

OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)
सीमाशुल्कआयुक्त (एनएस - V) काकार्यालय
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,
जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,
TALUKA – URAN, DISTRICT - RAIGAD, MAHARASHTRA -400707
तालुका - उरण, जिला - रायगढ़ , महाराष्ट्र 400707

DIN – 20251078NX0000000A6E

Date of Order:31.10.2025

F. No. S/10-191/2022-23/COMMR/NS-V/CAC/JNCH

Date of Issue:31.10.2025

SCN No.: 476/2022-23/COMMR/GR-VA/NS-V/JNCH

SCN Date: 06.07.2022

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No:253/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. SUZLON ENERGY LIMITED(IEC-2495002021)

ORDER-IN-ORIGINAL

मूल - आदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D'Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), 34, पी. डी.मेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal:-

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - सीए3, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

Time Limit - Within 3 months from the date of communication of this order.

समय सीमा - इस आदेश की सूचना की तारीख से 3 महीने के भीतर

Fee - फीस -

- (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.
- (क) एक हजार रुपये जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये या उस से कम है।
- (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.
- (ख) पाँच हजार रुपये - जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।
- (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
- (ग) दस हजार रुपये - जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 50 लाख रुपये से अधिक है।

Mode of Payment - A crossed Bank draft, in favor of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

भुगतान की रीति - क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सी.ई.एस.टी.ए.टी., मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

General - For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, 1962, सीमाशुल्क (अपील) नियम, 1982, सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, 1982 का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129E of the Customs Act 1962.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्गृहीत शास्ति का 7.5 % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 E के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

Subject: Adjudication of Show Cause Notice No. SCN No. 476/2022-23/Commr./GR.VA/NS-V/JNCH dated 06.07.2022 issued to M/S Suzlon Energy Limited – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice No. 476/2022-23/Commr./GR.VA/NS-V/JNCH dated 06.07.2022 that M/S. Suzlon Energy Limited having (IEC No. 2495002021) (hereinafter referred to as the 'Noticee') having address at Suzlon '5', Shrimali Society, Near Shri Krishna Complex, Navrangpura, Ahmedabad, Gujarat-380009, filed Bills of Entry at various Customs Locations for the Import of 'different parts of Wind Operated Electricity Generator' having declared assessable value Rs. 17,70,40,353/- (Rupees Seventeen Crore Seventy Lakh Forty Thousand Three Hundred and Fifty Three Only) through their Customs Brokers M/s. Paramount Shipping Services Pvt. Ltd (AAECP5649RCH001), M/s. JN Freight Forwarders Pvt. Limited (AABCJ1901BCH002), M/s. Vishal Shipping Agencies PVT LTD (AABCV6455CCH001), M/s. Fourstar International (AACFF0234DCH001), M/s. Freight Express International PVT.LTD. (AAACF5071HCH001) & M/s. Apshan Logistics (AFUPC6354ACH002) wherein BCD levied @ 7.5%, IGST @ 5% under Sr. No. I234 of IGST Notification No. 01/2017- (Integrated Tax Rate) dated 28.06.2017.

1.2. During the Premise Based Audit (PBA) exercise, it was noticed that the Noticee had paid/levied Anti Dumping Duty (ADD)/ Definitive Countervailing Duty (DCVD) on import of the 'Castings for wind-operated electricity generators whether or not machined, in raw, finished or sub-assembled form, or as a part of a subassembly, or as a part of an equipment/ component meant for wind-operated electricity generators' falling under tariff items 848340 00, 850300 10 or 85030090 of the First Schedule to the Customs Tariff Act, 1975 in some cases and not levied the same in Bills of Entry as detailed in the Annexure-I attached to this Show Cause Notice. The ADD/DCVD is applicable on the subject goods, originating in or exported from, People's Republic of China (PRC), when imported into India at a rate to be worked out as percentage of landed value as defined under Notification No. 1/2016-Customs (CVD) dated 19.01.2016 for a period of 5 years (unless revoked, superseded or amended earlier) from the date of publication of the Notification in the official gazette i.e., 19.01.2016.

1.3. As per Notification No. 42/2017-Cus (ADD) dated 30.08.2017, which was issued in the matter of "Casting for wind operated electricity generators", falling under tariff items 84834000, 85030010 or 85030090 of the First Schedule to the Customs Tariff Act, 1975, originating in or exported from People's Republic of China (PRC) and imported into India, the designated authority i.e., DGAD vide notification No.14/28/2013-DGAD dated 28.07.2017 has recommended the imposition of definitive anti-dumping duty on imports of the subject goods originating in or exported from the subject country (PRC) and imported into India, in order to remove the injury to the domestic industry. Such anti-dumping duty the rate of an amount

equivalent to the difference between the quantum of anti-dumping duties calculated as per the table specified in the ibid notification and the quantum of anti-subsidy/countervailing duty payable if any. The anti-dumping duty imposed under this notification shall be effective for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette i.e., 30.08.2017, and shall be payable in Indian currency.

1.4. During the course of Audit, it was noticed that the noticee had paid DCVD/ADD on import of following goods (Castings) in some cases under Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017:

BRAKE HOLDER	FRONT PROTECTING RING
SAFETY EYE	GEAR MOUNT UNIT
BACK COVER M334.0075	MAIN BEAM LEFT M324.000615
BACK COVER STV	LOWER METAL BLOCK
BACK PROTECTING RING	MAIN BEARING HOUSING COVER
BEARING CASE	S11X REAR FRAME OF MAIN FRAME CROSS BEAM
CROSS BEAM	S133 GIRDER SYSTEM
FRONT COVER	UPPER METAL BLOCK

However, the noticee has not paid the same under all such cases where goods (Castings) had been imported and liable for levy of DCVD/ADD under Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017. The details of such Bills of Entry have been given in Annexure-I annexed to this SCN. The total assessable value of the goods classified under Tariff Heading 8503 0099 of the first schedule to the Customs Tariff Act, 1975 as detailed in Annexure-I was **Rs. 17,70,40,353/- (Rupees Seventeen Crore Seventy Lakh Forty Thousand Three Hundred and Fifty Three Only)**. Further, the noticee has also suppressed the facts regarding the nature of imported goods as castings which led to the non-payment of the applicable Countervailing Duty and Anti-Dumping Duty.

1.5. Therefore, the differential duty works out to **Rs. 2,28,50,048/- (Rupees Two Crores Twenty Eight Lakh Fifty Thousand and Forty Eight only)**.

1.6. Accordingly, a Consultative letter vide F.No. CADT/CIR/ADT/PBA/166/2020-PBA-CIR-B1 dated 13.04.2022 was issued to the Noticee, apprising them of clearance of the impugned goods liable for levy of DCVD/ADD under Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017 and demanding the payment of the consequent differential duty under Customs Act, 1962 along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

1.7 In the light of above, it is found that the goods covered under Bills of Entry as mentioned in Annexure-I of the SCN, are 'Castings for wind-operated electricity generators whether or not machined, in raw, finished or sub-assembled form, or as a part of a subassembly, or as a part of an equipment/ component meant for wind-operated electricity generators' falling under tariff items 848340 00, 850300 10 or 85030090 of the First Schedule to the Customs Tariff Act, 1975. The subject goods are originating in or exported from, People's Republic of China (PRC) and supplied by foreign suppliers viz, M/s Changzhou Shuangye Machinery & Electric Co Ltd., M/S Zhejiang Jiali Wind Power Technology Co Ltd, M/S Jiangsu Sinojit Wind Energy Technology Co. Ltd., M/S Zhejiang Jiali Wind Power Technology Co Ltd. Therefore, the subject goods attracts levy of ADD/DCVD at applicable rates to be worked out as percentage of landed value as defined under Notification No. 1/2016-Customs (CVD) dated 19.01.2016 &/or Notification No. 42/2017- Cus (ADD) dated 30.08.2017 for a period of 5 years.

1.8 From foregoing, it appears that the Noticee was aware of the fact that the impugned goods as summarized under para 9 above are 'Castings for wind-operated electricity generators whether or not machined, in raw, finished or sub-assembled form, or as a part of a subassembly, or as a part of an equipment/ component meant for wind-operated electricity generators' falling under tariff items 848340 00, 850300 10 or 85030090 of the First Schedule to the Customs Tariff Act, 1975, the subject goods are originating in or exported from, People's Republic of China(PRC) and supplied by foreign suppliers viz, M/s Changzhou Shuangye Machinery & Electric Co Ltd., M/S Zhejiang Jiali Wind Power Technology Co Ltd, M/S Jiangsu Sinojit Wind Energy Technology Co. Ltd., M/S Zhejiang Jiali Wind Power Technology Co Ltd and hence, are liable for levy of ADD/DCVD at applicable rates to be worked out as percentage of landed value as defined under Notification No. 1/2016-Customs(CVD) dated 19.01.2016 &/or Notification No. 42/2017- Cus (ADD) dated 30.08.2017 for a period of 5 years. They were fully aware that non-levy of ADD/DCVD at applicable rate of landed value as defined under Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017 will result in short levy of duty. Hence, there seems to be a wilful intention on the part of the Noticee in order to evade payment of legitimate customs duty. Accordingly, the action of the Noticee to wrongful claim of IGST on the subject goods appears to be an act of wilful mis-statement and suppression of facts and the improper action of the importer warrants action for recovery of duty under Section 28(4) of the Customs Act, 1962.

