, Plot No. 128, Village: Rohika, Ahmedabad- Rajkot Highway, Dist: Ahmedabad were called upon to show cause to the Commissioner, CGST & Central Excise, Ahmedabad North, Ahmedabad, as to why:

16.1 For the procurements done as per Table 3,

- i. The Undertakings and Form I's issued under Rule 4(5) of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016 by the jurisdictional Assistant Commissioner which were subsequently cancelled but against which clearances of excisable goods at Nil rate of duty under Sl. No. 332A of Notification No 12/2012-C.E dated



17.03.2012 have been effected, should not be held as invalid documents for the procurement of excisable good i.e Plates HR as detailed in Table 3.

- ii. Goods valued at Rs 22,44,13,912/- (Rupees Twenty Two Crores Forty Four Lakhs Thirteen thousand Nine Hundred and Twelve only) against the Forms I's mentioned at Table 3 supra, procured without payment of appropriate excise duty should not be held liable for confiscation under Rule 25 of Central Excise Rules, 2002.
- iii. Central excise duty forgone amounting to Rs 2,80,51,739/- (Rupees Two Crores Eighty Lakhs Fifty One Thousand Seven Hundred and Thirty Nine only) for the procurements relating to the LUTs issued during the period from 04.09.2016 to 25.10.2016 should not be demanded and recovered from them under Section 11A (1) of the Central Excise Act, 1944 read with Rule 7 of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016.
- iv. Interest at the appropriate rate should not be charged and recovered from them under Section 11AA of the Central Excise Act, 1944
- v. Penalty under Rule 25 of the Central Excise Rules 2002 read with Section 11AC(c) of the Central Excise Act, 1944 should not be imposed on them .

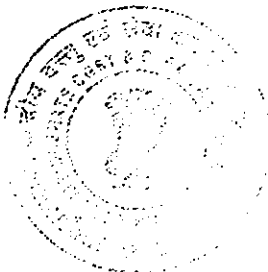
16.2 For the procurement done as Table 4,

- i. Goods valued at Rs 8,45,08,081/- (Rupees Eight Crores Forty Five Lakhs Eight thousand and Eighty One only) procured without payment of excise duty illicitly, without having the necessary permission and without following the proper procedure, should not be held liable for confiscation under Rule 25 of Central Excise Rules, 2002.
- ii. Central excise duty for the fraudulent procurements of goods amounting to Rs 1,05,63,511/- (Rupees One Crore Five Lakhs Sixty Three Thousand Five Hundred and eleven only) should not be demanded and recovered from them under Section 11A (1) of the Central Excise Act, 1944 read with Rule 7 of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rule, 2016.
- iii. Interest at the appropriate rate should not be charged and recovered from them under Section 11AA of the Central Excise Act, 1944
- iv. Penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC(c) of the Central Excise Act, 1944 should not be imposed on them.

16.3.1 Personal Penalty under Rule 26 of the Central Excise Rules 2002 should not be imposed against Shri Jitendra Mohananey, Authorised Signatory of M/s Inox Wind Limited.

**Personal Hearing:**

17. Shri Yogesh Rai, Assistant Manager and Shri Vijay Thakkar, Authorised Representative of the assessee, appeared before me on 16.03.2021. They reiterated their written submissions dated 09.10.2020 and 16.10.2020.



**DEFENCE REPLY/WRITTEN SUBMISSIONS:**

18. The assessee in reply to the Show Cause Notice, submitted vide their letters dated 8.4.2019, 9.10.2020 and 16.10.2020, has inter alia submitted that-

- A perusal of Entry 332 (supra) makes it clear that all non-conventional energy devices or systems covered in List 8 are exempted from levy of Excise duty. Among others, List 8 includes WOEgs, its components and parts ("WOEGs and Parts thereof"). This clearly indicates that not only WOEgs, but its components and parts are also entitled for Excise duty exemption vide Entry 332 of notification.
- Further, Entry 332A provides that "Parts consumed within the factory of production for the manufacture of goods specified in List 8" (emphasis supplied) would be eligible for Excise duty exemption. Accordingly, a collective reading of Entry 332 and 332A in the context of WOEgs (Refer: Serial No. 13 of List 8) would clearly imply that parts consumed within the factory of production for manufacture of WOEgs and Parts thereof would be eligible for Excise duty exemption under the Notification.
- That along with nacelle, hub and rotor blades, tower is an integral part of a WOEgs in terms of CBEC Telex/Circular No. 924/2/97-Cus. (TU), dated August 9, 1997. Towers are the very foundation and base on which WOEgs stand. It is not possible for WOEgs to function without the towers. Further, steel plate is the primary raw material/parts required for manufacture of towers. This position is further strengthened by the CBEC circular, wherein the Revenue while referring to the decision of Hon'ble Supreme Court in the case of *Gemini Instratech vs. Commissioner of Central Excise, Nashik in Civil Appeal No. 1218 of 2006* and *CCE, Nagpur vs. Hyundai Unitech Electrical Transmission Limited in Civil Appeal No. 5821 of 2013* clarify that tower and blades constitute an essential component of WOEgs.
- While the 2015 Circular has clarified that towers, etc. would constitute parts or components WOEgs, the judicial precedent referred below has laid down that parts of tower would constitute as part of WOEgs. In this regard reliance is placed on the decision of Supreme Court in the case of *M/s Gemini Instratech vs. Commissioner of Central Excise, Nashik (Civil Appeal No. 1218 of 2006)* wherein it was held that since tower is a part of WOEgs, parts of tower (such as doors) would also be treated as parts of WOEgs. Accordingly, the Supreme Court has upheld the principle that "part of a part constitutes part of the whole".
- The Hon'ble Tribunal (Mumbai Bench) has also upheld the said principle in the case of *Pushpam Forging vs. CCE, Raigad [2006 (193) ELT 334 (Tri. - Mumbai)]* so as to hold that MS flanges which are parts of tower would be parts of WOE Gs. In this regard, it was held that once tower is accepted and found and held to be part of WOEgs, it is to be held that part of tower i.e. Plates HR (steel) used in manufacturing of the tower will be (in entirety) a part of the whole Wind Generated Mill producing electricity from unconventional sources. Accordingly, all duty benefits available to WOEgs should be extended to these parts i.e. Plates HR as well.
- They relied on *Hyundai Unitech Electrical Transmission Ltd vs. CCE, Nagpur [2005 (187) E.L.T. 312 (Tri. - Mum)]*, *Collector of Central Excise vs. Mahendra Engg. Works [1993 (67) EL T 134 (Tri)]*, *Tata Iron and Steel Company vs. CCE [2001 (130) ELT 183 (Tri-Kol)]*, *CCE vs. Bansal Industrial Corporation [2000 (118) ELT 119 (Tri)]*
- That the term 'parts' is not defined under the Notification or the Central Excise Law. However,

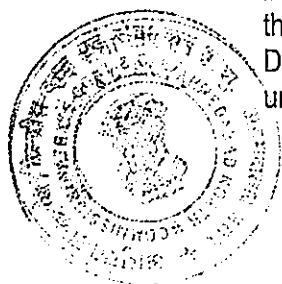


reference could be made to the judgment of the Supreme Court in the case of *Saraswati Sugar Mills vs. CCE, Delhi* [2011 (270) ELT 465 (SC)], wherein the Supreme Court has discussed scope of the expression 'component' or 'component part'. It has been observed that if an article is an element in the composition of another article made out of it, such an article may well be described as a component part of another article. The said Apex Court ruling thus, makes it abundantly clear that scope of the term 'parts' cannot be restricted to goods required to be physically used in another without losing its form. Usage in another product is testimony of the item being a part thereof.

- They relied on the judgment in the case of . *Eastend Paper Industries Limited* [1989 (43) ELT 201 (SC)], *Bharti Airtel Limited vs. CCE* [2014 (35) STR 865 (Bom.)] & others
- Chartered Engineer's Certificate dated November 14, 2016 through its letter dated November 16, 2016 that clearly states that the Plates HR are characterized with the specifications as prescribed by the Turbine Technology and Design Licensor of IWL i.e. AMSC Windtec GmbH. The same should, thus, be viewed as an integral Part of the Tower and in turn of the WOEGs.
- The said Plates HR are not mere steel raw material but specific 'parts or components' used to manufacture the tower which is an integral part of WOEGs. They relied on *Pushpam Forging vs. CCE, Raigad*,
- It is settled legal position that there is no room for intendment and assumptions in proceedings concerning fiscal laws. The present case admittedly relates to exemption benefit under the Notification and hence, the grant of the benefit should strictly be confined to evaluation of such conditions as may have been referred to or provided in the Notification itself and not otherwise.
- Their own The judiciary has consistently held that statutes/ notifications cannot be interpreted beyond the pure meaning of the words contained therein. Alternatively, the benefit under a notification cannot be subjected to any condition or limitation which has not been expressly mentioned or referred therein. They relied on the following judgments:-
- *Hemraj Gordhandas vs AC- 1978 (2)ELTJ350(5.C.)*
- *Inter Continental (India) vs UOI - 2003 (154) ELT 37 (Guj.); etc.*

(A) Distinction between entry No.332 and 332A of Notification No.12/2102-CE.

1. From the above it will be clear that Sr. No. 13 of List 8 are covered in Sr.No.332 of Notification No.12/2012-CE and attracts Nil Rate of duty.
2. Where as Sr. No. 332A of the said Notification grants exemption to the parts consumed within the factory of production for the manufacture of goods specified in LIST 8 [i.e. in our case production of the goods at Sr.No.13 both WOEGs and its components and Parts] and if such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001/2016 is followed. Condition 2 is as under.



2.	Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, is followed.
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3. Thus the difference between Sr. No 332 and 332A is that the Sr. No 332 grants the Exemption from of duty for the goods at Sr.No13 of the List 8 of the notification, whereas the Sr.No.332A of the notification grants the exemption to the Parts consumed within the factory of production for the manufacture of goods specified in LIST 8.

**(B) Exemption availed till 25-10-2016 under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001/2016.**

1. Accordingly we were availing exemption for our final product i.e. WOEGs and its components are exempted vide Sr.No.332 and for the Parts consumed in the factory of production for the manufacture of Components we were availing benefit of Sr.No.332A for "Plate HR" which were consumed in the manufacture of Parts i.e. Tubular Tower of WOEGs by following the conditions for procuring Plate HR under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001/2016 after necessary information and approval/permission-acceptance of four LUT dated 20-09-2016, one on 05-09-2016 and two on 25-10-2016 by the Assistant Commissioner having jurisdiction over our factory. The said permission by way of acceptance of Bond/LUT was given after a lot of deliberation and exchanges of letter by the Jurisdictional Assistant Commissioner as submitted in our earlier submission dated 05-04-2019.

**(C) Subsequent to 25-10-2016, for further procurement under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001/2016 Rejection of application.**

1. This being so, for our additional requirements of Plate HR, we have submitted one applications in Form-1 vide letter dated 06-12-2016, and three applications dated 13-02-2017, however the same was rejected by the Assistant Commissioner vide their letter No. III/Inox/B-1Bond/47/15-16 dated 01-03-2017, wherein it was mentioned;

"2. As per clarification given by the Board vide Circular No.1008/15/2015.CX issued from F.No.201/08/2015-CX.6 by CBEC and notification No.12/2014CE dated 11-07-2014, exemption has been granted only to the "Parts" of Wind Operated Electricity Generators (WOEGs) and parts and its components. However, no such exemption has been provided for raw materials consumed in the manufacture of Parts of the parts of WOEGs.

3. In the instant case, unlike parts which can be directly fitted into the final product the HR plates have to further undergo manufacturing process before they can be converted to a Tower. HR plate therefore can be considered as raw materials and certainly cannot be considered as "Parts" or Components.

4. In view of the above clarification, your application for removal of goods at concessional rate of duty under Central Excise (Removal of Goods at Concessional Rate of duty for manufacture of excisable goods) Rules, 2016 as mentioned in para 1 supra are rejected herewith. Also the permissions given earlier to M/s Inox for procurement of Plates HR at concessional rate of duty under Central Excise (Removal of Goods at Concessional Rate of duty for manufacture of excisable goods) Rules, 2016 are withdrawn with immediate effect. You are therefore required to immediately pay up the duty liability arising thereof.

**(D) Appeal before the Commissioner (Appeals)**

1. On receipt of the said letter we represented to the Hon'ble Commissioner vide our letter dated 12-04-2017. However, vide letter No. IV/16-30/MP/16-17 dated 18-05-



2017 the Deputy Commissioner, (Tech), Central Excise, Ahmedabad-II informed to us that "the Commissioner has gone through your representation thoroughly in view of prevailing Notification, Circular & Legal position. The Commissioner is of the view that part has to be specific size and shape which is suitable for solely or principally with a particular machine and benefit of the notification 12/2012-CE as amended cannot be extended to HR Plates/Sheets."

2. Being aggrieved with the said letter of the we had filed an appeal on 21-07-2017 the Hon'ble Commissioner (Appeals), Ahmedabad who in turn vide their Order In Appeal No.AHM-EXCUS-002-APP-288-17-18 dated 05/03/2018 [enclosed as Annexure-C] without entering into merit of exemption availed, had rejected the appeal on the ground that appeal if considered against order of the Assistant Commissioner dated 01-03-2017 is barred by the limitation and if considered against the letter of Deputy Commissioner dated 18-05-2017 cannot be entertained since the same communicates the order of the Commissioner which is not subordinate authority.