1.9 The extracts of the following relevant provisions of the Customs Act, 1962; for the time being in force, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- Section 28(4) - Notice for payment of duties, interest etc.
- Section 28AA- Interest on Delayed payment of duty
- Section 46- Entry of goods on importation.
- Section 111(m) - Confiscation of improperly imported goods, etc.
- Section 112- Penalty for improper importation of goods etc.

- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.
- Section 117- Penalties for contravention, etc., not expressly mentioned.

1.10 With the introduction of the Self-Assessment scheme, the onus is on the Noticee to comply with the various laws, determine their tax liability correctly and discharge the same. The Noticee are required to declare the correct description, value, classification, notification number, if any, on the imported goods. Self-assessment is supported by section 17, 18 and 46 of the Customs Act, 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011. The Noticee are squarely responsible for self-assessment of duty on imported goods and for filing of all declaration and related documents and confirming that these are true, correct and complete. Self-Assessment can result in assured facilitation for compliant Noticees. However, delinquent Noticees would face penal action on account of wrong self-assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provisions under the Customs Act, 1962 or the allied Acts.

1.11 Further, it is also found that the Noticee wilfully not levied ADD/DCVD as applicable under Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42/2017-Cus (ADD) dated 30.08.2017 which resulted into short payment of customs duty. All the aforesaid facts, discussed above about the manner in which the Noticee has evaded payment of legitimate customs duty (ADD/DCVD) under Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017 have come to light only after analysing the import data during Premise Based Audit of the Noticee. In view of the same, it appears that in-spite of having knowledge, the Noticee wilfully mis-stated and suppressed these vital facts from the department to evade payment of legitimate customs duty. Therefore, extended period of 5 years as provided under 28(4) of the Customs Act, 1962, is applicable for recovery of the short paid Customs duty under Section 28(4) of the Customs Act, 1962, along with applicable interest thereon, under Section 28AA of the Customs Act, 1962. Therefore, for same reasons stated hereinabove, the Noticee warrants action for recovery of duty under Section 28(4) of the Customs Act, 1962, and has also rendered themselves liable for penalty under Section 114A of the Customs Act, 1962.

1.12 From the foregoing Para, it appears that the Noticee has not paid appropriate duty on the goods imported in respect of Bills of Entry as detailed in Annexure-I of the Show Cause Notice. Consequently, differential duty amounting to **Rs. 2,28,50,048/- (Rupees Two Crores Twenty Eight Lakh Fifty Thousand and Forty Eight only)** appears liable to be paid by the Noticee in respect of Bills of Entry relating to the impugned goods as detailed in the **Annexure-I** attached of the Show Cause Notice.

1.12.1 It is pertinent to mentioned here that the noticee, M/s SUZLON ENERGY LIMITED having IEC No. 2495002021 has made voluntarily payment towards Differential Duty and interest vide Manual Challans as mentioned in the calculation sheet attached to their reply dated

20.05.2022. However, the noticee did not make any payment towards Penalty and effective IGST.

1.13 It, therefore, appears that:

(i) Above mentioned goods were not levied to ADD/DCVD as applicable under Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017. Consequently, differential duty amount of Rs. 2,28,50,048/-(Rupees Two Crores Twenty Eight Lakh Fifty Thousand and Forty Eight only) along with applicable interest thereon appears recoverable under Section 28(4) of the Customs Act, 1962 from the Noticee.

(ii) The intention of the Noticee to evade duty thereon appears to have contravened the provisions of Section 46(4) and 46(4A) of the Customs Act, 1962, and which in turn appears to have rendered the subject goods liable to confiscation in terms of the provisions of Section 111(m) of the Customs Act, 1962 and also appears to have made the Noticee liable for penal action in terms of the provisions of Section 114A of the Customs Act, 1962.

(iii) Further, the documents related to this import were processed by Custom Broker, M/s Paramount Shipping Services Pvt. Ltd (AAECP5649RCH001), JN Freight Forwarders PVT. Limited (AABCJ1901BCH002), M/S. Vishal Shipping Agencies PVT LTD (AABCV6455CCH001), Fourstar International (AACFF0234DCH001), Freight Express International PVT. LTD. (AAACF5071HCH001) & M/s Apshan Logistics (AFUPC6354ACH002) on behalf of the importer. The Customs Brokers also have knowingly signed and processed these documents for clearance of said goods. The Customs Broker is a service provider and being a licensed holder ought to know the Customs Act, Law, Rules and Regulations, Instructions, Circulars and Notifications framed therein vis-à-vis procedural acumens. In this particular case, Customs Broker is equally responsible for short payment of IGST on the subject goods. Hence, it appears that the Customs Brokers M/s Paramount Shipping Services Pvt. Ltd (AAECP5649RCH001), M/s JN Freight Forwarders Pvt. Limited (AABCJ1901BCH002), M/s. Vishal Shipping Agencies PVT LTD (AABCV6455CCH001), M/s Fourstar International (AACFF0234DCH001), M/s Freight Express International PVT.LTD. (AAACF5071HCH001) & M/s Apshan Logistics (AFUPC6354ACH002) have failed to sensitize the importer, M/s Suzlon Energy Limited regarding short payment of ADD on the imported goods while presenting the Bill of Entry under Section 46 of Customs Act, 1962. In view of this, Customs Brokers i.e., M/s Paramount Shipping Services Pvt. Ltd (AAECP5649RCH001), M/s JN Freight Forwarders Pvt. Limited (AABCJ1901BCH002), M/s. Vishal Shipping Agencies Pvt. Ltd (AABCV6455CCH001), M/s Fourstar International (AACFF0234DCH001), Freight Express International Pvt. Ltd. (AAACF5071HCH001) & M/s Apshan Logistics (AFUPC6354ACH002) are also liable for penalty under Section 117 of Customs Act 1962.

1.14 Therefore, M/s. Suzlon Energy Limited (IEC No. 2495002021), were called upon to show cause to the Commissioner of Customs, (Import) JNCH having office at Jawaharlal Nehru Custom House, Sheva, Taluka- Uran, Distt. Raigad, Maharastra-400707, within 30 days of receipt of this notice as to why:-

- i. The antidumping duty/Definitive Countervailing duty (ADD/DCVD) should not be collected under Section 28 of the Customs Act, 1962 in terms of Notification No. 1/2016- Customs (CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017 on import of items as mentioned in Bills of Entry mentioned in Annexure-I attached to this Show Cause Notice.
- ii. Differential duty amounting to **Rs. 2,28,50,048/- (Rupees Two Crores Twenty Eight Lakh Fifty Thousand and Forty Eight only)** as detailed in the **Annexure-I** attached to this Show Cause Notice alongwith applicable interest thereon in terms of provisions of Section 28 AA of the Customs Act, 1962, should not be demanded & recovered from them under Section 28(4) of the Customs Act, 1962.
- iii. The Noticee, M/S Suzlon Energy Limited having IEC No. 2495002021 has made voluntarily payment towards Differential Duty and interest vide Manual Challans as mentioned in the calculation sheet attached to their reply dated 20.05.2022 (copy enclosed as **Annexure-A**), the same may be required to be appropriated after due verification of genuineness of Challans against differential duty and interest.
- iv. The impugned goods under said Bills of Entry to this notice, valued at **Rs. 17,70,40,353/- (Rupees Seventeen Crore Seventy Lakh Forty Thousand Three Hundred and Fifty Three Only)** should not be held liable for confiscation in terms of provisions of Section 111 (m) read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962.
- v. Penalty should not be imposed on the Noticee under Section 114A of the Customs Act, 1962.

1.15 Therefore, Customs Brokers i.e., M/s Paramount Shipping Services Pvt. Ltd (AAECP5649RCH001), M/s JN Freight Forwarders Pvt. Limited (AABCJ1901BCH002), M/s. Vishal Shipping Agencies Pvt. Ltd (AABCV6455CCH001), M/s. Fourstar International (AACFF0234DCH001), M/s. Freight Express International Pvt. Ltd. (AAACF5071HCH001)& M/s. Apshan Logistics (AFUPC6354ACH002), were called upon to show cause to the Commissioner of Customs, (Import) JNCH having office at Jawaharlal Nehru Custom House, Sheva, Taluka- Uran, Distt. Raigad, Maharastra-400707, within 30 days of receipt of this notice as to why:-

(i) Penalty should not be imposed on the Customs Brokers i.e., M/s Paramount Shipping Services Pvt. Ltd (AAECP5649RCH001), M/s JN Freight Forwarders Pvt. Limited (AABCJ1901BCH002), M/s. Vishal Shipping Agencies Pvt. Ltd (AABCV6455CCH001), M/s Fourstar International (AACFF0234DCH001), M/s. Freight Express International Pvt. Ltd. (AAACF5071HCH001) & M/s. Apshan Logistics (AFUPC6354ACH002) under section 117 of the Customs Act, 1962.