(E) Appeal before CESTAT:

1. The aforesaid Order In Appeal was agitated before the Hon'ble CESTAT by way of filing two appeals. First appeal No.E/11455/2018 dated 06-06-2018 against the letter No. IV/16-30/MP/16-17 dated 18-05-2017 with condonation of delay in filing an appeal which is admitted by the Hon'ble Tribunal vide its order No M/11316/2018 dated 01-10-2018. The Second appeal No. E/11456/2018 dated 06-06-2018 against the Order In Appeal.
2. Pending decisions of aforesaid two appeals before CESTAT, the Hon'ble Commissioner, Central Excise, Ahmedabad-II have issued a show cause notice bearing V.84/15-33/OA/2018 dated August 21, 2018 wherein the issues raised in the said show cause notice and that agitated in the appeal dated 06-06-2018 are related to whether the Plate HR be considered as a parts of the WOEgS and whether the is entitled to exemption under Sr.No.332A of Notification No.12/2012-CE or otherwise.
3. Besides the common issue involved, vide said show cause notice the appellants are called upon to show cause as to why previous applications granted to the applicant should not be made invalid and as a consequence it is also proposed in the show cause notice as to why the Central Excise duty forgone should not be recovered along with Interest and why the penalty should not be imposed upon us.
4. Since the issue agitated before the Hon'ble Tribunal is identical to the issue involved in the aforesaid show cause notice, it will not be in our interest to run parallel proceedings before the Hon'ble Tribunal and before the Hon'ble Commissioner, Central Tax, Ahmedabad North. Hence before the show cause notice is concluded, we have made application on 09-09-2020 for withdrawal of the appeal No. Excise/11456/-2018 filed on 06-06-2018 to the Hon'ble CESTAT which stood withdrawn as per CESTAT's Order No. A/11252-11253/2020 [copy enclosed]. Thus till date issue of exemption is not decided at any level.

(F) Basis and allegations in the show cause notice.

- (1) The central issue in the show cause notice is based on the withdrawal of permission for procuring Plate HR under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001/2016 and consequently demand of Central Excise duty on the Plates HR is raised under Rule 7 of (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001/2016 read with section 11A of the Central Excise Act, 1944. The reason advanced by the department for withdrawal of the permissions and in raising show cause notices is based *inter-alia* on the following allegations.



- (2) The clarification in the Circular No.1008/15/2015-CX is applicable only to the Parts of WOEgs specified in the circular. However, no such exemption has been provided to the raw materials consumed in the manufacture of Parts or Parts of Parts.
- (3) It is alleged that in our case unlike parts which can be directly fitted into the final product, the HR plate have to further undergo manufacture process before they can be converted into Tower. HR Plate therefore considered as raw materials and certainly cannot be considered as parts or component.
- (4) The part has to be specific size and shape which is suitable for solely or principally with a particular machine and benefit of the notification 12/2012-CE as amended cannot be extended to HR Plates/Sheets.
- (5) The aforesaid contention of the department is not correct as submitted by us in our earlier submissions and also as submitted in the present additional submission in the ensuing paras.

**(G) Additional Submissions:**

(I) The Distinction between Sr.No.332 and 332A of Notification No 12/2012-CE is not considered by the department while issuing the impugned show cause notice.

1. As explained in the facts mentioned above, the difference between Sr. No 332 and 332A is that the Sr. No 332 grants the Exemption from payment of duty for the goods at Sr.No13 of the list 8 of the notification, whereas the Sr.No.332A of the notification grants the exemption the parts which are required for consumption for the manufacture of the goods in List 8 i.e. Sr.No.13 "Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller".
2. Thus harmonious reading of Sr.No.332A and Sr.No. 13 of list 8 allows exemption for the parts which are required for consumption for the manufacture of components and parts of WOEgs including rotor and wind turbine controller.
3. Here it is pertinent to note that as per circular No. 1008, Tower is categorised as component of WOEgs. Therefore the components or parts required to be consumed in the manufacture of Tower is eligible for exemption under Sr.No. 332A of Notification No. 12/2012-CE.
4. The material [which is claimed by us as parts of the Components/Parts of Tower] required for consumption in the manufacture of items at Sr.No.13 of the List 8 of Notification No.12/2012-CE to be procured from outside our factory. Therefore to avoid misuse of the said material and to ascertain the intended use the condition 2 is imposed for availing exemption under Sr. No 332A.
5. The department failed to recognize the aforesaid distinction while issuing the show cause notice.

(II) Meaning of Parts:

**Manufacturing of Tubular Tower:**

1. Materials required for manufacturing of Tower are Plate HR, Flanges, Ladder and various Electrical Accessories. Before the Tubular Tower is manufactured/fabricated a design drawing is prepared. Tubular Tower is a huge Metal Structure fabricated at site with the help of aforesaid materials as per the drawings. The Plate HR is subjected to metal fabrication which involves process of cutting, bending and assembling process by welding, fitting with the help of bolt, nuts, flanges etc. The materials so used are constituent materials. Out of all the constituent materials the content of Plate HR is around 60 % of the Tubular Tower. Without Plate HR the Tubular Tower cannot be



fabricated. Therefore the Plate HR is the predominant constituent material and is an integral Parts of the Tubular Tower. Thus it can be seen that Plate HR is consumed during the fabrication/manufacture of Tubular Tower. The question as to whether Plate HR is called as parts of 'Tubular Tower' which is a part of WOEgs.

2. Assuming without admitting that the definition of "parts" is not given in the Central Excise/Central Excise Tariff but dictionary meaning is accepted, than we would like to draw attention with regard to what is component and parts, the Hon'ble Supreme Court of India have laid down the test to ascertain what is parts in case of *Saraswati Sugar Mills v. Commissioner of Central Excise Civil Appeal No. 5295 of 2003*, decided on 2nd August, 2011 [2011 (270) E.L.T. 465 (S.C.)] Hon'ble Supreme Court of India observed:

11. The meaning of the expression 'components' as defined in the dictionary is accepted and adopted by this Court in the case of *Star Paper Mills v. Collector of Central Excise - (1989) 4 SCC 724 = 1989 (43) E.L.T. 178 (S.C.)*; and the same is quoted with approval in *CCE v. Allied Air Conditioning Corporation - 2006 (202) E.L.T. 209 (S.C.)*.

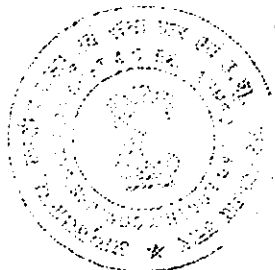
12. In order to determine whether a particular article is a component part of another article, the correct test would be to look both at the article which is said to be component part and the completed article and then come to a conclusion whether the first article is a component part of the whole or not. One must first look at the article itself and consider what its uses are and whether its only use or its primary or ordinary use is as the component part of another article. There cannot possibly be any serious dispute that in common parlance, components are items or parts which are used in the manufacture of the final product and without which, final product cannot be conceived of.

13. The meaning of the expression 'component' in common parlance is that 'component part of an article is an integral part necessary to the constitution of the whole article and without it, the article will not be complete'.

14. This court, in *Star Paper Mills* (supra) has made a settled distinction while considering whether paper cores are 'components' in the manufacture of paper rolls and manufacture of paper sheets. It is stated that 'paper cores' are component parts in so far as manufacture of roll is concerned, but it is not 'component part' in the manufacture of sheets. It is useful to quote the observations made by this Court :

"Paper core would also be constituent part of paper and would thus fall within the term "component parts" used in the Notification in so far as manufacture of paper in rolls is concerned. Paper core, however, cannot be said to be used in the manufacture of paper in sheets as component part.

15. In *Modi Rubber Ltd. v. Union of India*, (1997) 7 SCC 13, the appellant had set up tyre and tube manufacturing plant and imported various plants and machineries. While using the plants and machineries, PPLF (Poly propylene Liner Fabric) was used as a device in the form of liner components to various machinery units to protect the rubber-coated tyre fabric from atmospheric moisture and dust. This



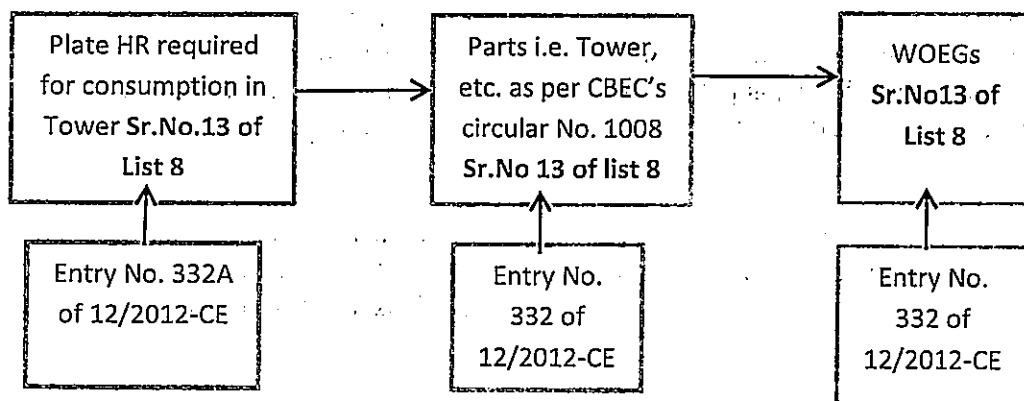


Court held that the PPLF was not a component of the machine itself. It was not a constituent part. It was used as a Liner Fabric not only in tyre production but also in similar other industrial processes

3. Thus the test laid down by the Hon'ble Supreme court to determine what is component or part of an article in the aforesaid case is clearly applicable in our case. The Plate HR which alone constitutes around 60% of it in the manufacture of Tower i.e. without which Tower cannot be manufactured. In other words it is an integral part of Tower. Hence the contention of the department is in total contrast to what the Hon'ble Supreme Court of India has laid down.
4. Therefore applying the test laid down by the Apex court, in our case Plate HR which are consumed in the manufacture of Tower which is part of WOEGBs is covered in the entry No. 332A of the Notification No.12/2012-CE.

**Flow Chart of Consumption of Plate HR in the manufacture of Tower [Part of WOEGB's]**

5. To make facts of the case easy to understand we draw herein below a layman diagram and flow chart as under.



6. The above chart shows that the tower is undisputedly a part of Wind Operated Electricity Generator in view of Circular No. 1008/15/2015-CD dated 20-10-2020, and Plate HR is consumed in the manufacture of Tower. The tower so manufactured is a part of WOEGBs.
- (III) **Classification of WOEGBs and its Parts in CETA,1985**

7. The WOEGBs are classifiable under sub heading No.8502.31.00 and its parts are classifiable under sub heading No.8503.00 of CETA, 1985. The said entries are reproduced as under.

**8502 ELECTRIC GENERATING SETS AND ROTARY CONVERTERS**

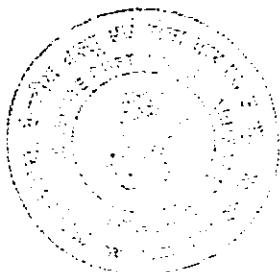
- Generating sets with compression-ignition internal combustion piston engines (diesel or semi-diesel engines):

- Other generating sets :

**8502 31 00 -- Wind-powered**

8502 39 – Other

**8503 00 - Parts suitable for use solely or principally with the machines of heading 8501 or 8502:**



8503 00 10 --- Parts of generator (AC or DC)

--- Parts of electric motor:

8503 00 21 ---- Of DC motor u 12.5%

8503 00 29 ---- Other

8503 00 90 --- Other

8. Thus the Parts i.e. Tower which is suitable for use solely or principally with the machines will be classified in Chapter Heading 8503.00.90 above.

9. Now in our case the issue involved is that for the manufacture of parts of 8503.00.90 we requires various materials which may be classified in any chapter of CETA, 1985. Accordingly, the Plates HR which is classifiable under Chapter Heading 7208 of CETA, 1985 is our requirement to consume the same in our factory for its use in the manufacture of parts of Sub Heading No. 8503.00.90 which are parts suitable for use solely or principally with the machines of heading 8503. However following submission will highlight that Plate HR classifiable under 7208 is also be categorised as part of 8503.

(IV) Plate HR is also part of WOEgs as per to Chapter Notes to Chapter 84/85

10. For parts other than those covered in heading No.8503, we would like to draw your kind attention to the following notes available in Central Excise Tariff Act, 1985.

Section Notes to Section XVI applicable to Chapter 84 and 85:

1. This Section does not cover:

(g) parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39);

**Section XV**

2. Throughout this Schedule, the expression "parts of general use" means:

(a) articles of heading 7307, 7312, 7315, 7317 or 7318 and similar articles of other base metal;

(b) springs and leaves for springs, of base metal, other than clock or watch springs (heading 9114); and (c) articles of headings 8301, 8302, 8308, 8310 and frames and mirrors, of base metal, of heading 8306.

In Chapters 73 to 76 and 78 to 82 (but not in heading 7315) references to parts of goods do not include references to parts of general use as defined above. Subject to the preceding paragraph and to Note 1 to Chapter 83, the articles of Chapter 82 or 83 are excluded from Chapters 72 to 76 and 78 to 81

11. By virtue of above, parts of General use are excluded from the chapter No 84 and 85. The perusal of the above legal provision clearly indicates that Plate HR is not "parts of General Use". Hence as per Section Note 1(g) Plate HR is not excluded from the chapter 84/85.

12. Now coming to Chapter Notes of 84 and 85, which are meant for the classifications of parts of various machine. The Chapter Note 2 of Chapter 84/85 for classification of Parts of various machines classifiable under chapter 84 and 85 of CETA, 1985 is as under.



2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules :

(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

(c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

13. The Plat HR sheet is classifiable under Heading No.7208 of the First Schedule of Central Excise Tariff Act, 1985. The Harmonious reading of all the aforesaid Section notes and Chapter notes clearly suggests that HR sheet/Plates classifiable under 7208 is not "Parts of General use". Further chapter Note 2(c) of chapter 85 provides that all other parts which are not covered in Note 2(a) and 2(b) are to be classified according to chapter Note 2(c) which states that "all other parts are to be classified in heading 8409,8431,8448,8466,8473,8503, 8522,8529, or 8538 as appropriate or failing that in heading 8487 or 8548."
14. Thus though Plate HR is not suitable for use solely or principally with a particular kind of machine, however, when the said Plate HR is used in the manufacture of items classifiable under Heading 8503 are to be classified under the said heading.
15. When parts suitable for use solely or principally with the machines of heading 8501 or 8502 are to be classified in sub heading 8503.00 as per note 2(b) above and other parts which are falls in the "other category" for chapter 85 has to be governed as per chapter Note 2(c). Other parts of Generators which are other then suitable for use solely or principally with the machines of heading are also covered in sub heading 8503.00 by virtue of Chapter Note 2(c). Therefore, the HR sheet/Plates when consumed and used in the manufacture parts of WOEgs classifiable under 8503 within the factory are covered in Sr.No.332A of Notification No.12/2012-CE as amended.
16. From what is submitted above, it is established that Plate HR classifiable under chapter Heading 7208 when consumed in the manufacture of Tower is a part of the Tower and the receipt of the same as a part of the part i.e. part of tower is correct under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001/2016. Entry 332A is applicable to the parts may be falling under any chapter, but it if the same is used in the manufacture of the items of List 8 of Notification No.12/2012-CE it will not attract Central Excise duty. Therefore the contention of the department that Plate HR is not the part of WOEgs or its part is not tenable. Hence withdrawal of the Permission by the Assistant Commissioner, which we had obtained under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001/2016 is not correct.

(V) Procurement of Parts for consumption under Central Excise (Removal of Goods at Concessional Rate of Duty) Rule 2001/2016

- i. As submitted in the facts of the case above, WOEgs and its parts are covered in Sr.No.13 of the List 8 includes Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller for which Sr.No.332 of Notification No.12/2012-CE grants Nil rate of excise duty without any condition. Where as Sr. No. 332A of the said Notification grants exemption to the parts consumed within the factory of production for the manufacture of goods specified in LIST 8 [i.e. in our case production of the goods mentioned at Sr.No.13 and if such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the



Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 is followed. Condition 2 is as under.

- iii. The wording of the entry No.332A is "Parts consumed within the factory of production for the manufacture of goods specified in List 8". Here it will be pertinent to note that in the said entry the words "consumed" is used after the parts and it does not have used the words manufacture. In our case after consumption of parts i.e. Plate HR, Tower will emerge which is an admittedly is a Parts of WOEgS. Thus the exemption in the entry 332A is granted to the parts which are consumed [required for consuming] in the manufacture of parts, and not to the Parts of WOEgS, as the parts so manufactured is covered in Sr.No.13 of the List 8.
- iv. The part so required for the consumption may or may not manufactured by the factory using it.
- v. As we are not the manufacturer of Plate HR which we believe is a part of part of WOEgS which required to be consumed within our factory. The said Plate HR has to be procured from outside. Therefore it is very purpose of putting condition 2 against the said entry No.332A. Thus the manufacturer of Plate HR is intend to avail NIL rate of duty as per 332A, has to follow the procedure as laid down in Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001/2016. In terms of Rule 3(b) we are the "Applicant manufacturer" and the manufacturer of Plate HR is the "supplier manufacturer" in terms of Rule 3(f) as is evident from the following.

(b) "applicant manufacturer" means a manufacturer who intends to receive goods for specified use at concessional rate of duty;

(f) "supplier manufacturer" means a manufacturer who supplies excisable goods at concessional rate of duty to applicant manufacturer;

- vi. Thus the mechanism devised in Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001/2016 is applicable to the applicant who intends to receive goods for specified purpose and not applicable to the Supplier Manufacturer. The intended purpose is specified entry No 332A of Notification No.12/2012-CE as under.

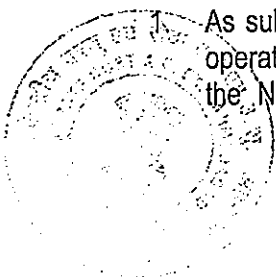
"332A	Any Chapter	Parts consumed within the factory of production for the manufacture of goods specified in LIST 8	Nil	2
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- vii Here it will be pertinent to note that we require Plates HR for its consumption in the manufacture of Tower which is a part of WOEgS. Hence our contention is that as submitted above Plate HR is a part of Tower, we have correctly received the goods under Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001.

- vii Therefore, the intimations given by us which were not accepted and rejected by the Assistant Commissioner is also not correct under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001/2016.

(VI) Rejection of Permission and returning of Bond/LUT is not correct and legal.

As submitted above, the Plate HR consumed in the manufacture of Tower which is part of wind operated electricity generator, we have correctly availed the benefit granted under Sr. No. 332A of the Notification No. 12/2012-CE. We further submit that after substitution of Central Excise



(Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) 2001 vide Notification No.20/2016-CE (NT) in the year 2016 no permission to be obtained from the Jurisdictional Assistant Commissioner, instead an intimation in Form-I is required.

2. Though the permission was not required for procuring the material for the specified purpose as specified in entry No.332A of Notification No.12/2012-CE we have *bona-fidely* sought, which can otherwise can be treated as intimation only and filed required Bond/LUT. As submitted above the rejection of permission or intimation and returning Bond/LUT after acceptance by the Assistant Commissioner is not correct and legal as the aforesaid rules does not provides such an action as long as the goods procured under the aforesaid rules is used for intended purpose. Previously, the department has admitted that the "Plate HR" as a part of Tower and is consumed in the manufacture of Tower. However, subsequently have raised interpretation that that Plate HR is not the part of Tower and hence exemption contemplated in entry No 332A is not entitled.
3. On this sole ground the previous applications which were accepted by way of accepting LUTs in 9 cases out of which we have used only 4 is now proposed to be treated as in-valid and consequently proposed recovery of excise duty foregone to the extent of Rs. 2,80,51,739/- is not legal and correct.

(VII) After following the condition 2 for exemption provided at Sr.NO.332A of Notification No.12/2012-CE, the goods procured and used as intended purpose as laid down in Central Excise (Removal of Goods at Concessional Rate) Rules, 2016 the demand invoking Rule 7 read with Section 11A of the Central Excise Act,1944 is not correct.

We contend that the Plate HR were procured under condition No.2 prescribed for availing exemption under Sr.NO.332A of Notification No.12/2012-CE and goods so procured is used for the intended purpose specified in the said entry. Rule 7 of Central Excise (Removal of Goods at Concessional Rate) Rules, 2016 provides as under.

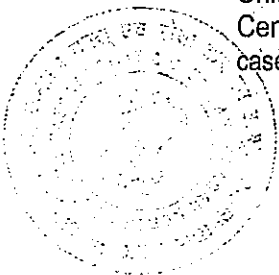
**RULE 7. Recovery of duty in certain cases.** - *Where the goods cleared by the supplier manufacturer on the basis of information provided by an applicant manufacturer, are not used for the intended purpose, the applicant manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the supplier manufacturer of the subject goods, along with interest and the provisions of section 11A, except the time limit mentioned in the said section for demanding duty and section 11AA of the Act shall apply mutatis mutandis, for effecting such recoveries :*

*Provided that where the applicant manufacturer is found to be non-existent, the supplier manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the supplier manufacturer of the subject goods, along with interest and the provisions of section 11A except the time limit mentioned in the said section and section 11AA of the Act shall apply mutatis mutandis, for effecting such recoveries.*

*Provided further that if the subject goods on receipt are found to be defective or damaged or unsuitable or surplus to the needs of the applicant manufacturer, he may return the subject goods to the supplier manufacturer and every such returned goods shall be added to the non-duty paid stock of the supplier manufacturer.*

**Explanation.** - *For the removal of doubts, it is hereby clarified that subject goods shall be deemed not to have been used for the intended purpose even if any of the quantity of the subject goods is lost or destroyed by natural causes or by unavoidable accidents during transport from the place of procurement to the applicant manufacturer's premises or from the supplier manufacturer's premises to the place of procurement or during handling or storage in the applicant manufacturer's premises.*

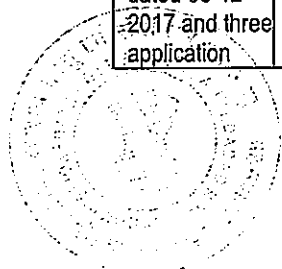
Perusal of above rule and the facts of our case clearly suggest that none of the circumstances as mentioned in the above Rule 7 exists in our as the goods so procured is used for intended purpose, the applicant manufacturer is very much in existence and the said goods is not destroyed or lost. Unless any discrepancy is found in this regard demand under Rule 7 read with Section 11A of the Central Excise Act,1944 is not sustainable and correct. The assessee relied on the judgement in the case of Harichand Shri Gopal reported as 2010 (260) E.L.T. 3 (S.C.).



## (VIII) Rejection of Permission and rejection of Bond/LUT after acceptance cannot be retrospective.

Assuming without admitting we submit that the Assistant Commissioner have issued permissions and accepted Bond/LUTs filed by us after lot of deliberation and exchanges of communication on either side as is evident from the following sequence of events. The sequence of events and communication that has took place is tabulated giving number of exhibits of our earlier submission as under.

Date	To whom addressed	Subject	Decision	Exhibit No. to earlier written submission dated
04-03-2016	Assistant Commissioner, Division -III, Ahmedabad-II	Application for removal of goods at concessional rate of duty under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001 for which 6 B-1 Bonds were filed for procuring Plates HR and other articles to be used in the manufacture of WOEGs  Notification No. 12/2012-CE  Sr.No. 332 and 332A	Vide letter No.III/Inox/B1 Bond/47/15-16 dated 28-03-2016 permission was not granted and six original bonds were returned back by the Assistant Commissioner .	Exhibit-5 and Exhibit-6
		In the said letter following details were provided  1) Copy of CE. Registration 2) Copy of Notification 3) Copy of VAT /CST Registration 4) Copy of PAN card and address proof 5) Copy of sample Invoices 6) Work sheet of C.Ex. duty calculation 7) Copy of sample Purchase orders 8) Process flow charts 9) Input output ratio		
10-06-2016	Assistant Commissioner, Division -III, Ahmedabad-II	Detail submission was made to the effect why we are entitled for the said benefit.		Exhibit-7
			Vide letter No.III/Inox/B1 Bond/47/15-16 dated 27-07-2016 additional information was called for	Exhibit-9
26-07-2016	Assistant Commissioner, Division -III, Ahmedabad-II	Additional details as called for vide letter dated 27-07-2016 was submitted.		Exhibit-10
01-08-2016	Assistant Commissioner, Division -III, Ahmedabad-II	Additional submission was made with regards to usage of materials		Exhibit-11
			On 20-09-2016 all the 6 LUTs/B-1 bonds were accepted by the Assistant Commissioner.	Exhibit-12
14-11-2016	Assistant Commissioner, Division -III, Ahmedabad-II	Certificates dated 14-11-2016 from Chartered Engineers was submitted		Exhibit-13
One application dated 06-12-2017 and three application	Assistant Commissioner, Division -III, Ahmedabad-II	Four application for procuring Plate HR from M/s Essar Steels Limited, Surat was filed.	Vide letter No.III/Inox/B1 Bond/47/15-16 dated 01-03-2017 one application dated 06-12-2016, and three application dated 13-02-2017 was rejected	Exhibit-14



dated 13-02-2017			Not only that further vide their letter No. No.III/Inox/B1 Bond/47/15-16 dated 14-03-2017 the earlier accepted applications were also rejected.	
12-04-2017	The Hon'ble Commissioner, Excise and Customs, Ahmedabad-II	Meeting was held with the Hon'ble Commissioner in connection with the rejection of our application vide letter dated 01-03-2017 and 14-03-2017 and also submitted the detail submission dated 12-04-2017	However, vide letter No. IV/16-30/MP/16-17 dated 18-05-2017 the Deputy Commissioner,(Tech) ,Central Excise, Ahmedabad-II informed to us that benefit of the notification cannot be extended to HR Plates/Sheets	Exhibit-15 and Exhibit 16
27-07-2017	Appeal filed before the Commissioner (Appeals) C.Ex., Ahmedabad	Challenged the said letter dated 18-05-2017	Appeal is still pending.	Exhibit-17

This being so, on granting permission and acceptance by the Bond/LUT we have procured Plate HR from M/s Essar Steel Limited and consumed in our factory. The withdrawal of the permission thereafter shall not and cannot have retrospective effect. The action which was completed cannot be undone retrospectively. Hence demand of duty by giving withdrawal of permission is not correct and legal. The effect of withdrawal can only be prospective.