2. The subject SCN was adjudicated by the Commissioner of Customs, NS-V, JNCH, vide Order-in-Original (O-i-O) No. 84/2024-25/Commr/NS-V/CAC/JNCH dated 05.07.2024 wherein the following order was passed:

- i. I imposed the antidumping duty/Definitive Countervailing duty (ADD/DCVD) under Section 28 of the Customs Act, 1962 in terms of Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017 on import of items as mentioned in Bills of Entry mentioned in Anneuxre-I to the Show Cause Notice.
- ii. I order to confiscate the impugned goods under said Bills of Entry to this notice, valued at **Rs. 17,70,40,353/-(Rupees Seventeen Crore Seventy Lakh Forty Thousand Three Hundred and Fifty Three Only)** in terms of provisions of Section 111 (m) read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962. Even though the goods are not available for confiscation. However, I give an option to the importer to redeem these goods on payment of redemption fine of **Rs 2,00,00,000/- (Rupees Two Crores only)** under Section 125 of the Customs Act, 1962.
- iii. I confirm the differential duty amounting to **Rs. 2,28,50,048/-(Rupees Two Crores Twenty Eight Lakh Fifty Thousand and Forty Eight only)** as detailed in the Annexure-I to the Show Cause Notice alongwith applicable interest thereon in terms of provisions of Section 28 AA of the Customs Act, 1962 & recovered the same from the importer under Section 28(4) of the Customs Act, 1962.
- iv. I order to appropriate voluntarily payment towards Differential Duty and interest made by M/S Suzlon Energy Limited having IEC No. 2495002021 vide Manual Challans as mentioned in Annexure- B to SCN, the same may be required to be appropriated after due verification of genuineness of Challans against differential duty and interest.
- v. I Impose a penalty of **Rs. 2,28,50,048/-(Rupees Two Crores Twenty Eight Lakh Fifty Thousand and Forty Eight only)** (Equivalent to differential duty) under Section 114A of the Customs Act, 1962, alongwith applicable interest, on the importer for the reasons aforesaid.

vi. I drop the proposed penalty under Section 117 of the Customs Act, against the Customs Brokers i.e., M/s Paramount Shipping Services Pvt. Ltd (AAECP5649RCH001), M/s JN Freight Forwarders Pvt. Limited (AABCJ1901BCH002), M/s. Vishal Shipping Agencies Pvt. Ltd (AABCV6455CCH001), M/s Fourstar International (AACFF0234DCH001), M/s. Freight Express International Pvt. Ltd. (AAACF5071HCH001) & M/s. Apshan Logistics (AFUPC6354ACH002).

3. Aggrieved by the above O-i-O, the Importer (vide Customs Appeal No. 87536 of 2024) filed an Appeals against the above O-i-O before the Hon'ble CESTAT, Mumbai. The Hon'ble CESTAT, Mumbai vide Final Order No. 87419/2024 dated 25.11.2024, remanded back the matter to the original authority by observing as under:

"6. We find that the adjudicating authority who was entirely within the four corners of the law in having granted three dates for disposal of the appeal, and that the adjudication had to be concluded within the extended time allowed by the competent authority empowered under section 28(9) of the Customs Act, 1962 was not at fault in ex parte disposal. Nonetheless, the pleas of the larger issue of compliance with principles of natural justice, requiring that the noticee be heard before appeal was disposed off on merit is irresistible. Consequently, we allow this appeal by way of remand and direct the original authority to hear the appellant herein on merits for the purpose. Needless to state, appellant should appear at the hearing so scheduled.

7. Accordingly, this appeal is disposed off by remand."

4. WRITTEN SUBMISSION OF THE NOTICEE

4.1 The Noticee, vide their letter dated 24.09.2025 gave written reply to the subject SCN. Vide the above reply, they denied all the allegations made in the SCN and made submissions *inter alia* as under:

4.2 The Noticee regularly imports 'Castings for wind-operated electricity generators' ("**imported goods**") and discharges Anti-Dumping Duty ("**ADD**") / Countervailing Duty ("**CVD**") on the same. The present SCN dated 07.07.2024 ("**SCN**") covers 22 Bills of Entry vide which the Noticee had imported the imported goods. Out of these 22 Bills of Entry, 7 are warehousing Bills of Entry and only the remaining 15 Bills of Entry are for home consumption.

Out of these 15 Bills of Entry for home consumption, the Noticee had, in fact, duly paid the ADD/CVD as applicable through manual challans.

4.3 **Differential duty cannot be demanded against warehoused bills of entry. Thus, the duty demanded cannot exceed Rs. 1,65,83,744.46.**

4.3.1 Section 68 of the Act states that three key criteria must be met for warehoused goods to be cleared for home consumption: (a) the presentation of a bill of entry for home consumption, (b) payment of the requisite import duty, interest, fines, and penalties, and (c) issuance of an order for clearance by the proper officer.

4.3.2 The fundamental principle established here is that the demand for import duty can only arise once the goods are cleared for home consumption, which is initiated by the submission of a bill of entry for home consumption ('Ex-bond'). Further, the Noticee places reliance on **Circular No. 46/2017-Cus dated 24.11.2017** [Refer Sr. No. 3 of the Compilation] which reinforces this interpretation by outlining that Chapter IX of the Customs Act provides the framework for warehousing goods without payment of duty. The Circular emphasizes that payment of duty is deferred until the goods are removed from the bonded warehouse for home consumption.

4.3.3 Further, Section 72 provides for duty being demanded in case of non-removal of goods from the warehouse within the stipulated period, which deems such non-removal of goods as improper removal. It is undisputed that the present case does not involve such improper removal and thus, there is no question of duty being demanded on warehousing Bills of Entry. Therefore, the demand of duty, if any, ought to be restricted to Bills of Entry filed for home consumption.

4.3.4 As already stated above, the Department vide the present SCN has proposed to demand duty on 22 Bills of Entry out of which 7 are warehousing Bills of Entry. Copies of the 7 Warehousing Bills of Entry are collectively enclosed herewith as **Annexure-1**. A bare perusal of these Bills of Entry would make it evident that these are Warehousing Bills of Entry. The below table sets out the complete list of Bills of Entry as covered in the present SCN and the demand in respect of the same.

TABLE-B

Sr. No.	Bill of Entry No. and Date	Type of Bill of Entry	Corresponding X-Bond Bill of Entry	Differential Duty (in INR)
1	2397875 dated 11.07.2017	Home Consumption	--	16,69,247.25
2	2417805 dated 12.07.2017	Home Consumption	--	17,62,127.89
3	2417782 dated 12.07.2017	Home Consumption	--	54,60,585.25
4	2421761 dated 12.07.2017	Home Consumption	--	3,59,318.83
5	2599286 dated 26.07.2017	Home Consumption	--	2,67,608.95
6	2607439 dated	Home	--	4,51,933.52

	26.07.2017	Consumption		
7	2645935 dated 29.07.2017	Home Consumption	--	33,82,280.46
8	2749750 dated 07.08.2017	Home Consumption	--	5,28,072.50
9	4661343 dated 03.01.2018	Home Consumption	--	1,21,406.38
10	4662643 dated 03.01.2018	Home Consumption	--	96,666.80
11	5369178 dated 26.02.2018	Home Consumption	--	13,974.30
12	6409074 dated 17.05.2018	Home Consumption	--	6,99,827.38
13	7667482 dated 17.08.2018	Home Consumption	--	8,79,957.74
14	7997170 dated 11.09.2018	Home Consumption	--	8,79,957.74
15	6242041 dated 04.05.2018	Home Consumption	--	10,779.47
		TOTAL		1,65,83,744.46
16	2686655 dated 01.08.2017	Warehousing	--	16,62,177.78
17	3702515 dated 23.10.2017	Warehousing	(Sr. No. 9) 4661343	1,21,406.38
18	7493743 dated 03.08.2018	Warehousing	(Sr. No. 13) 7667482	8,92,409.97
19	7493415 dated 03.08.2017	Warehousing	(Sr. No. 14) 7997170	8,92,409.97
20	8711898 dated 02.11.2018	Warehousing	--	4,77,521.29
21	8774157 dated 08.11.2018	Warehousing	--	9,50,557.00
22	8771705 dated 08.11.2018	Warehousing	--	12,69,821.24
		TOTAL		62,66,303.65
		GRAND TOTAL		2,28,50,048.09

4.3.5 From the aforesaid table, it is clearly evident that differential duty amounting to Rs.62,66,303.65/- has been proposed to be demanded on warehousing Bills of Entry. On the basis of the above submissions, it is urged that the aforesaid demand of Rs. 62,66,303.65/- ought

to be deducted from the overall differential duty demand of Rs. 2,28,50,048.09/- proposed by the Department.

4.3.6 Therefore, it is submitted that demand of differential duty, if any, ought to be restricted to the 15 Bills of Entry filed for home consumption amounting to Rs. 1,65,83,744.46/- as indicated in the table above. Furthermore, it is submitted that these 7 warehousing Bills of Entry have been cleared for home consumption after payment of ADD/CVD as applicable.

4.4 Noticee has paid duty in excess of the differential duty proposed to be demanded as per the Impugned SCN.

4.4.1 It is submitted that the Noticee has paid duty in excess of the demand raised in the Impugned SCN. As already stated above, the demand of differential duty, if any, ought to be restricted to the demand on Bills of Entry for home consumption i.e., Rs. 1,65,83,744.46/-. Whereas the differential duty paid by the Noticee before the issuance of the Impugned SCN amounts to Rs. 1,75,11,577/-. The challans vide which the Noticee had made payment of the aforesaid amount are collectively enclosed herewith as Annexure-2. Further, a copy of the excel sheet setting out the details of the payments made with respect to the Bills of Entry in dispute is enclosed herewith as Annexure-3.

4.4.2 The above factual position is evident from the below table, which provides the payment details, including the relevant Challan numbers:

TABLE-C

Sl. No.	Bill of Entry No. & Date	CVD (ADD) (in INR)	IGST on CVD/A DD (in INR)	Total Differential Duty (in INR)	Payment before SCN (in INR)	Payment after SCN (in INR)	Interest Paid (in INR)	Challan No. & Date
Bill of Entry wherein BCD, IGST on BCD and ADD/CVD were duly paid before receiving out-of-charge. IGST on ADD/CVD paid after receiving out-of-charge but before issuance of SCN.								
1	2397875 dated 11.07.2017	15,89,759.28	79,487.96	16,69,247.25	17,06,207			00011 dated 19.07.2017
		(0)			85,310			00046 dated 31.08.2017
Bills of Entry wherein BCD, IGST on BCD and ADD/CVD were duly paid before receiving out-of-charge. IGST on ADD/CVD plus interest on such IGST paid after issuance of SCN.								
2	2417805	16,78,217.	83,910.8	17,62,127.	16,78,21			347

	dated 12.07.20 17	04	5	89	7			dated 25.07.20 17
		(0)				83,911	67,830	HCM- 1155 dated 16.11.20 22
3	2417782 dated 12.07.20 17	52,00,557. 39	260,027. 87	54,60,585. 25	52,00,55 7			345 dated 25.07.20 17
		(0)				2,60,028	2,10,195	HCM- 1155 dated 16.11.20 22
4	2421761 dated 12.07.20 17	3,42,208.4 1	17,110.4 2	3,59,318.8 3	3,42,208			0072153 dated 31.07.20 17
		(0)				17,111	13,831	004958 dated 17.11.20 22
5	2599286 dated 26.07.20 17	2,54,865.6 7	12,743.2 8	2,67,608.9 5	4,86,133			181 dated 11.08.20 17
		(0)				24,307	19,508	HCM- 1155 dated 16.11.20 22
6	2607439 dated 26.07.20 17	4,30,412.8 8	21,520.6 4	4,51,933.5 2	4,30,413			183 (11.08.2 017)
		(0)				21,521	17,272	HCM- 1155 dated 16.11.20

								22
7	2645935 dated 29.07.20 17	32,21,219. 49	161,060. 97	33,82,280. 46	33,35,02 6			HC-63 dated 05.09.20 17
		(0)				1,66,751	1,33,630	HCM- 1155 dated 16.11.20 22
8	2749750 dated 07.08.20 17	5,02,926.1 9	25,146.3 1	5,28,072.5 0	502,926			HC-64 dated 05.09.20 17
		(0)				25,146	20,059	HCM- 1155 dated 16.11.20 22
Bills of Entry wherein BCD and IGST on BCD were duly paid before receiving out-of-charge. ADD/CVD and IGST on ADD/CVD plus interest on such IGST paid after receiving out-of-charge but before issuance of SCN.								
9	7667482 dated 17.08.20 18	8,38,054.9 9	41,902.7 5	8,79,957.7 4	12,33,69 6			HCM 5373 dated 24.08.20 18
		(0)						
10	7997170 dated 11.09.20 18	8,38,054.9 9	41,902.7 5	8,79,957.7 4	12,33,69 7			HCM 1987 dated 25.09.20 18
		(0)						
Bills of Entry wherein ADD/CVD, IGST on ADD/CVD and interest on such ADD/CVD were paid after receiving out-of-charge but before issuance of SCN.								
11	4661343 dated 03.01.20 18	1,07,617.8 5	5,781.26	1,21,406.3 8	1,07,618			346 dated 24.01.20 18

		(0)			13,789		1,361	HCM-5874 dated 30.08.2018
12	4662643 dated 03.01.2018	92,063.62	4,603.18	96,666.80	92,064			HC-345 dated 24.01.2018
		(0)			4,603		457	HCM-5875 dated 30.08.2018
13	5369178 dated 26.02.2018	13,308.86	665.44	13,974.30	13,309			HC-253 dated 27.03.2018
		(0)			665		55	HCM-5876 dated 30.08.2018
14	6409074 dated 17.05.2018	6,66,502.26	33,325.11	6,99,827.38	10,45,139		45,531	HCM-5880 dated 30.08.2018
		(0)						
Bill of Entry wherein ADD/CVD, IGST on ADD/CVD and interest on such ADD/CVD and IGST on ADD/CVD were paid after receiving out-of-charge and after issuance of SCN.								
15	6242041 dated 04.05.2018	10,266.16	513.31	10,779.47		10,780.00	6544	127 dated 19.05.2022
		(0)						
	Total	1,57,94,042.35 (1,57,86,035.07 + 8,007.28)	7,89,702.12	1,65,83,744.47	1,75,11,577	6,09,555	5,36,273	

4.4.3 From the above table, it is evident that the figure indicated in 'RED' (Rs. 1,65,83,744.47/-) represents the total differential duty proposed to be demanded in respect of the 15 Bills of Entry for home consumption. Whereas the figure indicated in 'GREEN' (Rs. 1,75,11,577/-) is the amount actually paid by the Noticee before the issuance of the Impugned SCN. The Annexure-2 Challans evidencing the payment made by the Noticee clearly go to show the Noticee had, in fact, paid in excess of the demand raised in the SCN.

4.4.4 In fact, after the issuance of the Impugned SCN, the Noticee had paid IGST on ADD/CVD component in certain cases as mentioned in the table above and interest on IGST paid. Taking these payments well into consideration, the total duty now paid by the Noticee stands at Rs.1,86,57,405/- which is more than what was payable by the Noticee as per the Impugned SCN. Therefore, it is submitted that the Noticee is eligible for refund of Rs.20,73,660.53/-. In light of the aforesaid reasoning, it is submitted that the Noticee has duly paid more than the duty leviable on the imported goods. Thus, no further duty is payable.

4.5 Extended period of limitation cannot be invoked.

4.5.1 The Noticee has been issued with Impugned SCN dated 07.07.2022. Therefore, demand made in respect of imports made after 07.07.2020 alone will be within the normal period of limitation. In other words, the entire proposed demand of differential duty amounting to Rs. 2,28,50,048/- in respect of imports made during the period from 11.07.2017 to 08.11.2018 is beyond the normal period of limitation.

4.5.2 The sole reason given in Para 13 of the Impugned SCN for invoking the extended period of limitation is that the Noticee has resorted to mis-statement and suppression of facts in respect of the imported goods to evade payment of legitimate customs duty. At the outset, it is humbly submitted that there is absolutely no evasion of duty in the present case. In fact, the Noticee has duly paid the duty along with interest where applicable in excess of the demand proposed in the Impugned SCN. This is a case where the Department had failed to take into account the legitimate payments made by the Noticee.

4.5.3 Further, it is submitted that Department has not discharged the onus cast upon it to prove that the Noticee had mis-stated or suppressed any facts from the Department. It is submitted that the extended period of limitation under Section 28(4) cannot be invoked as the ingredients for the same viz. collusion or wilful misrepresentation or suppression of facts to evade customs duty are not satisfied in the present case for the following reasons: The imported goods are correctly declared in the import documents. The description in the bill of entry duly indicated the nature of the goods imported. Suppression and wilful misstatement cannot be alleged as all facts relating to the import goods were known to the Department. Therefore, in light of the decisions cited

[Refer: *Aban Lloyd & Midas Fertchem* - Sr. Nos. 4 & 6] in the Compilation, extended period is not otherwise invocable in the present case.

4.6 Imported goods are not liable for confiscation. Penalty and interest cannot be imposed.

4.6.1 The Noticee has not mis-declared the description of the imported goods. The various particulars entered in the bills of entry viz. description, value and all other material particulars are not disputed or found to be un-true. Further, the imported goods have already been cleared for home consumption and are not physically available with the customs department. Hence, the imported goods are not liable to confiscation under Section 111(m) [Refer: *Northern Plastic* and *Sahil International* - Sr. Nos. 9 & 10 of the compilation].