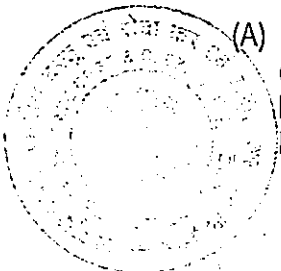
(IX) Demand of Central Excise duty is not correct and not sustainable:

As submitted above, the Plate HR is a part of Tower and the same were consumed in the manufacture of Tower, and Tower so manufactured is a part of WOEGBs, we have correctly availed the benefit granted under Sr. No. 332A of the Notification No. 12/2012-CE and followed correct procedure Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) 2001 which was substituted vide Notification No.20/2016-CE (NT) in the year 2016.

This being so, demand of Central Excise duty cannot be raised under Rule 6 of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) 2016 as long as the goods procured under provision of this rules are used for the intended purpose. Previously, the department has admitted that the said goods i.e. Plate HR is used in the manufacture of Tower and issued permission by way of accepting LUTs on 9 occasions. However, subsequently has raised interpretation that Plate HR is not the part of Tower and hence exemption contemplated in entry No 332A is not entitled. In this regard it is contended that as submitted in detail supra, the Plate HR has to be considered as Parts of Tower, and exemption granted under Sr.No.332A of Notification No.12/2012-CE, is correctly availed. Hence following demand of Central Excise duty are not sustainable. Accordingly we submit that the same may be dropped

In the impugned show cause notice following amount of Central Excise duty which had foregone in procuring the Plate HR besides recovery of Interests and imposition of penalty.

- (A) As mentioned in para 11 of the show cause notice that the details of procurement of HR Sheet during the period 04-09-2016 to 25-09-2016 using exemption certificates which was withdrawn vide letter No. III/Inox/B-1 Bond/47/15-16 dated 01-03-2017 and consequently demand of duty of Rs.2,80,51,739/- as detailed below and as mentioned in Table No.3 of the Show cause notice.



No	Form 1	Quantity Procured (MT)	Sum of Assessable Value (INR)	Duty Foregone
1	002/16-17//INOX/Rohika	2124.975	79531626.51/-	9941453
2	003/16-17//INOX/Rohika	1825.072	66983572.92/-	8372 947
3	004/16-17//INOX/Rohika	1095.513	42474681.18/-	53 09335
4	008/16-17//INOX/Rohika	951.596	35424033.84/-	4428004
<b>Total</b>				<b>28051739</b>

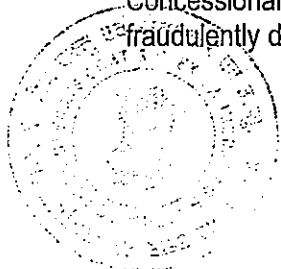
In this regard it is submitted that out of total 9 permission obtained we have utilized only four as mentioned in the table above in which duty foregone demanded is Rs.2,80,51,739/- is not sustainable as contended above.

(B) As regard to demand of Central Excise duty forgone Rs. 1,05,63,511/- tabulated as under.

No	Form I	Quantity Procured (MT)	Sum of Assessable Value (INR)	Duty Foregone
1	009/16-17//INOX/Rohika	625.717	24289198.63	3036150
2	0010/16-17//INOX/Rohika	955.931	36598958.93	4574870
3	0014/16-17//INOX/Rohika	201.541	8011255.82	1001407
4	0015/16-17//INOX/Rohika	386.465	15608668.4	1951084
<b>Total</b>			<b>84508081.78</b>	<b>10563511</b>

In this regard it is submitted that out of above Four LUT's mentioned as withdrawn by us, later three PO's were issued from MP Plant to Essar Steel Limited and LUT was also submitted at MP Excise authority. Supply against these by Essar Steel Limited, was made to MP Plant only. In support of the LUT utilization at MP Plant, submission made with MP Excise authority is enclosed. Accordingly we contend that the demand of Central Excise duty of Rs.75,27,361/- foregone for last three consignments covered in respective LUTs is suffers from the lack of the Jurisdiction of the Commissioner, Central Tax, Ahmedabad, North hence the same is not sustainable.

Further the One LUT Bearing Form I No 009/16-17) appearing at Sr.No.1 of the above table was utilized at Gujarat Plant. It is also further mentioned that in the substituted Central Excise (Removal of Goods at Concessional rate of duty) Rule, 2016 no prior permission was required, however the intimation in Form-1 has to be given to the Jurisdictional Assistant Commissioner, which was given. However in any case the Central Excise duty demand pertaining to Sr.1 which is Rs. 30,36,150/- is also not sustainable in view of our contention in the aforesaid paras supra. Accordingly, we contend that the allegations of the department that Inox has also procured the following quantity of Plates HR (mentioned in table 4 of SCN) from M/s Essar at concessional rate of duty without permission from the department. These procurements were done without following the procedure as stipulated in Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) 2016. Thus, it appeared that M/s Inox has fraudulently done the procurement of Plates HR to evade the payment of excise duty providing fake /illegal





information to M/s Essar Steel India Ltd. The details of Plates HR without permission of the department is not sustainable and not correct.

In summing up, it is submitted that the "Plate HR" is a part of Tubular Tower and the Tubular Tower is a part as specified under Circular No.1008. Therefore the exemption specified at Sr.No.332A of the Notification 12/2012-CE were procured as per condition No.2 after due procedure followed and procurement was approved by the Jurisdictional Assistant Commissioner is legally correct and duty foregone on this account and demanded from us is not correct on merit. The said goods so procured for intended purpose was utilized for the said purpose and not otherwise. Hence demand under Rule 7 of Central Excise (Removal of Goods at Concessional rate of duty)Rule, 2016 read with Section 11A of Central Excise Act,1944 by invoking extended period is not correct and not sustainable. This being so, the present demand of Central Excise duty is not sustainable on merit as well as on the grounds of suppression of facts as well as contended above and in our earlier submission as well. Accordingly we finally contend that:

- (i) As submitted above the Plate HR is a part consumed in the manufacture of Tubular Tower, the exemption is correctly availed, hence all the procurement under various permissions cannot be invalidated as proposed in the show cause notice.
- (ii) The goods procured under proper procedure and used for intended purpose can not be liable for confiscation as proposed in the show cause notice.
- (iii) Show cause notice demanding Central Excise duty of Rs. 2,80,51,739/- and Rs. 1,05,63,511/- may be dropped as the same is not sustainable on merit as well as on the limitation.
- (iv) We have not suppressed anything from the department as submitted above hence charge of suppression of fact is not sustainable hence no penalty is imposable upon us, under Rule 25 of Central Excise Rules,2002 read with Section 11AC(c) of the Central Excise Act,1944 as proposed in the show cause notice.

Accordingly, we submit that proceedings initiated vide impugned show-cause notice may please be dropped".

Vide additional submission dated 16.10.2020, M/s.Inox Wind Ltd, has submitted that -

" In continuation to our personal appearance and previous submission dated 09-10-2020, in the captioned matter, we on behalf of the Company M/s Inox Wind Limited, would like to add further submission as under.

1. We enclose herewith Order In Appeal No.AHM-EXCUS-002-APP-288-17-18 dated 05/03/2018 referred at para (J) "Appeal before the Commissioner (Appeals)" which was Annexure C of our submission dated 09-10-2020. [Exhibit-I]
2. While submitting "Meaning of Parts" in para (II)(2) we have referred a case of Saraswati Sugar Mills v. Commissioner of Central Excise Civil Appeal No. 5295 of 2003, decided on 2nd August, 2011 [2011 (270) E.L.T. 465 (S.C.) is now enclosed with this letter.[Exhibit-II]
3. Decision in the case of Harichand Shri Gopal reported as 2010 (260) E.L.T. 3 (S.C.) referred in Submission dated 09-10-2020 at (VII). [Exhibit-III].
4. We would further like to add with regard to proposed penalty under Rule 25 of Central Excise Rules, 2002 read with Section 11AC(c) of the Central Excise Act, 1944 that in the instant case we have not mis-declared anything to the department nor we have suppressed anything from the department. We have procured the material Plate HR for consumption in the manufacture of Parts of Wind Operated Electricity Generator as per the condition No. 2 mentioned against the Sr. No 332A of Notification No. 12/2012-CE. For the said purpose we have submitted various permissions and intimation in Form I in duplicate in terms of Rule 4 followed by the acceptance of LUTs/Bond after lot of deliberation with regard to how the Plate HR is parts of Tower of WOEGBs to the



Jurisdictional Assistant Commissioner. After satisfying himself the JAC has accepted LUT/Bonds and in terms of Rule 4(5) and thereafter the Jurisdictional Assistant Commissioner have forwarded the information in Form I in terms of Rule 4(1) to the Supplier Manufacturer i.e. to ESSAR against which we have procured Plate HR. The "Plate HR" were procured for the consumption in the manufacture of Tower of WOGs i.e. intended purpose. Hence it could not be alleged upon us that we have obtained Plate HR fraudulently without proper permission and undertaking as alleged in para 14.3 of the show cause notice and hence imposition of penalty under Rule 25 of Central Excise Rules, 2002 read with section 11AC(c) of the Central Excise Act, 1944 is not imposable upon us.

5. Section 11AC(c) of the Central Excise Act, 1944 provides that "where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined.
6. Therefore for imposition of penalty under said section the presence of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty is necessary. This is not the case with us as explained in detail above. Hence penalty under section 11AC is not imposable upon us. In this regard we invite attention to the CBEC's Circular No. 1063/2/2018-CX, dated 16-2-2018 wherein the Orders of Supreme Court, High Courts and CESTAT accepted by the Department and on which no review petitions SLPs have been filed were circulated. [Exhibit-IV] The relevant text of para 17 applicable in our case is as under.

17. Order of the Hon'ble Bombay High Court order dated 11-3-2015 in CEA No. 65/2005 in the case of Commissioner of Central Excise, Thane-II v. Bright Brothers [2015 (322) E.L.T. 110 (Bom.)].

17.1 Department has accepted the order of the Hon'ble Bombay High Court order dated 11-3-2015 in CEA No. 65/2005 in the case of Commissioner of Central Excise, Thane-II v. Bright Brothers [2015 (322) E.L.T. 110 (Bom.)] where the Hon'ble High Court has upheld the order of Tribunal holding that penalty under Section 11AC could not have been imposed as necessary ingredients for Section 11AC are missing and also adjudication order fails to give a categorical finding in reference to the ingredients of Section 11AC.

17.2 In the matter assessee is manufacturer of Plastic moulded components of motor vehicle and allegedly undervalued the goods. Demand was confirmed and penalty imposed under Section 11AC observing that there were two conflicting orders of the Tribunal and the matter was resolved by a Larger Bench in case of Mutual Industries Ltd. v. CCE [2000 (117) E.L.T. 578 (Tri.)] where it was held that so long as the mould is being used in the manufacture of the finished product it contributes certain value to be added to the value of finished products. This additional value must necessarily go in assessing the duty payable on the finished product under Excise Law. On appeal by the assessee, Tribunal set aside the penalty imposed under Section 11AC and remanded the case for re-quantification of duty. Department contested setting aside of penalty. HC observed that the penalty provisions may be termed as mandatory, but the imposition itself has to precede the satisfaction in terms of Section 11AC. Once there was a scope for entertaining a doubt, and there is no wilful mis-statement or suppression of facts, then, penalty is not called for as the Tribunal did not find anything on record, barring a statement, to conclude that this was a case of suppression.

7. Further the entire show cause notice is revolving around interpretation whether Plate HR can be parts for consumption in the manufacture of parts of WOGs or not. It is the department's case that it is not and it is our bonafide belief that it is part for consumption in the manufacture of WOGs and hence we are entitled to exemption under Sr.No.332A of Notification No.12/2012-CE for which we have complied condition 2 stipulated therein. Also we have followed all the procedure as prescribed in Central Excise (Removal of goods at concessional rate of duty for manufacture of Excisable Goods) Rules, 2016 and thereby not contravened any provisions of Central Excise Rules as alleged in the show cause notice. Further the department also contended that the word "Parts" used in Sr.No.332A of Notification No 12/2012-CE is not defined in the Central Excise Tariff hence have taken recourse to Dictionary Meaning as mentioned in para 8 of the show cause notice. Based on such narrow meaning and confining their interpretation that "Parts" of WOGs are only those parts which are specified in the CBEC's circular 1008/15/2015-CX- dated 20-10-2015 raised the present show cause notice. While doing so the department have clearly ignore the fact



that the exemption under Sr. No. 332A of Notification No.12/2012-CE is related to Parts consumed in the manufacture of Parts within the factory subject to conditions 2. Hence CBEC's circular is quoted out of context.

Therefore we contend that the terms Parts are definitely matter of interpretation. The said terms is explained in the judgement of Hon'ble Supreme Court in the case of Sugar Mills v. Commissioner of Central Excise Civil Appeal No. 5295 of 2003, decided on 2nd August, 2011 [2011 (270) E.L.T. 465 (S.C) [enclosed above] and is relied by us in our submission dated 09-10-2020. Wherein it was also held that "*Interpretation of exemption notification - Notification to be strictly construed - Conditions for taking benefit under notification also to be strictly interpreted - Wordings of notification when clear, plain language of notification be given effect to - Court cannot add or substitute any word while construing notification either to grant or deny exemption*".

In the instant case it is admitted fact on the part of department that meaning of the word Parts is not clear. Hence it is a matter of Interpretation.

Accordingly we contend that proposal of penalty under Section 11AC(c) of Central Excise Act, 1944 is not justifiable. In the matter of interpretation no penalty is imposable as held in the case of Nestle India Limited vs Commissioner of Central Excise, Goa reported as 2008(227)ELT631(Tri-Mumbai [Exhibit-V] wherein the Hon'ble Tribunal has held as under.

*Penalty - Mandatory penalty - Impugned case involving interpretation of the Central Excise Tariff entries vis-a-vis exemption notification and earlier decisions of Tribunal - Allegation of suppression of fact regarding true nature of product, not sustainable - Penalty set aside - Section 11AC of Central Excise Act, 1944 - Rule 25(1)(d) of Central Excise Rules, 2002. [para 31]*

On appeal against the said decision by the Department before the Hon'ble Supreme Court of India was affirmed by the Hon'ble Supreme Court of India reported as Commissioner v. Nestle India Ltd. - 2009 (237) E.L.T. A102 (S.C.) [Exhibit-VI]

8. Personal penalty upon Jitendra Mohananey, Authorised Signatory under Rule 26 of Central Excise Rules, 2002 it is submitted that Shri Jitendra Mohananey CFO have withdrawn the Form-I as the said procurement were meant for procuring Plate HR for their Plant located at MP, which they claimed at the Jurisdictional Assistant Commissioner for which they have furnished the required detail along with LUT/Bond and accordingly Plate HR was procured for their MP plant.

The withdrawal of the application/intimation letter by Shri Jitendra Mohananey cannot be considered fraudulent activities. The allegation upon him is without knowing actual facts. Further the entire demand is not sustainable as contended in the written submission of the Main noticee. Accordingly it is contended that such an allegation is not sustainable under the law. Hence the proposal of penalty upon him under Rule 26 is totally baseless and may not be imposed upon him".

### DISCUSSION AND FINDINGS:

19. I have carefully gone through the records of the case, submission made by M/s.Inox in reply to the show cause notice as well personal hearing and additional written submission made by them.

20. The issues to be decided in the present case are:

- i) Whether HR plate, on which manufacturing processes have been carried out, used in the manufacture of Wind Operated Electricity Generators which include Tower, Nacelle, Rotor, Wind Turbine Controller, Nacelle Controller and Control Cables, is part of WOEg or otherwise?
- ii) Whether Central Excise duty demanded by the Department on which undertakings and **Form 1s (Permission) issued under Rule 4(5) of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) 2016** by the jurisdictional Assistant Commissioner, **which were subsequently cancelled** and held as invalid documents, but against which clearances of excisable goods at Nil rate of duty under SI.No.332A of

Notification No.12/2012-CE dated 17.03.2012 have been effected, for the procurement of excisable goods i.e. Plates HR as detailed in Table 3 of the show cause notice, is justified or otherwise?

iii) Whether duty is liable to be paid on the dutiable goods viz. HR plates procured without payment of excise duty by M/s. Inox Wind Ltd, under nil rate of duty under Sr.No.332A of Notification No.12/2012-CE, dated 17.3.2012 illicitly, without having the necessary permission and without following the proper procedure?

21. The main allegation in the show cause notice is that M/s Inox had applied for the benefit of exemption of excise duty on the procurement of Plates HR (Steel plates) from M/s Essar Steel India Ltd. for the purpose of manufacturing of Tower under Notification 12/2012-C.E (Sr No 332A) dated 17.03.2012 by referring to the decision in the case of M/s Rakhoh Enterprises / Gemini Instratech Pvt Ltd V/s CCE, Pune as reported in 2016-TIOL-1671-CESTAT-MUM-LB and filed application on 16.8.2016, 07.09.2016, 13.09.2016 and 19.10.2016. M/s Inox had mentioned in their application that Plates HR as a part of Tower. The said application was examined and permission was given to procure Plates HR subject to the conditions as laid down under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016. M/s Inox was given nine permissions as per Table-1 of the Show Cause Notice to procure HR Plates under the letter of undertakings for procuring excisable goods for manufacture at concessional rate of duty under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016.

22. Further M/s Inox have later vide application dated 6.12.2016 applied for permission for procurement of 6054.636 MT of Plates HR from M/s Jindal Steel & Power Ltd., Raigarh. M/s Inox further submitted three applications dated 13.02.2017 for procurement of HR Plates at concessional rate of duty under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016 for manufacture of Towers.

On perusal of purchase order no. 5100011485 dated 18.11.2016 issued by M/s Inox to M/s Jindal, it was revealed that:

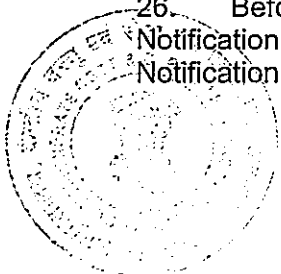
- a. Plate HR was shown as parts of Wind Turbine Generator
- b. As per "Standard Terms and Condition" the "product" shall mean goods to be manufactured / supplied based on the specifications for use in Wind Turbine Generators as per purchase order issued.

23. Also, on perusal of the proforma invoice No. JSPL/PI/2016-17/Dec/18 of M/s Jindal, it was revealed that M/s. Jindal was only supplying Steel Plates of different sizes and thickness against the said purchase orders. It was not specified in the said documents/invoices nor was it indicated that the 'Plates HR' was a part of Tower/WOEG, clearly implying that the said plates were going to be used in the manufacture of "parts" or "Parts and Components" of WOEG and as such the "Plates HR" were not a part of the WOEG on standalone basis. Thus the Plates HR was the raw materials for making parts of WOEG

24. The Department was of the view that as per the clarification given by Board vide Circular No 1008/15/2015-CX and notification 12/2014 C.E dated 11.05.2014, the excise duty exemption has been granted only to 'Parts' of WOEG and its 'Parts and Components'. No such exemption has been provided for raw materials consumed in the manufacture of 'Parts' or 'Part of parts' of WOEG. Therefore the applications mentioned at Table 2 of the SCN with the Original Bonds were returned to M/s Inox and the permissions given for procurement of 'Plates HR' from M/s Essar Steel Ltd. for manufacturing of Tower under the letter of undertakings as detailed in Table 1 were withdrawn by the jurisdictional Assistant Commissioner vide letter F.No III/Inox/B-1 Bond/47/15-16 dated 01.03.2017 stating that the said exemption is not available to them.

25. M/s Inox have claimed the benefit of Sl. No. 332A of Notification No. 12/2012 – CE as amended (in List 8 Sr. No. 13) by filing application for procuring H R Plates at concessional rate of duty under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016.

26. Before proceeding further, it is imperative to examine the serial number of 332 of Notification No.12/2012-CE, dated 17.03.2012. The relevant portions of Sr. No. 332 of Notification No. 12/2012 C.E dated 17.3.2012 and Sr. No. 332A inserted vide Notification No.



12/2014 C.E. dated 11.05.2014 are reproduced below along with the relevant portion of List 8 for reference:

Sr. No. 332 of Notification No. 12/2012 C.E dated 17.3.2012

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
332	Any Chapter	Non-conventional energy devices or systems specified in LIST 8	Nil	Nil

Sr. No. 332 A inserted vide Notification No. 12/2014 C.E dated 11.05.2014

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
332A	Any Chapter	Parts consumed within the factory of production for the manufacture of goods specified in LIST 8	Nil	2

Condition No.	Condition
2.	Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 20016, is followed.

Sr.No. 13 of List : 8 of Notification No. 12/2012 – CE as amended

(13) Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller

27. On going through the above mentioned condition i.e. List 8 of Notification No.12/12-CE as amended, I find that entry No. 13 that the parts of "Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller" are eligible for exemption under Sr. No. 332A of Notn. No. 12/2012 CE.

28.. Further, it is also necessary to examine the CBEC circular No. 1008/15/2015, dated 20.10.2015 wherein it is clarified that parts such as tower, nacelle, rotor, blades, wind turbine controller etc. of WOEG are eligible for exemption from Central Excise duty. The said circular is produced below for reference:

*CIR NO. 1008/15/2015-CX, DT. 20/10/2015*

*Clarification regarding tower and blades constitute an essential component of Wind Operated Electricity Generators (WOEG)-reg*

A large number of references have been received from the trade as well as the field formations to clarify whether exemption Notification No. 12/2012-Central Excise, dated 17.03.2012 covers part/components of Wind Operated Electricity Generators (WOEG). References have been received in relation to tower, tower doors, blades and electrical boxes.

2. The matter has been examined. In the aforesaid notification serial no. 332 read with List 8 exempts 'Wind operated electricity generator, its component and parts thereof including rotor and wind turbine controller' from Central Excise duty. In this regard, attention is invited to the judgement of Hon'ble Supreme Court dated 13th August, 2015 in case of M/s Gemini Instratech Vs Commissioner of Central Excise, Nashik in Civil Appeal No. 1218 of 2006, wherein Hon'ble Apex Court (while deciding the eligibility of wind mill doors and electrical boxes of WOEG for exemption) has held that-

"It is not in dispute that as far as windmill doors or tower doors are concerned, it is a safety device which is used as security for high voltage equipments fitted inside the tower, preventing unauthorized access and preventing entries of reptiles, insects, etc, inside the tower. This, according to us, would be sufficient to make it part of electricity generator. We further find that this was so held by the Commissioner of Central Excise and Customs, Raipur in order-in-original dated 28.02.2005 as well as by the Commissioner (Appeals), Raipur vide his orders dated 10.02.2003. The said orders were accepted by the Revenue as it is recorded by the CESTAT that the Revenue could not produce any evidence to show that those orders were challenged by it. Further, since the tower is held as part of the generator, door thereof has to be necessarily a part of the generator. We, therefore, are of opinion that there is no case of interference made out by the Department.

The appeal is accordingly dismissed"

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

i) Tower: which supports the nacelle and rotor assembly of a wind operated electricity generator.

ii) Nacelle: which consists of gear-box, generator, yaw components, flexible couplings, brake hydraulics, brake calipers, sensors, nacelle plate, nacelle cover and other smaller components.

iii) Rotor: consists of blades, hub, nosecone, main shaft, special bearings.

iv) Wind turbine controller, nacelle controller and control cables.

4. In view of the judgement of Hon'ble Supreme Court and clarification received from the administrative ministry, parts/components referred in Para 3 above may be treated as



*parts and components of wind operated electricity generators eligible for exemption under serial no. 332 of Notification No. 12/2012-Central Excise, dated 17.03.2012.*

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

29. From the plain reading of the above circular, it comes out clear that 'Tower' has been clarified to be a part of the Wind Operated Electricity generator and Plates HR are not covered under the said circular. In this case, M/s Inox applied for the exemption benefit of Sr 332A of Notification 12/2012 C.E for 'Plates HR' which does not appear to be 'Part' of Tower/WOEG as per clarification given in the Circular No. 1008/15/2015-CX, dated 20.10.2015.

30. I find that the Plates HR, claimed as parts by M/s Inox, are used for manufacture of Tower. Such Plates HR are raw materials required for making a part i.e. Tower. Without undertaking the manufacturing process on Plates HR, they would be of no use in the WOEG. Only after undertaking the processes of manufacture can the HR Plates be converted to Tower. Vide their letter dated 26.07.2016 itself, they stated that the Plates HR were subjected to the processing of Cutting & Beveling, Bending, Longitudinal Seam welding, Re-bending and Flange fit-up, 1+1 shell fitup and welding, progressive fitup and welding, fitment of weldable internals, Blasting and painting in the process of manufacture of Tower. This aspect has already been mentioned in the show cause notice. M/s.Inox has not neither contested this issue nor denied that the HR Plates are subjected to further processing before the same was used in the manufacture of Tower. It is reiterated again that Sr. No. 332A of Notn. No. 12/2012 CE exempts only 'parts' of Wind Operated Electricity Generator.

31. As per the definitions of parts, HR Plates cannot be called as 'parts or components' of Tower or Wind Operated Electricity Generator especially in light of the meaning of the 'parts/components', elaborated in the Show Cause Notice; but the same can only be termed as raw material used in the manufacture of the Tower of WOEG.

32. M/s.Inox vide their letter dated 08.04.2019 has denied the charges leveled in the show cause notice and stated that they used the HR plates in the manufacture of WOEG which included Tower, Nacelle, Rotor, Wind Turbine Controller, Nacelle Controller and control cables meant for general electricity. They enclosed copy of Notification No.12/12-CE, copy of Circular No.1008/15/2015-CX dated 20.10.2015, copies of applications made to the Divisional Office requesting for concessional rate of duty under Central Excise (Removal of Goods at Concessional Rate of duty for manufacture of Excisable Goods) Rules, 2001, as amended, copies of correspondence with this office and Divisional office copy of Appeal filed before CESTAT against letter dated 18.05.2017 of Deputy Commissioner(Technical), Central Excise, Ahmedabad-II and copies of various LUTs issued by the Assistant Commissioner, Central Excise, Division-II, Ahmedabad North. They stated that Steel Plates are not raw material but duly constitute a part used in the manufacture of tower. Therefore denial of exemption is arbitrary and binding of principle of judicial precedent needs to be followed. They claimed that it is not open to the revenue authorities to alter settled conclusions without change in facts or law. Further, the position emerging from Board circulars is binding on the revenue authorities, a departure there from is not tenable under the law. They also submitted that there is no ground for consequential interest and penalties. They have relied on the following case laws:-

1. Gemini Instratech Vs Commissioner of Central Excise, Nashik 2015(323) ELT 220 (SC).
2. UOI Vs Parenteral Drugs (India)-Ltd 2015 (318) ELT A249 (SC).
3. UP Forest Corporation Vs DCIT Lucknow 2007-TIOL-235-SC-IT

4. CCE Nagpur Vs Hyundai Unitech Electrical Transmission Ltd in Civil Appeal No.5281 of 2013.
5. Pushpam Forging Vs CCE, Raigad 2006 (193) ELT 334 (Tri-Mumbai)
6. Hyundai Unitech Electrical Transmission Ltd Vs CCE, Nagpur 2005(187) ELT 312 (Tri-Mum).
7. Collector of Central Excise Vs Mahendra Engg. Works 1993 (67) ELT 134 (Tri)
8. Tata Iron & Steel Co Vs CCE 2001 (130) ELT 183 (Tri-Kol)
9. CCE Vs Bansal Industrial Corporation 2000 (118) ELT 119 (Tri)
10. Hemraj Gordhandas Vs AC 1978 (2) ELT J 350 (SC)
11. Intercontinental (I) Vs UOI 2003 (154) ELT 37 (Guj)
12. Creative Travel Pvt.Ltd 2016(8) TMI 94
13. CBEC Circular F.No.201/01/2014-CX.6 dated 26.06.2014 referring the case of UOI Vs Kamlakshi Finance Corporation Ltd 1991 (55) ELT 433 (SC).
14. UOI Vs Arviva Industries (I) Ltd 2007 (209) ELT 5 (SC)
15. Bhirav Synthetics Pvt.Ltd Vs Commissioner of C.Ex, Thane-1 2016 (336) ELT 325 (Tri-Mum).
16. GOI in the case of Alpha Laboratory Ltd 2014 (313) ELT 967 (GOI).
17. CCE Vs HMM Ltd 1995 (76) ELT 497 (SC)
18. Pratibha Processors Vs UOI 1996 (88) ELT 12 (SC).
19. Commissioner Vs Oracle India Pvt.Ltd 2016 (342) ELT A 40 (SC)
20. Commissioner Vs Reliance Industries Ltd 2016(45)STR J 302 (SC)
21. Commissioner Vs Continental Airlines Inc 2016 (45) STR J 208 (SC).

33. On going through the above case laws, I find that the facts and circumstances in these cases are different from the case in hand. In the case of 2015(323) ELT 220 (SC) CCE Nagpur Vs. Hyundai Unitech Electrical Transmission Ltd, I find that the issue involved is in respect of "Doors for windmill" whereas in the present case, the description of goods is "HR Plates". In the case of 206(193) ELT 334 (Tri-Mum), Pushpam Forgings Vs Commissioner of Central Excise, Raigad the description of goods – is "Flanges-MS forged flanges". There also, description of goods is different. Other cases laws are on varied subjects and are not applicable to the present cases. None of the case laws referred to the above are related to the disputed issue. Therefore, I find that the said case laws are not relevant to the present case.

34. Vide letter dated 09.10.2020, M/s.Inox stated that they require various parts and components including "Plates HR" for consumption in their factory. The HR Plates are being used for the manufacture of Tubular Towers, as such, they effectively constitute parts of parts used in the manufacture of the WOEGs and explained the process of Tubular Tower. They admitted that the Plate HR is subjected to metal fabrication which involves process of cutting, bending and assembling process by welding, fitting with the help of bolt, nuts, flanges etc. They stated that out of all the constituent materials, the content of Plate HR & Flanges is around 60% of the total constituent materials used in Tubular Tower. I find that when substantial quantity is used in the manufacture of tower and without the HR Plate fabrication of tower is impossible, it cannot be considered as parts but only raw material for the Tubular Tower. They produced the image of the WOEGs. They reiterated that the effective rates of Non-conventional devices or systems specified in List 8 of Notification No.12/2012-CE amended vide Notification No.12/2012-CE dated 11.07.2014 is specified in Entry No.332 and 332A inserted w.e.f. 11.07.2014 in the said notification which grants exemption to parts consumed within the factory of production for the manufacture of goods specified in List 8 subject to condition No.2 of the said notification. On going through the said Entry No.332 and 332A and condition specified in list 8, I find that HR Plates have not be specified anywhere. Therefore, their argument to consider HR plate as parts is not tenable.

35. They also explained a flow chart of use of HR Plate in the manufacture of Tubular Tower. They stated that they availed exemption till 25.10.2016 under Central Excise (Removal of goods and Concessional Rate of Duty for Manufacture of Excisable Goods), 2001/2016 and subsequent to 25.10.2016, for further procurement under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods), their application was rejected. They have submitted that the definition of "parts" is not given in the Central Excise/Central Excise Tariff but the dictionary meaning has been relied upon in the Show Cause Notice. They drew attention to the judgment of the Hon'ble Supreme Court of India in the case of Saraswati Sugar Mills Vs Commissioner of Central Excise Civil Appeal No.5295 of 2003, reported in 2011 (270) ELT 465 (SC) wherein the test to ascertain what is "part" has been laid down. They have relied on the following case laws:





1. Star Paper Mills Vs Collector of Cental Excise – 1989(4) SCC 724 = 1989 (43) ELT 178 (SC)
2. CCE Vs Allied Air Conditioning Corporation 2006(202) ELT 209 (SC)
3. Modi Rubber Ltd Vs Union of India 1997 (7) SCC 13.

36. They stated that applying the test laid down by the Apex court, in their case, HR Plate which were consumed in the manufacture of Tower which is part of WOEg is covered in the Entry No.332A of the Notification No.12/2012-CE. They referred to various issues such as classification of WOEgS and its parts in CETA, 1985, and submitted that Plate HR is also part of WOEgS as per to Chapter Notes to chapter 84/85, Plate HR is not "parts of General Use", hence as per Section Note 1(g) Plate HR is not excluded from the Chapter 84/85. They stated that rejection of permission and returning of Bond/LUT is not correct and legal. They stated that rejection of permission and rejection of Bond/LUT after acceptance cannot be retrospective. They also stated that extended period cannot be invoked in the present case and requested to drop the show cause notice.

37. I find that M/s.Inox's version that HR Plates are Parts is not based on the facts as the same have not been mentioned as "Parts" in any notification, definition, case laws. Secondly, they themselves have admitted that HR Plates in substantial quantity are used in the manufacture of WOEgS. Thirdly, the documents submitted by them to the Division office established that HR Plates are not Parts. Further, in normal case, "Parts" are not subjected to any further processing. M/s.Inox has admitted that the HR Plates are subject to various processes before being used in the WOEgS. Under the circumstances, their argument that HR Plates are "Parts" cannot be accepted.

38. Further, vide additional submission dated 16.10.2020, M/s.Inox has submitted a lengthy letter quoting various citations in their defence to argue that demand is not sustainable, penalty is not justified under Rule 25 of the Central Excise Rules, 2002 and under Section 11AC (c). They referred to the case of Commissioner of Central Excise, Thane-II, Vs Bright Brothers (2015 (322) ELT 110 (Bom.), Mutual Industries Ltd Vs CCE 2000 (117) ELT 578 (Tri), Sugar Mills Vs Commissioner of Central Excise Civil No.5295/2003, reported in 2011(270) ELT 465 (SC), Nestle India Ltd Vs Commissioner of Central Excise, Goa reported in 2008 (227) ELT 63 (Tri-Mum), Commissioner Vs Nesle India Ltd – 2009 (237) ELT A102 (SC).

39. They stated that proposal for personal penalty upon Shri Jitendra Mohanney, Authorised Signatory under Rule 26 of the Central Excise Rules, 2002 is not justified. Shri Jitendra Mohanney CFO, had withdrawn the Form-1 as the said procurement were meant for procuring Plate HR for their Plant located at MP. Withdrawal of the application/intimation letter by Shri Jitendra Mohanney cannot be considered fraudulent activities. The allegation levelled upon him is not based on actual facts. Further the entire demand is not sustainable. Proposal of penalty upon him under Rule 26 is totally baseless and therefore, penalty should not be imposed on him.

40. I find that the Department had initially given permission to M/s.Inox on their request as per the decision in the case of Rakhoh Enterprises/Gemini Instratech Pvt.Ltd, Pune as reported in 2016-TIOL-1671-CESTAT-MUM-LB. Later on, as per the chartered engineer's certificate dated 14.11.2016, it had come to the knowledge of the Department that HR Plates, which were shown as part of WOEg by M/s.Inox, shown as Tower Plates in proforma invoices submitted with the application for example, IWPL/ROHIKA/15092016/001 dated 15.09.2016, did not form part of WOEg. The HR Plates were consumed in substantial quantity for manufacture of Parts of WOEg. Under such circumstances, when substantial quantity is used in the manufacture of a particular item, the said product cannot be considered as Parts but only raw material.

41. The assessee vide their reply has submitted as under:

***"Materials required for manufacturing of Tower are Plate HR, Flanges, Ladder and various Electrical Accessories. Before the Tubular Tower is manufactured/fabricated a design drawing is prepared. Tubular Tower is a huge Metal Structure fabricated at site with the help of aforesaid materials as per the drawings. The Plate HR is subjected to metal fabrication which involves process of cutting, bending and assembling process by welding, fitting with the help of bolt, nuts, flanges etc. The materials so used are constituent materials. Out of all the constituent materials the content of Plate HR is around 60 % of the Tubular Tower. Without Plate HR the Tubular Tower cannot be fabricated. Therefore the Plate HR is the predominant constituent material and is an integral Parts of***

*the Tubular Tower. Thus it can be seen that Plate HR is consumed during the fabrication/manufacture of Tubular Tower. "*

42. Thus, as seen from the above, in the present case, more 60% of the material used in the manufacture of the WOEG comprised of HR Plates. Since the description of "Parts" and raw materials are different and in the present case Plates HR are not used as Parts, the Plates HR cannot be considered as "part" of WOEG, but only as the main raw material used in the manufacture of WOEG. As such, the argument put forward by M/s.Inox does not hold good and cannot be considered. Generally, parts are considered as "a portion or division of a whole that is separate or distinct; piece, fragment, fraction, or section; constituent". Therefore, in my opinion, such an object or thing or a material which used in the manufacture of a component cannot be considered as a "part".

43. I find M/s.Inox had appealed the letter F.No.IV/16-30/MP/16-17 dated 18.05.2017 issued by the Deputy Commissioner, Ahmedabad-II rejection their application before Commissioner(A). The jurisdictional AC was held that "in the instant case, unlike parts which can be directly fitted into the final product, the H.R.Plates have to further undergo manufacturing process before they can be converted to a tower and hence HR Plates can be considered as raw materials and certainly cannot be considered as parts or components". On the basis of the said reasoning, the Assistant Commissioner rejected the applications filed by the appellant for removal of goods at concessional rate of duty under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, as amended, vide his letter dated 01.03.2017. Their appeal was rejected by the Commissioner (A) for limitation vide OIA No.AHM-EXCUS-002-APP-288-17-18 dated 28.01.2018. The said OIA was appealed by M/s.Inox before the Hon'ble CESTAT and they subsequently withdrawn the said appeal.

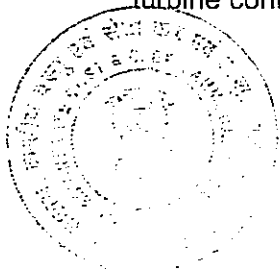
44. M/s.Inox had submitted a large number of case laws in their defence including the Hon'ble Supreme Court's decision in the case of Saraswati Sugar Mills Vs Commissioner of Central Excise, Delhi-III reported in 2011 (270) ELT 465 (SC). On going through the case of Saraswati Sugar Mills Vs Commissioner of Central Excise, Delhi-III, I find that the issue involved in the said case is that Iron and Steel structures used captively in the factory for installation of sugar manufacturing plant wherein exemption under Notification No.67/95-CE was denied as goods not components of capital goods. whereas in the present case, the question involved is whether H.R. Plates, which is the main raw material (ingredients) of Tower can be considered as parts or otherwise. Therefore, the said case cannot be compared with the present case. Similarly, I find that other case laws discussed by M/s. Inox is also not relevant as facts and circumstances of the said cases are different and therefore, cannot be compared with the present case. I also find that the various Circulars relied upon by M/s.Inox are also not applicable to the present case in view of the facts discussed above.