4.6.2 Penalty has been proposed to be imposed under Section 114A of the Customs Act. As already stated above, since the duty and interest has been duly paid prior to the issuance of the SCN in this case, extend period of limitation ought not be invoked and penalty under Section 114A is also not imposable in the present case [Refer: *Minebea Intec* and *ITC Limited* – Sr. Nos. 7 & 8 of the Compilation]. Since, extended period is not invocable for the reasons given in Para 13 above no penalty is imposable under Section 114A.

4.7 Without prejudice, the demand of IGST is liable to be dropped as the same is revenue neutral. Further, interest and penalty cannot be proposed on the IGST demand as there is no such provision in the law for the same.

4.7.1 Without prejudice to the above submissions, the Noticee submits that the demand of differential IGST ought to be dropped to the extent that the Noticee is entitled to avail credit of the IGST paid, since the same would result in a revenue neutral situation.

4.7.2 Therefore, in light of the decisions cited [Refer: *Neuvera Wellness*; & *Suryadev Alloys* at Sr. Nos. 13 to 14] in the Compilation the proposal to demand IGST ought to be dropped. Further, it is submitted that when demand is of differential IGST, no interest and penalty is imposable / payable, as there is no provision under the Customs Tariff Act enabling levy of such interest/penalty. [Refer: *Mahindra and Mahindra*; and *A.R. Sulphonates* – Sr. Nos. 15 & 16 of the Compilation].

4.8 In view of the above, it is prayed that the proposals in the Impugned SCN be dropped.

5. RECORD OF PERSONAL HEARINGS

5.1 There is one Noticee in the subject SCN viz. M/s Andreas STIHL Private Limited. In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee was granted opportunity of Personal

Hearing (PH) on 24.09.2025 and PH intimation letter was issued by speedpost. On 24.09.2025, Mr Bharat Menon, Advocate and Mr. Kedar Kokatay, Advocate, on behalf of M/s. Suzlon Energy Ltd., attended the personal hearing before me in virtual mode.

5.2. They argued the case and submitted that out of the 22 Bills of Entry 7 are Warehouse Bills of Entry. For warehouse bills of entry demand cannot be raised and further, they have paid all duties at the time of X-Bond Bill of Entry.

5.3 For the remaining Bills of Entry also they have paid the differential duty before issuance of SCN.

5.4 Further, they requested to drop the proceeding as the duty was paid before the issuance of SCN without any fine or penalty

6. DISCUSSION AND FINDINGS

6.1 I have carefully gone through the subject Show Cause Notice (SCN) and its enclosures, material on record and facts of the case, as well as oral submissions made during the PH and written submission made by the Noticee. Accordingly, I proceed to decide the case on merit.

6.2 In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) on 24.09.2025 was granted to the Noticee. Availing the said opportunity, the Noticee attended the PH on 24.09.2025. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the submission / contention made by the Noticee.

6.3 The fact of the matter is that a Show Cause Notice No. 476/2022-23/Commr./GR.VA/NS-V/JNCH dated 06.07.2022 was issued to the Noticee, M/S. Suzlon Energy Limited and others., wherein it was alleged that they had not paid applicable Definitive Countervailing Duty/ Anti-Dumping Duty as per Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017. The SCN proposes that the differential duty amounting to **Rs. 2,28,50,048/- (Rupees Two Crores Twenty Eight Lakh Fifty Thousand and Forty Eight only)** along with applicable interest should be recovered from the Noticee as per provisions of Section 28 & 28AA of the Customs Act, 1962. Further, the SCN proposes confiscation of the impugned imported goods under Section 111(m) of the Customs Act, 1962 and imposition of penalty on the Noticee under Section 114A of the Customs Act, 1962. The subject SCN was adjudicated by the Commissioner of Customs, NS-V, JNCH, vide Order-in-Original (O-i-O) No. 84/2024-25/Commr/NS-V/CAC/JNCH dated 05.07.2024 (Details of order has been reproduced in Para 2 above). Aggrieved by the above O-i-O, the importer (vide Customs Appeal No. 87536 of 2024) (Noticee No. 1 i.e. M/S. Suzlon Energy Limited) filed

Appeals against the above O-i-O before the Hon'ble CESTAT, Mumbai. The Hon'ble CESTAT, Mumbai vide Final Order No. 87419/2024 dated 25.11.2024, remanded back the matter to the original authority. I find that the other noticees {i.e. M/s Paramount Shipping Services Pvt. Ltd (AAECP5649RCH001), M/s JN Freight Forwarders Pvt. Limited (AABCJ1901BCH002), M/s. Vishal Shipping Agencies Pvt. Ltd (AABCV6455CCH001), M/s. Fourstar International (AACFF0234DCH001), M/s. Freight Express International Pvt. Ltd. (AAACF5071HCH001)& M/s. Apshan Logistics (AFUPC6354ACH002)} have not filed an appeal against the original adjudication order, hence, I proceed to decide the case w.r.t. Noticee no. 1 (i.e. M/S. Suzlon Energy Limited) only.

6.4 In view of the above and on a careful perusal of the Show Cause Notice and case records, I find that following issues remain which are required to be decided:

- (i) Whether DCVD/ADD in terms of Notification No. 1/2016-Customs(CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017 is leaviable on the subject goods as detailed in Annexure-I of the SCN.
- (ii) Whether the differential Duty amounting to **Rs. 2,28,50,048/-(Rupees Two Crores Twenty Eight Lakh Fifty Thousand and Forty Eight only)** as detailed in the **Annexure-I** attached to the Show Cause Notice should be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA *ibid*;
- (iii) Whether the goods valued at **Rs. 17,70,40,353/-(Rupees Seventeen Crore Seventy Lakh Forty Thousand Three Hundred and Fifty Three Only)** should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (iv) Whether Penalty should not be imposed on the importer M/s. Suzlon Energy Limited under Section 114A of the Customs act, 1962.

6.5 After having identified and framed the issues to be decided, I now proceed to decide the same by examining each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as Noticee's oral and written submissions and documents / evidences available on record.

6.6 Whether DCVD/ADD in terms of Notification No. 1/2016-Customs(CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017 is leaviable on the subject goods as detailed in Annexure-I of the SCN.

6.6.1 I note that the Noticee, M/s. Suzlon Energy Limited vide the impugned Bills of Entry as detailed in Annexure-I to the subject SCN, had imported 'different parts of Wind Operated Electricity Generator'. However, as per the SCN,the noticee has not paid ADD/CVD where goods (Castings) had been imported and liable for levy of DCVD/ADD under Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42/2017-Cus(ADD) dated 30.08.2017. The details of such Bills of Entry have been given in Anneuxre-I to the SCN

6.6.2 Relevant para of Notification No.01/2016(CVD) dated 19.01.2016 read is as under:-

“..... in exercise of the powers conferred by sub-sections (1) and (6) of section 9 of the Customs Tariff Act, read with rules 20 and 22 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff items of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India, countervailing duty at the rate to be worked out as percentage of the landed value of imports of the subject goods as specified in the corresponding entry in column (8) of the said Table, namely:-

Table

Sl. No	Tariff item	Description of goods	Country of origin	Country of Export	Producer	Exporter	Percentage of landed Value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	8483 40 00, 8503 00 10 or 8503 00 90	Castings for wind-operated electricity generators, whether or not machined, in raw, finished or sub assembled form, or as a part of a subassembly, or as a part of an equipment/	People's Republic of China	People's Republic of China	Zhejiang Jiali Wind Power Technology Company Limited	Zhejiang Jiali Wind Power Technology Company Limited	8.78

		<i>component meant for wind- operated electricity generators</i>					
2	-do-	-do-	<i>People's Republic of China</i>	<i>People's Republic of China</i>	<i>Any</i>	<i>Any</i>	<i>13.44</i>
3	-do-	-do-	<i>People's Republic of China</i>	<i>Any Country</i>	<i>Any</i>	<i>Any</i>	<i>13.44</i>
4	-do-	-do-	<i>Any Country</i>	<i>People's Republic of China</i>	<i>Any</i>	<i>Any</i>	<i>13.44</i>

.....

Explanation.- For the purposes of this notification, "landed value" shall be the assessable value as determined under the Customs Act 1962, (52 of 1962) and all duties of customs except duties levied under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act. "

6.6.3 I find that, as per Notification No. 42/2017-Cus(ADD) dated 30.08.2017, which was issued in the matter of "Casting for wind operated electricity generators", falling under tariff items 84834000, 85030010 or 85030090 of the First Schedule to the Customs Tariff Act, 1975, originating in or exported from People's Republic of China (PRC) and imported into India, the CBIC designated authority i.e., DGAD vide notification No.14/28/2013-DGAD dated 28.07.2017 has accepted recommendation for the imposition of anti-dumping duty on imports of the subject goods originating in or exported from the subject country(PRC) and imported into India, in order to remove the injury to the domestic industry. Such anti-dumping duty the rate of an amount equivalent to the difference between the quantum of anti-dumping duties calculated as per the table specified in the ibid notification and the quantum of anti-subsidy/countervailing duty payable if any. The anti-dumping duty imposed under this notification shall be effective for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette i.e., 30.08.2017, and shall be payable in Indian currency.

6.6.4 The entry of the Notification No.42 of 2017-Cus (ADD) dated 30.08.2017, read as below:

S. No.	Subheading or tariff item	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty amount as % of landed value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	8483 40 00, 8503 00 10 or 8503 00 90	Castings for Wind Operated Electricity Generators	China PR	China PR	Dalian Huarui Heavy Industry Casting Co. Ltd	Dalian Huarui Heavy Industry Casting Co. Ltd	18.48
2.	-do-	-do-	China PR	China PR	Zhejiang Jiali Wind Power Technology Co. Ltd.	Zhejiang Jiali Wind Power Technology Co. Ltd.	6.27
3.	-do-	-do-	China PR	China PR	Jiangsu Sinojit Wind Energy Technology Co., Ltd	Jiangsu Sinojit Wind Energy Technology Co.Ltd., or Tectone HK, Ltd	14.44
4.	-do-	-do-	China PR	China PR	Changzhou Sinojit Wind Energy Tech. Co. Ltd	-do-	14.44
5.	-do-	-do-	China PR	China PR	JiangyinHenghua Machinery Co., Ltd Jiangyin City	-do-	14.44
6.	-do-	-do-	China PR	China PR	Jiangyin Qixing Technology Co., Ltd. Jiangyin City	-do-	14.44
7.	-do-	-do-	China PR	China PR	Jiangyin Changling New Energy Co., Ltd. Wuxi City, Jiangsu	-do-	14.44
8.	-do-	-do-	China PR	China PR	Nantong Hongde Mechanical Co. Ltd	Nantong Hongde Mechanical Co. Ltd	18.64
9.	-do-	-do-	China PR	China PR	KOIZUMI Machinery co. Ltd	-do-	18.64
10.	-do-	-do-	China PR	China PR	Jiangsu Faw Foundary Co., Ltd.	Jiangsu Faw Foundary Co., Ltd.	28.83
11.	-do-	-do-	China PR	China PR	Yeong Guan Energy Tech. Group Company Limited	Ningbo Yeong Shang Casting Iron Co.	15.46

						Ltd , or Yeong Chen Asia Pacific Co., Ltd	
12.	-do-	-do-	China PR	China PR	Dongguan Yeong Guan Mould Factory Co., Ltd.	-do-	15.46
13.	-do-	-do-	China PR	China PR	Jiangsu Bright Steel Fine Machinery Co., Ltd	-do-	15.46
14.	-do-	-do-	China PR	China PR	Ningbo Lu Lin Machine Tool Foundry Co., Ltd	-do-	15.46
15.	-do-	-do-	China PR	China PR	Ningbo Yeong Shang Casting Iron Co. Ltd.	-do-	15.46
16.	-do-	-do-	China PR	China PR	Yeong Chen Asia Pacific Co., Ltd.	-do-	15.46
17.	-do-	-do-	China PR	China PR	Any other combination than S. No. 1 to 16		35.92
18.	-do-	-do-	China PR	Any	Any	Any	35.92
19.	-do-	-do-	Any	China PR	Any	Any	35.92

6.6.5 From the above paras, it is evident that “Casting for Wind operated Electricity Generator” attracts DCVD and/or ADD in terms of Notification No. 1/2016-Customs(CVD) dated 19.01.2016 and Notification No. 42/2017- Cus (ADD) dated 30.08.2017. Further, I find that notice, neither in their written submission nor in personal hearing has disputed the fact that the impugned goods as detailed in Annexure-I of the SCN attracts DCVD and/or ADD in terms of Notification No. 1/2016-Customs(CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017.

6.6.6 In view of the above, I hold that DCVD and/or ADD in terms of Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017 is leviable on the subject goods as detailed in Annexure-I of the SCN.

6.7 Whether the differential Duty amounting to Rs. 2,28,50,048/-(Rupees Two Crores Twenty Eight Lakh Fifty Thousand and Forty Eight only) as detailed in the Annexure-I attached to the Show Cause Notice should be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA ibid;

6.7.1 The noticee in their submission have submitted that out of 22 bills of entry for which duty has been demanded in the SCN, 7 are warehouse bills of entry and hence duty cannot be demanded for these 7 bills of entry. They further submitted that out of these 7 warehouse bill of

entry, they have paid the applicable ADD/CVD for four bills of entry at the time of clearance of the said bills of entry for home consumption and for the remaining three bills of entry the demand has been raised for their respective home consumption bill of entry. Accordingly, they requested that the demand of Rs. 62,66,303.65/- raised w.r.t. these 7 warehouse bills of entry be deducted from the overall differential duty of Rs. 2,28,50,048/-.

6.7.2 The details of the above submission of the notice has been detailed in table below:

TABLE-B

Sr. No.	Bill of Entry No. and Date	Type of Bill of Entry	Corresponding X-Bond Bill of Entry	Differential Duty (in INR)
1	2397875 dated 11.07.2017	Home Consumption	--	16,69,247.25
2	2417805 dated 12.07.2017	Home Consumption	--	17,62,127.89
3	2417782 dated 12.07.2017	Home Consumption	--	54,60,585.25
4	2421761 dated 12.07.2017	Home Consumption	--	3,59,318.83
5	2599286 dated 26.07.2017	Home Consumption	--	2,67,608.95
6	2607439 dated 26.07.2017	Home Consumption	--	4,51,933.52
7	2645935 dated 29.07.2017	Home Consumption	--	33,82,280.46
8	2749750 dated 07.08.2017	Home Consumption	--	5,28,072.50
9	4661343 dated 03.01.2018	Home Consumption	--	1,21,406.38
10	4662643 dated 03.01.2018	Home Consumption	--	96,666.80
11	5369178 dated 26.02.2018	Home Consumption	--	13,974.30
12	6409074 dated 17.05.2018	Home Consumption	--	6,99,827.38
13	7667482 dated 17.08.2018	Home Consumption	--	8,79,957.74
14	7997170 dated 11.09.2018	Home Consumption	--	8,79,957.74

15	6242041 dated 04.05.2018	Home Consumption	--	10,779.47
		TOTAL		1,65,83,744.46
16	2686655 dated 01.08.2017	Warehousing	2972530 dated 24.08.2017	16,62,177.78
17	3702515 dated 23.10.2017	Warehousing	(Sr. No. 9) 4661343 dated 03.01.2018	1,21,406.38
18	7493743 dated 03.08.2018	Warehousing	(Sr. No. 13) 7667482 dated 17.08.2018	8,92,409.97
19	7493415 dated 03.08.2017	Warehousing	(Sr. No. 14) 7997170 dated 11.09.2018	8,92,409.97
20	8711898 dated 02.11.2018	Warehousing	8866030 dated 15.11.2018	4,77,521.29
21	8774157 dated 08.11.2018	Warehousing	9341110 dated 20.12.2018	9,50,557.00
22	8771705 dated 08.11.2018	Warehousing	9237959 dated 13.12.2018	12,69,821.24
		TOTAL		62,66,303.65
		GRAND TOTAL		2,28,50,048.09

6.7.3 I find merit in the noticee's claim that out of 22 Bills of Entry 7 are Warehouse Bills of Entry as verified from ICES system. Further, for Bills of entry mentioned at S.no. 16, 20, 21 and 22 of the above table, notice has paid applicable DCVD and/or ADD at the time of clearing the goods for home consumption i.e. while filing x-bond bill of entry. Further, w.r.t. Bills of entry mentioned at s.no. 17, 18 and 19 of above table, it is noticed that their respective x-bond Bill of Entry has been covered in the subject SCN.

6.7.4. Section 15 of Customs Act,1962 is reproduced below:

"Section 15. Date for determination of rate of duty and tariff valuation of imported goods. -

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;

(c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.

(2) The provisions of this section shall not apply to baggage and goods imported by post.

6.7.5 In view of above, I hold that as date of determination of duty and tariff valuation for warehoused goods will be the date on which a bill of entry for home consumption is presented for the warehoused goods and hence, I conclude that-

(i) For Bill of entry mentioned at S.no. 16, 20, 21 and 22 of the above table differential duty cannot be demanded as the applicable DCVD and/or ADD was paid at the time of clearing the respective goods for home consumption as verified from ICES system.

(ii) For Bill of entry mentioned at S.no. 17, 18 and 19 of the above table differential duty cannot be demanded as their respective x-bond Bills of entry are covered in the subject SCN.

6.7.6 It is evident from the above paras that the differential duty w.r.t. the 7 warehouse bills of entry, amounting to Rs. 62,66,303.65/- cannot be demanded from the notice. Accordingly, I hold that as per Section 28(4) of the Customs Act, 1962 only **Rs 1,65,83,745/-** is liable to be recoverable.