45. I find that there is a clause in the prescribed Bond executed by M/s.Inox before the jurisdictional Assistant Commissioner to the effect that-

*"c). And if all dues whether excise duty or other lawful charges which shall be demandable on the goods obtained by the obligors without payment of the whole or part of the duty or transported from place of procurement to the premises of the obligors as shown by the records of the proper officer of central Excise be duly paid into the Treasury to the account of the Deputy/Assistant Commissioner within 10 days of the date of demand thereof being made in writing by the said officer of Central Excise, this obligation shall be void".*

45.1 I find that M/s.Inox has failed to honour the Letter of Undertaking executed by them before the jurisdictional Central Excise authorities during the relevant period. Therefore, I find that the authority who has permitted the clearance initially under exemption, has the right to deny the exemption for the cause of the exchequer. Questioning the authorities at a later stage is not in the good spirit of law. Accordingly, I hold that the jurisdictional authorities have rightly denied the exemption on finding that the HR Plates are not "Parts" but raw material and ingredient of manufacturing the Tower.

46. As already discussed in the show cause notice that the CBEC vide circular No. 1008/15/2015, dated 20.10.2015 clarified that parts such as tower, nacelle, rotor, blades, wind turbine controller etc. of WOEG are eligible for exemption from Central Excise duty. There is no



reference about HR Plates, as such, exemption benefit of Sr 332A of Notification 12/2012 C.E for 'Plates HR' cannot be allowed to M/s.Inox.

47. Further, the term 'parts' has been defined in Cambridge dictionary as "a separate piece of something, or a piece that combines with other pieces to form the whole of something OR one of the pieces that together form a machine or some type of equipment". In short 'part' is something which is straightway fitted to other pieces to form the desired product. In other words, 'part' would be something on which no further work is required to be undertaken but would be taken up in the assembly line for the purpose of fitting with other pieces/ parts. In the present case, HR Plates are put into further process/modification before fitted into the Tower. Besides, major chunk of the Tower consisted of HR Plates. Under the circumstances, their contention that HR Plates to consider as Parts is not maintainable.

48. Similarly, the term 'component' has been defined in Cambridge dictionary as "a part that combines with other parts to form something bigger". Here again, the meaning almost remains the same as that has been discussed in the show cause notice. The parts or components would be pieces which need no further work but are to be taken in the assembly line to make the desired product. On this ground also, the argument of M/s.Inox to consider HR Plates as Parts can not be entertained.

49. The Plates HR, claimed as parts by M/s Inox, are used for manufacture of Tower. Such Plates HR are raw materials required for making a part i.e. Tower. Without undertaking the manufacturing process on Plates HR, they would be of no use. It is only after undertaking the process of manufacture that the HR Plates are converted to Tower. Letter dated 26.07.2016 given by M/s Inox itself says that the Plates HR were subjected to the processing of Cutting & Beveling, Bending, Longitudinal Seam welding, Re-bending and Flange fit-up, 1+1 shell fitup and welding, progressive fitup and welding, fitment of weldable internals, Blasting and painting in the processing of manufacture of Tower. Therefore, the said letter itself proves that HR Plates are not "Parts". Therefore, it is obvious that the HR Plates are not "Parts" and to consider HR Plates are "Parts" is rejected.

50. In view of the facts discussed above, HR Plates cannot be called as 'parts or components' of Tower or Wind Operated Electricity Generator especially in light of the meaning of the 'parts/ components'. It may be appreciated that Sr. No. 332A of Noth. No. 12/2012 CE exempts only 'parts' of Wind Operated Electricity Generator.

51. M/s Inox is engaged in manufacture of WOEG falling under chapter 85023100 of Central Excise Tariff Act, 1985. The parts suitable for use solely or principally with the machines of heading 8501 and 8502 have been classified under 8503. In the present case M/s Inox have been procuring Plates HR as parts of tower. The Plates HR procured by them have been classified by the suppliers under chapter sub-head 72085110. Thus it is undoubtedly clear that 'Plates HR' are raw materials for manufacturing the Tower of WOEG. Therefore, such Plates HR would not fall under the category of Parts of WOEG.

52. The language employed in the notification indicates that the exemption is not extended to each and every non-conventional energy device or system. It appears that scope of exemption has been restricted only to such devices or systems which have been specified in List 8. Further, while some entries in List 8 above refer to individual items or devices, some other entries include systems as a whole or a combination of equipment and the corresponding system. Therefore, it appeared that wherever it is intended that a device alone should be granted the benefit of exemption it has been so stated; on the other hand where it is intended that the system as a whole needs to be exempted, it has been clearly described as such. In this background, it appeared that each of the entries in List 8 would have to be construed strictly as per the text of the entry itself without expanding the scope merely because group heading in

Entry 332 of the Table refers to systems i.e. *Non-conventional energy devices / "systems" specified in List 8 falling under "Any Chapter"*

53. The above fact indicated that the intention of the legislature while amending previous exemption was to restrict the exemption to the parts of wind operated electricity generator instead of allowing exemption to entire windmill and parts thereof. Thus it was construed that the entry at Serial No (13) of List 8 covers only the generator and its parts and its scope cannot be expanded to include the entire windmill and parts thereof.

54. Further, I also find support from the judgement given by the Authority For Advance Rullings, New Delhi in the case of M/s ENERCON (INDIA) LTD reported at 2011 (270) E.L.T. 132 (A.A.R.). whereby it was held as under:

*"Transformers - Specially designed for wind operated electricity generators - Exemption - Mounted on tower structure and connected to system by wires and cables - HELD : Though transformer was part of whole wind operated electricity generating system, it was not part of generator - It was more so as no technical evidence was produced in that regard, and website of collaborator of manufacturer showed transformer as separate item of electrical machinery - In that view, it could not be held to be covered under Item No. 13 of list 5 to Notification No. 6/2006-C.E., and not entitled to benefit under Serial No. 84 thereof - It was immaterial that Item No. 13 of list 5 also specifically covered rotor and wind turbine controller, which were parts of generating system."*

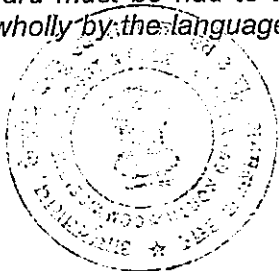
55. The issue is no more *res integra* in view of the judgment in the case of Nicco Corporation Ltd. v. Commissioner of Central Excise, Calcutta (2006-TIOL-163-SC-CX) whereby Hon'ble Supreme Court has held that insulated electrical cables designed for use in wind mills would not be eligible for exemption under Notification No. 205/88 as amended reasoning insulated cables are not parts of wind mill which is complete in itself without electric cables, although wind mill may not be able to function without these cables, and, as such benefit of exemption would not be available to the assessee. The ratio of the said judgment is squarely applicable to the facts of the present case

56. The assessee have contended that the said exemption is available to them in light of the decision of M/s Hyundai Unitech Electrical Transmission Ltd. reported at 2005 (187) ELT 312, M/s Gemini Instratech P Ltd. reported at 2014 (300) ELT 446 and M/s Pushpam Forgings reported at 2006 (193) ELT 334. In this regard, I find that the dispute in the case of M/s Pushpam Forgings and M/s Hyundai Unitech Electrical Transmission Ltd. was pertaining to exemption Notn. No. 6/2000 CE dated 1.3.2000 and in the case of M/s Gemini Instratech P Ltd. the dispute was pertaining to exemption under Notn. No. 6/2002 CE dt. 1.3.02. However, the facts before me in the instant case involve examination of the exemption under Notn. No. 6/2006 CE dated 1.3.2006. As discussed at para 49, the language employed in the relevant exemption notifications has undergone a drastic change from the year 1999 to 2006. Thus, the said case laws would no longer hold good while interpreting the provisions of Notn. No. 12/2012- CE and accordingly the ratio of the same cannot be made applicable to the facts of the present case. Further, I find that the case of M/s Gemini Instratech P Ltd. has not attained finality in as much as the appeal has been admitted by the Supreme Court as reported at (315) E.L.T. A81 (S.C.).

57. Further, I find that the burden of proof lies on the claimant claiming the benefit of exemption notification as held by the Supreme Court in the case of M/s Novopan India Ltd. v. CCE, Hyderabad - 1994 (73) E.L.T. 769 (S.C.) wherein it was held that:

*"A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision - In case of doubt or ambiguity, benefit of it must go to the State."*

*The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."*



58. It is a well settled principle of law that a notification is to be interpreted in light of the language employed in the said notification and no addition or deletion from the same is to be made. Such a view has been expressed by the Apex Court in a plethora of cases of which a few are listed below:

- (1) *Commissioner of C.Ex., Jaipur v. Mewar Bartan Nirman Udyog* - 2008 (231) E.L.T. 27 (S.C.)
- (2) *Commissioner of C.Ex. & Cus., Indore v. Parenteral Drugs (I) Ltd.* - 2009 (236) E.L.T. 625 (S.C.)
- (3) *Hotel Leela Venture Ltd. v. Commissioner of Customs (Gen.), Mumbai* - 2009 (234) E.L.T. 389 (S.C.)
- (4) *Mihir Textiles Ltd. v. Collector of Customs, Bombay* - 1997 (92) E.L.T. 9 (S.C.)
- (5) *Orient Traders v. Commercial Tax Officer, Triupati* - 2009 (237) E.L.T. 447 (S.C.)

59. I find that the assessee in their defence reply has submitted that the judiciary has consistently held that statutes/ notifications cannot be interpreted beyond the pure meaning of the words contained therein. Alternatively, the benefit under a notification cannot be subjected to any condition or limitation which has not been expressly mentioned or referred therein. I also rely on the following judgments relied upon the assessee to hold that Notification are to be followed strictly construing to the meaning contained in the words and the same cannot be interpreted as per our own whims and convenience.

- *Hemraj Gordhandas vs AC- 1978 (2)ELTJ350(5.C.)*
- *Inter Continental (India) vs UOI - 2003 (154) ELT 37 (Guj.); etc.*

60. Accordingly, I hold that M/s Inox is not eligible for the benefit of Sr. No. 332 of Notification No. 12/2012 C,Ex dated 17.3.2012 and Sr. No. 332 A inserted vide Notification No. 12/2014 C,Ex dated 11.05.2014 for the procurement of raw materials such as HR Plates etc. at concessional rate of duty under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016 is concerned.

61. M/s Inox has also procured 'Plates HR' having assessable value of Rs 8,45,08,081 on which Central excise duty works out to Rs.1,05,63,511 illegally without proper permission and documents. M/s Inox has availed the inadmissible benefit of SI.No 332A of the Central excise exemption notification No. 12/2012-CE dated 17.03.2012 as amended despite knowing that the provision is not applicable to the excisable good i.e Plates HR which are not 'Parts' of the Tower or Wind Operated Electricity Generator (WOEG). Thus M/s Inox have evaded payment of Central excise duty by wrongly availing the benefit under exemption as per SI.No 332A of 12/2012-CE dated 17.03.2012, as amended. M/s Inox has procured 'Plates HR' from M/s Essar using Form I's which has not been approved and accepted by the jurisdictional Assistant Commissioner. These are fraudulent procurements and had been done to avail exemption benefit illegally. Therefore the amount of Rs.1,05,63,511/- is required to be recovered from M/s Inox under the provision of Section 11A(1) of the Central Excise Act, 1944 read with Rule 7 of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016. I hold that all such procurements of excisable goods are illicit clearances of excisable goods made without payment of appropriate Central excise duty on the basis of fraudulent Form I's and therefore interest is also chargeable in terms of Section 11AA of the Central excise Act, 1944. I hold that M/s Inox had procured the quantity as mentioned at Table 4 in para 11.1 above. 'Plates HR' from M/s Essar at concessional rate of duty without permission from the department. These procurements were done without following the procedure as stipulated in Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2016. Thus I hold that M/s Inox had fraudulently done the procurement of Plates HR to evade the payment of excise duty by providing fake/illegal information to M/s. Essar Steel India Ltd. In view of the above, Thus I hold that M/s Inox had procured 'Plates HR' having assessable value of Rs 8,45,08,081, and evaded payment of Central excise duty amounting to Rs.1,05,63,511 illegally without proper permission and documents as they were not eligible for exemption under Sr. No. 332 of Notification No. 12/2012 C,Ex dated 17.3.2012 and Sr. No. 332 A inserted vide Notification No. 12/2014 C,Ex dated 11.05.2014 for the procurement of raw materials such as HR Plates etc. at concessional rate of duty under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods)

Rule, 2016. It is apparent that M/s Inox had procured 'Plates HR' from M/s Essar using Form I's which had not been approved and accepted by the jurisdictional Assistant Commissioner. It appeared that these are fraudulent procurements and had been done to avail exemption benefit illegally. Therefore, the amount of Rs. 1,05,63,511 as shown in Table 4 of Para 11.1 is required to be recovered from M/s Inox under the provision of Section 11A(1) of the Central Excise Act, 1944 read with Rule 7 of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016. Also all such procurements of excisable goods are illicit clearances of excisable goods without payment of appropriate Central excise duty on the basis of fraudulent Form I's. Therefore, I confirm the demand of Central Excise duty forgone amounting to Rs. 1,05,63,511/- as detailed below and also hold that interest is also chargeable in terms of Section 11AA of the Central excise Act, 1944.

*Procurement of Plates HR without proper permission and documents*

Sr.No.	Form I	Quantity Procured (MT)	Sum of Assessable Value (Rs)	Duty Forgone
1	009/16-17/INOX/Rohika	625.717	2,42,89,198.63	30,36,150
2	0010/16-17/INOX/Rohika	955.931	3,65,98,958.93	45,74,870
3	0014/16-17/INOX/Rohika	201.541	80,11,255.82	10,01,407
4	0015/16-17/INOX/Rohika	386.465	1,56,08,668.40	19,51,084
<b>TOTAL</b>				<b>1,05,63,511</b>

**Demand of Central Excise duty amounting to Rs. 2,80,51,739/- on procurement of 'Plates HR' by M/s Inox using the exemption certificates, which were later withdrawn by the Assistant Commissioner**

62. Having decided that M/s Inox is not eligible for the benefit of Sr. No. 332 of Notification No. 12/2012 C, Ex dated 17.3.2012 and Sr. No. 332 A inserted vide Notification No. 12/2014 C, Ex dated 11.05.2014 for the procurement of raw materials such as HR Plates etc. at concessional rate of duty under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016, in the foregoing paras, I hereby examine the demand of Rs. 2,80,51,739/- on the procurement of 'Plates HR' by M/s Inox using the exemption certificates, which were later withdrawn by the Assistant Commissioner vide letter dated letter F.No III/Inox/B-1 Bond/47/15-16 dated 01.03.2017, issued as given in Table 1 were obtained from the Supplier manufacturer i.e. M/s Essar Steel Limited, Hazira, Surat by the jurisdictional Range Superintendent. The procurement details of Plates HR against the invalidated exemption certificates are as under:

*Procurement details by M/s Inox against the invalidated exemption certificate*

Sr.No.	Form I	Quantity Procured (MT)	Sum of Assessable Value (Rs)	Duty Forgone
1	002/16-17/INOX/Rohika	2124.975	7,95,31,626.51	99,41,453
2	003/16-17/INOX/Rohika	1825.072	6,69,83,572.92	83,72,947
3	004/16-17/INOX/Rohika	1095.513	4,24,74,681.18	53,09,335
4	008/16-17/INOX/Rohika	951.596	3,54,24,033.84	44,28,004
<b>TOTAL</b>				<b>2,80,51,739</b>

63. From the facts of the case I find that M/s Inox had procured excisable goods against invalidated Form I's and undertakings as in Table 3 at Para 11 above. M/s Inox procured excisable goods having assessable value of Rs 22,44,13,912 on which Central Excise duty works out to Rs 2,80,51,739 against invalidated Form I's and undertakings. M/s Inox had availed the inadmissible benefit of Sl.No 332A of the Central excise exemption notification No. 12/2012-CE dated 17.03.2012 as amended despite knowing that the provision is not applicable

to the excisable good i.e Plates HR which are not 'Parts' of the Tower or Wind Operated Electricity Generator (WOEG). M/s Inox have evaded payment of Central Excise duty by wrongly availing the benefit under exemption as per Sl.No 332A of 12/2012-CE dated 17.03.2012, as amended, by way of presenting false facts to the department.

64. From the facts discussed above, for duty forgone in Table 3 at Para 11 above, it appeared that M/s. Inox was not entitled to avail the benefit of exemption as per Sl.No 332A of Notification 12/2012-C.E dated 17.03.2012 for the procurement of 'Plates HR' from M/s. Essar, Surat. Therefore, the amount of Rs.2,80,51,739/- is liable to be recovered from M/s Inox under the provision of Section 11A(1) of the Central Excise Act, 1944 read with Rule 7 of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016. Also all such procurements of excisable goods are illicit clearances of excisable goods without payment of appropriate Central excise duty on the basis of invalid and illegal Form I's and undertakings and it appeared that interest is also chargeable in terms of Section 11AA of the Central excise Act, 1944. I also hold that these procurements by wrongfully availing the exemption benefit made the goods liable for confiscation under Rule 25 of the Central Excise Rules, 2002.

65. Attention is drawn to Rule 7 of Central Excise (Removal of Goods at Concessional Rate) Rules, 2016 provides as under.

*RULE 7. Recovery of duty in certain cases. - Where the goods cleared by the supplier manufacturer on the basis of information provided by an applicant manufacturer, are not used for the intended purpose, the applicant manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the supplier manufacturer of the subject goods, along with interest and the provisions of section 11A, except the time limit mentioned in the said section for demanding duty and section 11AA of the Act shall apply mutatis mutandis, for effecting such recoveries :*

*Provided that where the applicant manufacturer is found to be non-existent, the supplier manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the supplier manufacturer of the subject goods, along with interest and the provisions of section 11A except the time limit mentioned in the said section and section 11AA of the Act shall apply mutatis mutandis, for effecting such recoveries.*

*Provided further that if the subject goods on receipt are found to be defective or damaged or unsuitable or surplus to the needs of the applicant manufacturer, he may return the subject goods to the supplier manufacturer and every such returned goods shall be added to the non-duty paid stock of the supplier manufacturer.*

*Explanation. - For the removal of doubts, it is hereby clarified that subject goods shall be deemed not to have been used for the intended purpose even if any of the quantity of the subject goods is lost or destroyed by natural causes or by unavoidable accidents during transport from the place of procurement to the applicant manufacturer's premises or from the supplier manufacturer's premises to the place of procurement or during handling or storage in the applicant manufacturer's premises.*

65.1 Perusal of above Rule and the facts of the case clearly indicate that since the applicant manufacturer, i.e the assessee, had not used the procured goods for "the intended purpose", in as much as that HR plates, which were shown as part of WOEG by M/s. Inox, was not a part of WOEG, but were consumed for the manufacture of parts of WOEG, the demand under Rule 7 read with Section 11A of the Central Excise Act,1944 is sustainable.

66. I, once again, draw attention to clause (c) in the prescribed Bond executed by M/s.Inox before the jurisdictional Assistant Commissioner to the effect that-

*"(c). And if all dues whether excise duty or other lawful charges which shall be demandable on the goods obtained by the obligors without payment of the whole or part of the duty or transported from place of procurement to the premises of the obligors as shown by the records of the proper officer of central Excise be duly paid into the Treasury to the account of the Deputy/Assistant Commissioner within 10 days of the date of demand thereof being made in writing by the said officer of Central Excise, this obligation shall be void".*

67. Thus I hold that M/s Inox had contravened the provision of Notification No 12/2012-CE dated 17.03.2012 as amended, in as much as they had wrongly availed the benefit of exemption as per Sl. No. 332A of the aforesaid notification which is not applicable to the procured excisable goods viz. 'Plates HR' which was not a part of WOEГ. They have also violated the provisions of Rule 4 of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016 by providing wrong information that 'Plates HR' is a part of Tower/WOEГ whereas it was only the raw material for manufacturing tower.

68. I hold that the subject goods i.e 'Plates HR' which were procured by M/s Inox cannot be construed as 'Parts' of Tower/WOEГ and procurement of such goods without proper permission and misconstruing the same as 'Parts' of Tower/WOEГ is a blatant breach of notification 12/2012-C.E dated 17.03.2012. I hold that the assessee is not eligible for exemption under Sr. No. 332 of Notification No. 12/2012 C.E dated 17.3.2012 and Sr. No. 332A inserted vide Notification No. 12/2014 C.E. dated 11.05.2014

69. "Rule 25. Confiscation and penalty,- (1) Subject to the provisions of section 11 AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer,-

- (a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or
- (b) does not account for any excisable goods produced or manufactured or stored by him; or
- (c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or
- (d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,

then all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or rupees ten thousand (now rupees two thousand), whichever is greater."

69.1 I find that such acts of contravention by M/s Inox, as discussed hereinabove, constitute offences of the nature as described in Rule 25 of the Central Excise Rules, 2002 and therefore they are liable for penalty as provided under the said rule, for such clearances, as detailed in Table 4 in para 11.1 above. I reiterate that the Central Excise duty forgone amounting to Rs 1,05,63,511/- is liable to be recovered from M/s. Inox under Section 11A(1) of Central excise Act, 1944 read with Rule 7 of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016 and therefore, the assessee is also liable for penal action under Section 11AC(1) (c) of the Central Excise Act, 1944.

70. I also find that Shri Jitendra Mohananey, working as CFO and acting as authorized signatory of M/s Inox wind had played a major role in the procurement of the goods. The Forms which were withdrawn by M/s Inox were sent to M/s Essar for procuring the excisable goods surreptitiously. This activity of fraudulent procurement of H R Plates under exemption of central excise duty couldn't have been done by M/s Inox without the active participation and knowledge of the authorized signatory. Therefore Shri Jitendra Mohananey, Authorised Signatory cannot escape by pleading ignorance on the pretext that he is not responsible for the unauthorized clearance. Accordingly, I hold that he is liable for penal action under Rule 26 of Central Excise rules, 2002.

71. In view of the facts and circumstances discussed above and my findings, I pass the following order:



ORDER

- i. I order that the Undertakings and Form I's issued under Rule 4(5) of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016 by the jurisdictional Assistant Commissioner which were subsequently cancelled but against which clearances of excisable goods at Nil rate of duty under Sl. No. 332A of Notification No 12/2012-C.E dated 17.03.2012, have been effected, may be treated as invalid documents for the procurement of excisable good i.e Plates HR.
- ii. I order that goods valued at Rs 22,44,13,912/- (Rupees Twenty Two Crores Forty Four Lakhs Thirteen thousand Nine Hundred and Twelve only) against the Forms I's mentioned at Table 3 of Para 11 above, procured without payment of appropriate excise duty is liable for confiscation under Rule 25 of Central Excise Rules, 2002.
- iii. I confirm the demand of Central excise duty forgone amounting to Rs. 2,80,51,739/- (Rupees Two Crores Eighty Lakhs Fifty One Thousand Seven Hundred and Thirty Nine only) for the procurements relating to the LUTs issued during the period from 04.09.2016 to 25.10.2016, and order that the same should be recovered from them under Section 11A (1) of the Central Excise Act, 1944 read with Rule 7 of Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule, 2016.
- iv. I order that interest at the appropriate rate be recovered from them under Section 11AA of the Central Excise Act, 1944
- v. I impose a penalty of Rs. Rs 2,80,51,739/- (Rupees Two Crores Eighty Lakhs Fifty One Thousand Seven Hundred and Thirty Nine only) under Rule 25 of the Central Excise Rules 2002 read with Section 11AC(c) of the Central Excise Act, 1944 on M/s. Inox Wind Limited, Plot No.128, Village: Rohika, Ahmedabad- Rajkot Highway, Dist-Ahmedabad.
- vi. I order that goods valued at Rs 8,45,08,081/- (Rupees Eight Crores Forty Five Lakhs Eight thousand and Eighty One only), as detailed in Table 4 in para 11.1 above, procured without payment of excise duty illicitly, without having the necessary permission and without following the proper procedure, are liable for confiscation under Rule 25 of Central Excise Rules, 2002.
- vii. I confirm the demand of Central Excise duty for the illegal procurements of goods amounting to Rs 1,05,63,511/- (Rupees One Crore Five Lakhs Sixty Three Thousand Five Hundred and eleven only) and order the same to be recovered from them under Section 11A (1) of the Central Excise Act, 1944 read with Rule 7 of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rule, 2016.
- viii. I order that interest at the appropriate rate be recovered from them on the demand confirmed as per point (vi) above, under Section 11AA of the Central Excise Act, 1944.
- ix. I impose a penalty of Rs 1,05,63,511/- (Rupees One Crore Five Lakhs Sixty Three Thousand Five Hundred and eleven only) under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC(1)(c) of the Central Excise Act, 1944. In terms of Section 11AC (1) (e) of the Central Excise Act, 1944.
- x. I impose a penalty of Rs.10,00,000/-(Rupees Ten Lakhs only) under Rule 26 of the Central Excise Rules 2002 on Shri Jitendra Mohananey, Authorised Signatory of M/s Inox Wind Limited.

- xi. I order that if M/s. Inox Wind Ltd pays the Central Excise duty determined at point no.vi above along with interest payable thereon as point no. (iii) and (vii) above, within thirty days of the date of communication of this order, the amount of penalty liable to be paid by the assessee shall be 25% of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified.

70. The Show Cause Notice no. V.84/15-33/OA/2018, dated 21.8.2018, is hereby disposed of.

(Amarjeet Singh)  
Commissioner  
CGST & Central Excise  
Ahmedabad North

**DIN-20210464WT0000666C79**

F. No.V.84/15-33/OA/2018

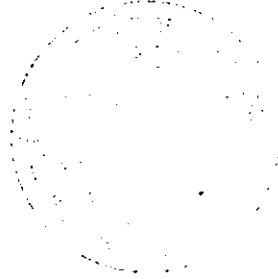
Date: 28.4.2021

To,

- (1) M/s. Inox Wind Limited,  
Plot No. 128, Village:Rohika,  
Ahmedabad- Rajkot Highway,  
Dist: Ahmedabad
- (2) Shri Jitendra Mohananey,  
M/s. Inox Wind Limited,  
Plot No. 128, Village:Rohika,  
Ahmedabad- Rajkot Highway,  
Dist: Ahmedabad

Copy to :

1. The Chief Commissioner, Ahmedabad Zone, GST Bhavan, Ambavadi, Ahmedabad.
2. The Deputy/Assist. Commissioner, CGST & CE, Division-V, Ahmedabad-North.
3. The Deputy/Assist. Commissioner, CGST & CE, Division-IV, Surat for information.
4. The Superintendent of CGST, AR-V, Div-V, Ahmedabad- North. II
5. Guard File.



Division - II  
CGST, Surat,  
2nd Floor, GST Bhavan,  
Opp. Bahumali Building,  
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