6.7.7 After having determined the applicability of DCVD and/or ADD, it is imperative to determine whether the demand of differential/short paid duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. In this regard, the relevant legal provision is as under:

SECTION 28(4) of the Customs Act, 1962.

Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. –

(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has

been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

6.7.8 The Noticee has submitted that they had correctly declared the imported goods in the import documents, thus, there was no mis-statement or suppression of facts on their part. The Noticee has further argued that larger period of limitation is not attracted in the case as there is no suppression of facts or wilful mis-statement by them.

6.7.9 I find that, after the introductions of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including calculation of duty. Section 17(1) Assessment of duty, reads as: An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self assess the duty, if any, leviable on such goods.

6.7.10 In the instant case, the Noticee was aware of the fact that the impugned goods are 'Castings for wind-operated electricity generators whether or not machined, in raw, finished or sub-assembled form, or as a part of a subassembly, or as a part of an equipment/ component meant for wind-operated electricity generators' falling under tariff items 848340 00, 850300 10 or 85030090 of the First Schedule to the Customs Tariff Act, 1975, the subject goods are originating in or exported from, People's Republic of China(PRC) and hence, are liable for levy of ADD/DCVD at applicable rates to be worked out as percentage of landed value as defined under Notification No. 1/2016-Customs(CVD) dated 19.01.2016 &/or Notification No.42/2017-Cus (ADD) dated 30.08.2017 for a period of 5 years. I find that the importer has imported identical goods several times in the past also where they have paid ADD/CVD for the goods, hence the Noticee was well aware of the correct classification of the goods and leviability of various duties thereon. However, in the instant case, they wilfully did not self-assess the goods with ADD/CVD at the time of import, when knowing that the imported goods attracted ADD/DCVD at applicable rates to be worked out as percentage of landed value as defined under Notification No. 1/2016-Customs(CVD) dated 19.01.2016 &/or Notification No.42/2017- Cus (ADD) dated 30.08.2017.

6.7.11 In the instant case, I find that the goods cleared vide the Bills of Entry mentioned in Annexure I to SCN were cleared by them by wilfully and deliberately indulging in mis-declaration of goods by self-assessing 'Castings of Wind operated Electricity Generator' without applicable ADD/DCVD, with the intent to evade applicable duty. They were also fully aware that non-levy of ADD/DCVD at applicable rate of landed value as defined under Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or NotificationNo.42 of 2017-Cus (ADD) dated 30.08.2017 will result in short levy of duty. Hence, there seems to be a wilful intention on the part of the Noticee in order to evade payment of legitimate customs duty. As the Noticee got monetary benefit due to their wilful mis-declaration and evasion of applicable duty on the subject

goods, hence, I find that duty was correctly demanded under Section 28(4) of the Customs Act, 1962, by invoking extended period.

6.7.12 I find that the Noticee wilfully not levied ADD/DCVD as applicable under Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42 of 2017 Cus(ADD) dated 30.08.2017 which resulted into short payment of customs duty. All the aforesaid facts, discussed above about the manner in which the Noticee has evaded payment of legitimate customs duty (ADD/DCVD) under Notification No. 1/2016- Customs (CVD) dated 19.01.2016 or Notification No.42 of 2017-Cus(ADD) dated 30.08.2017 have come to light only after analysing the import data during Premise Based Audit of the Noticee. In view of the same, it appears that in-spite of having knowledge, the Noticee wilfully mis-stated and suppressed these vital facts from the department to evade payment of legitimate customs duty. Therefore, I find that in the instant case there is an element of '*mens rea*' involved. In the instant case, the noticee deliberately chose not to pay applicable ADD/CVD. Once '*mens rea*' is established on the part of the noticee, the extended period of limitation, automatically get attracted.

6.7.13 Further, I find that the Noticee has contended that the issue of demand of IGST is entirely revenue neutral as they can take Input Tax Credit (ITC) on payment of IGST paid. In this regard, I find that the argument of revenue neutrality, if accepted as a defence, the entire scheme of payment of taxes on reverse charge basis will become futile. In the instant case, I rely upon the following case laws & rulings:

Shreenath Polyplast Pvt. Ltd. ((2019 (24) G.S.T.L. 133 (App. A.A.R. - GST)), wherein the Hon'ble Bench has held at Para 61 of their Order that:

"Further, with respect to the plea of applicant to consider the transaction as Revenue Neutral', it is submitted that this plea is not legal and tenable in the eyes of law, as the whole indirect tax administration run on the principle of credit flow and value addition. Such utilization of ITC should not be treated as Revenue Neutral'. Further, by the logic of 'Revenue Neutrality', almost every Business-to-Business transaction transfer the credit and cannot be taken as revenue neutral as it is against the basic principle of indirect taxation."

6.7.13.1 Further in the case of *ICICI Econet Internet & Technology Fund V/s Commr. of Central Tax, Bangalore North 2021 (51) G.S.T.L. 36 (Tri. - Bang.)* wherein the Hon'ble Tribunal has held at Para 50 of their Order that:

"50. Regarding the submissions of the appellants on revenue neutrality, we find that payment of service tax by one entity and availment of Cenvat credit by another entity on the basis of such payment is not a criteria to determine the eligibility of a particular service rendered. The argument goes against the general scheme of service tax and Cenvat credit. If one entity has to pay service tax, it has to pay the same notwithstanding the fact that credit will be availed by a subsequent user. The scheme of Cenvat credit is to

lessen the cascading effect of taxation and cannot be a reason for not paying taxes. We find that the appellant's submissions on revenue neutrality are not convincing."

6.7.13.2 I do not find merit in the aforesaid argument of the Noticee as the availability of Input Tax Credit is not related to payment of GST under reverse charge mechanism. The provisions of payment of GST under reverse charge mechanism are different from the provisions of Input Tax Credit as both are different and are governed by different Sections of GST Act, 2017. The eligibility of the tax payer to avail the ITC and utilization thereof is governed by the provision of Act related to ITC. Hence, it cannot be construed that the payment of GST under reverse charge mechanism is not required if they are eligible for ITC. In view of this, the plea of the Noticee regarding revenue neutrality cannot be accepted as it is not supported by any provision of the GST Act, 2017.

6.7.14 The noticee in its written submission has placed reliance upon various judicial pronouncements of Tribunals, High Courts and Apex Court, however, I find that the Hon'ble Supreme Court of India in case of *Ambica Quarry Works vs. State of Gujarat & Others* [1987(1) S.C. C. 213] observed that *"the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it."* Further in the case of *Bhavnagar University vs. Palitana Sugar Mills (P) Ltd.* 2003 (2) SCC 111, the Hon'ble Apex Court observed *"It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."* In the decision of the Hon'ble Supreme Court in *Ispat Industries vs. Commissioner of Customs, Mumbai* [2004 (202) ELT 56C (SC)], wherein, the Hon'ble Court has quoted Lord Denning and ordered as under:

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

Thus, it is a settled position in law that a ratio of a decision would apply only when the facts are identical. In view of the above, the quoted case laws do not support the noticee's stand.

6.7.15 In view of the foregoing, I find that the duty demand against the importer has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the decision

of the Tribunal in *Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi* reported in 2013(294) E.L.T.222(Tri.-LB) [Misc. Order Nos.M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]:

“In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified.”

6.7.16 Accordingly, the differential duty amounting to **Rs 1,65,83,745/- (Rupees One Crores Sixty Five Lakh Eighty Three Thousand Seven Hundred and Forty Five only)**, is recoverable from M/s. Suzlon Energy Limited, under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

6.7.17 Under Section 28AA of the Customs Act, the person who is liable to pay duty in accordance with the provisions of the Section 28, shall in addition to such duty, be liable to pay interest. In case *M/s Kamat Printers Pvt. Ltd.* the Court observed that once duty is ascertained then by operation of law, such person in addition shall be liable to pay interest at such rate as fixed by the Board. The proper officer, therefore, in ordinary course would be bound once the duty is held to be liable to call on the party to pay interest as fixed by the Board.

6.7.18 I find that the Courts in various judgments pronounced that interest payable is compensatory for failure to pay the duty. It is not penal in character in that context. The Supreme Court under the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 in *Collector of C. Ex., Ahmedabad vs. Orient Fabrics Pvt. Ltd* 2003 (158) E.L.T. 545 (S.C.) was pleased to observe that when the breach of the provision of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. The Court observed that, the law on the issue of charge of interest, stands concluded and is no longer res integra. We may only gainfully refer to the judgment in *India Carbon Ltd. Vs State of Assam*, (1997) 6 S.C.C. 497. The Court there observed as under:-

“This proposition may be derived from the above: interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf”. Therefore, once it is held that duty is due, interest on the unpaid amount of duty becomes payable by operation of law under section 28AA.

6.7.19 In case of *Directorate of Revenue Intelligence, Mumbai vs Valecha Engineering Limited*, Hon'ble Bombay High Court observed that, in view of Section 28AA, interest is automatically payable on failure by the assessee to pay duty as assessed within the time as set out therein.

6.7.20 In view of the above, I am of the considered opinion that imposition of interest on the duty not paid, short paid is the natural consequence of the law and the importers are liable to pay the duty in respect of the said imported goods along with applicable interest.

6.7.21 In view of the above, I hold that the total differential duty amounting to **Rs 1,65,83,745/- (Rupees One Crores Sixty Five Lakh Eighty Three Thousand Seven Hundred and Forty Five only)**, with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962, should be demanded & recovered from the Noticee under Section 28(4) of the Customs Act, 1962.

6.8 Whether the goods valued at Rs. 17,70,40,353/-(Rupees Seventeen Crore Seventy Lakh Forty Thousand Three Hundred and Fifty Three Only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962

6.8.1 I have already held in previous para that the demand of differential duty against Bills of entry mentioned from S. No. 16 to 22 of Table-B is not proper. Accordingly, the goods of these bills of entry having assessable value Rs 5,70,88,992/- are also not liable for confiscation, only the goods of Bills of entry mentioned from S. No. 1 to 15 of Table-B above, having assessable value amounting to Rs. 11,99,51,361/- are liable for confiscation under Section 111(m) of the Customs Act, 1962.

6.8.2 I note that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Section 111(m) of the Customs Act, 1962 states that the following goods brought from a place outside India shall be liable to confiscation:

(m) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77, in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of Section 54;

6.8.3 I have already held in foregoing paras that DCVD and/or ADD in terms of Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42/2017- Cus (ADD) dated 30.08.2017 is leviable on the subject goods. The Noticee was very well aware of the actual nature of the imported goods and the applicable Duty thereon. However, they deliberately did not self-assess the Bill of entry with applicable DCVD and/or ADD to claim lower rate of duty and they also deliberately did not declared the nature of goods as Castings. This deliberate suppression of facts and willful mis-classification resorted by the Noticee, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the Noticee have rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

6.8.4 I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry is made under the Customs Act, 1962. I have to restrict myself only to examine the words "*in respect of any other particular with the entry made under this act*" which would also cover case of suppression of nature of goods to avoid applicable DCVD and/or ADD. As this act of the importer has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified and sustainable.

6.8.5 As per Section 46 of the Customs Act, 1962, the importer of any goods, while making entry on the Customs automated system to the Proper Officer, shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed. He shall ensure the accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

6.8.6 I find that the importer while filing the Bill of Entry for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the Service Centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

6.8.7 Prior to 08.04.2011, sub-section (2) of Section 2 of the Customs Act, 1962 read as under:

(2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;

Finance Act, 2011 introduced provision for self-assessment by the importer. Subsequent to substitution by the Finance Act, 2011 (Act 8 of 2011), (w.e.f. 08.04.2011) sub-section (2) of Section 2 *ibid* read as under:

Section 2 - Definitions, Sub-section (2) – assessment:

(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

With effect from 29.03.2018, the term 'assessment' in sub-section (2) of Section 2 *ibid* means as follows:

(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

- a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*
- b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*
- c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;*
- d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*
- e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods,*
- f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,*

and includes provisional assessment self-assessment, re-assessment and any assessment in which the duty assessed is nil;

6.8.8 From a plain reading of the above provisions related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Customs Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the importer to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from

29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that M/s Suzlon Energy Limited has deliberately failed to discharge this statutory responsibility cast upon them.

6.8.9 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer while filing the Bill of Entry has resorted to deliberate suppression of facts to claim lower rate of duty. Thus, the Noticee has failed to correctly assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption. Therefore, I find that by not self-assessing the true and correct rate of Customs duty applicable on the subject goods, the importer willfully did not pay the applicable duty on the impugned goods.

6.8.10 In view of the foregoing discussion, I hold that the impugned imported goods declared in the Bills of Entry filed by M/s Suzlon Energy Limited having total assessable value of Rs. 11,99,51,361/- (Rupees Eleven Crore Ninety Nine Lakh Fifty One Thousand Three Hundred Sixty One Only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, on the grounds of suppression and mis-classification of the imported goods.

6.8.11 As the importer, through wilful mis-statement and suppression of facts, had mis-declared the goods while filing the Bills of Entry with intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. However, I find that the goods imported having assessable value Rs. 11,99,51,361/- are not available for confiscation. But I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for

imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

6.8.11.1 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.).

6.8.11.2 I also find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

6.8.11.3 In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122 (Bom)- upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case. I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, since the impugned goods are not prohibited goods, the said goods are required to be allowed for redemption by the owner on payment of fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

6.9 Whether Penalty should not be imposed on the importer M/s. Suzlon Energy Limited under Section 114A of the Customs act, 1962.

6.9.1 I find that the Noticee had wrongly self-assessed the Bill of entry without DCVD and/or ADD and evaded the payment of correctly leviable duty in respect of the impugned imported goods covered under Bills of Entry mentioned from S. No. 1 to 15 of Table-B above. As the Noticee got monetary benefit due to their wilful mis-declaration and evasion of applicable duty on the aforesaid goods, I find that duty was correctly demanded under Section 28(4) of the Act by invoking extended period.

6.9.2 Further, I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period is established. Hon'ble Supreme Court in *Grasim Industries Ltd. V. Collector of Customs, Bombay* [(2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)] has followed the same principle and observed:

"Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for Court to take upon itself the task of amending or altering the statutory provisions." (para 10).

Hon'ble Supreme Court has again in *Union of India Vs. Ind-Swift Laboratories* has held: *"A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency..."* [2011 (265) ELT 3 (SC)].

Thus, in view of the mandatory nature of penalty under Section 114A no other conclusion can be drawn in this regard. I also rely upon case reported in 2015 (328) E.L.T. 238 (Tri. - Mumbai) in the case of *SAMAY ELECTRONICS (P) LTD. Versus C.C. (IMPORT) (GENERAL), Mumbai*, in which it has been held:

Penalty - Imposition of - Once demand confirmed under Section 28 of Customs Act, 1962 read with Section 9A of Customs Tariff Act, 1975 on account of fraud, penalty under Section 114A ibid mandatory and cannot be waived - Therefore imposition of penalty cannot be faulted - Section 114A ibid.

6.9.3 As I have held above, that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 114A is rightly proposed on the Noticee, M/s Suzlon Energy Limited, in the impugned SCN. Accordingly, the Noticee is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-declaration and suppression of facts, with an intent to evade duty.

7. In view of the facts of the case, the documentary evidences on record and findings as detailed above, I pass the following order:

ORDER

- i. I order to collect the Antidumping Duty/Definitive Countervailing duty (ADD/DCVD) under Section 28 of the Customs Act, 1962 in terms of Notification No. 1/2016-Customs (CVD) dated 19.01.2016 or Notification No. 42/2017-Cus (ADD) dated 30.08.2017 on import of items as mentioned in Bills of Entry mentioned from S. No. 1 to 15 of Table-B above.

- ii. I confirm the differential duty amounting to **Rs 1,65,83,745/- (Rupees One Crores Sixty Five Lakh Eighty Three Thousand Seven Hundred and Forty Five only)** as detailed from S. No. 1 to 15 of Table-B above, alongwith applicable interest thereon in terms of provisions of Section 28 AA of the Customs Act, 1962 & order to recover the same from the importer under Section 28(4) of the Customs Act, 1962.
- iii. I order to confiscate the impugned goods under said Bills of Entry mentioned at S. No. 1 to 15 of Table-B above, valued at **Rs. 11,99,51,361/- (Rupees Eleven Crore Ninety Nine Lakh Fifty One Thousand Three Hundred Sixty One Only)** in terms of provisions of Section 111 (m) read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962. However, I give an option to the importer to redeem these goods on payment of redemption fine of **Rs 50,00,000/- (Rupees Fifty Lakhs only)** under Section 125 of the Customs Act, 1962.
- iv. I order to appropriate the payment made towards Differential Duty and interest by M/S Suzlon Energy Limited vide Manual Challans as mentioned in Annexure- A to SCN, after due verification of genuineness of Challans against differential duty and interest.
- v. I Impose a penalty of **Rs 1,65,83,745/- (Rupees One Crores Sixty Five Lakh Eighty Three Thousand Seven Hundred and Forty Five only)** alongwith applicable interest under Section 114A of the Customs Act, 1962.

8. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/firms concerned, covered or not covered by this show cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

Anil Ramteke
21/1/23

(अनिल रामटेके / ANIL RAMTEKE)

सीमा शुल्क आयुक्त / Commissioner of Customs

एनएस-V, जेएनसीएच / NS-V, JNCH

To,

1. M/S. Suzlon Energy Limited.,
Suzlon '5', Shrimali Society, Near Shri Krishna Complex,
Navrangpura, Ahmedabad, Gujarat-380009.

Copy to:

1. The Addl. Commissioner of Customs, Group V, JNCH

2. AC/DC, Chief Commissioner's Office, JNCH
3. AC/DC, Audit, JNCH
4. AC/DC, Centralized Revenue Recovery Cell, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section.
7. Office copy.

