IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.1131 of 2020
and
C.M.P.No.13822 of 2020

M/s.SIEMENS GAMESA RENEWABLE POWER
PRIVATE LIMITED,
Represented by S.Ramachandran ... Appellant / Petitioner

Vs.

1.The Union of India,
Represented by the Revenue Secretary,
Department of Revenue,
North Block, New Delhi - 110 001.

2.The Commissioner of Customs (Sea Port-Import),
Customs House,
No.60, Rajaji Salai,
Chennai - 600 001. ... Respondents / Respondents

Prayer: Writ Appeal under Clause XV of the Letters Patent, against the Order dated 09.10.2020 passed in W.P.No.3763 of 2013.

For Appellant : Mr.N.Muralikumar
for M/s.McGAN LAW FIRM

For Respondents : Mr.K.S.Ramasamy
Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN,J.)**

This writ appeal has been filed by the appellant against the order dated 09.10.2020 of the learned Single Judge of this Court in W.P.No.3763 of 2013.

2. By the impugned order dated 09.10.2020, the learned Single Judge of this Court has dismissed the Writ Petition with the following observations:-

> *"4. Learned Counsel for the Petitioner contends that since the Writ Petition has been pending from the year 2013 and interim order has been in force since 15.02.2013, the exercise of alternative remedy may not be considered as the bar to entertain the Writ Petition at this stage and the matter may be decided on merits. In this regard, it would be appropriate to refer the dictum laid down by the Hon'ble Supreme Court of India in the State of Uttar Pradesh -vs- Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti [(2008) 12 SCC 675] in which it has been held that it cannot be laid down as a proposition of law that once a Writ Petition is admitted, it cannot be dismissed on the ground of alternative remedy.*
>
> *5. In the result, the Writ Petition, which cannot be entertained, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs."*

3. It is noticed that in the said writ petition, the appellant / petitioner had challenged the Order-in-Original No.19752 of 2012 sdated 16.11.2012 passed by the 2nd respondent.

4. The case of the appellant is that the appellant had imported goods namely parts of Wind Operated Electric Generator System (WOEGS) and had paid basic customs duty at 5% and claimed the benefit of exemption under Notification No.6/2006-Central Excise (CE) dated 01.03.2006 from payment of countervailing duty.

5. It is further case of the appellant that the issue is covered by a plethero of decisions / rulings of the Courts including Circulars issued by the Central Board of Excise and Customs (CBEC) clarifying ther position, presently the Central Board of Indirect Taxes and Customs (CBIC).

6. It is further case of the appellant that the imported goods were classified under Chaper-83 of the Customs Tariff Act, 1975 and that the appellant claimed the benefit of exemption under Notification No.6/2006-Central Excise (CE) dated 01.03.2006. The 2nd respondent however issued Show Cause Notice under Section 28(1) of the Customs Act, 1962 on

12.04.2012 and alleged that the imported goods fell under the Customs Tariff Heading (CTH) 7308 of the Customs Tariff Act, 1975.

7. The case of the appellant is that the appellant had classified the imported goods under the Customs Tarrif Heading (CTH) 8503, as their parts solely and principally to be used with Wind Turbine Generator / Windmills / Wind Operated Electricity Generators (WOEGs).

8. The case of the appellant is that the tower and its base segment supporting the Wind Generating Unit (WGU) and is a significant functional component of the Wind Generating Unit (WGU) as it serves certain purposes and was a principal part of the Wind Generating System (WGS) along with the following:-

i) the tower

ii) the hub

iii) the nacelle and

v) the blades

9. It is the further case of the appellant that the tower which is fitted to the base foundation on the ground is connected to the hub at the top. The hub

in turn supports the nacelle which is connected to the rotor blades thereby completing a Wind Generating Unit (WGU). Hence, the contention is that the subject goods are not part of Wind Operated Electricity Generator (WOEG) is incorrect and untenable.

10. The learned counsel for the appellant has placed reliance on the following decisions:-

i) **Commissioner of Central Excise, Nagpur** Vs. **M/s.Hyundai Unitech Electrical Transmission Limited & Another** in C.A.No.1218 of 2006 dated 13.08.2015.

ii) **Commissioner of Central Excise, Calcutta-II** Vs. **Techno Fab Manufacturing Limited,** 2003 (158) ELT 515.

iii) **Airport Authority of India** Vs. **Commissioner of Customs, Mumbai,** 2006 (201) ELT 506.

iv) **Bharat Heavy Electricals Limited** Vs. **Collector of Customs, Chennai,** 1999 (108) ELT 448.

v) **Pushpam Forging** Vs. **Commissioner of Central Excise, Raigad,** 2006 (193) ELT 334.

11. It is further submitted that Sl.No.85 to Notification No.6/2006-Central Excise dated 01.03.2006 read with Sl.No.13 of List 5 specifically exempted the subject items in question imported by the appellant and therefore

the impugned Order-in-Original No.19752 of 2012 was contrary to law regarding qualification apart from lack of jurisdiction.

12. The learned counsel for the appellant has also placed reliance on the following decisions:-

i) **Saurashtra Chemicals, Porbandar** Vs. **Collector of Customs, Bombay,** 1986 (23) ELT 283 (Tr-LB).

ii) **Reckitt & Colman of India** Vs. **Collector of Central Excise, Bangalore**, (1994) 71 ELT 44.

iii) **Industrial Cables (India) Limited and Another** Vs. **Union of India and others,** (1986) 25 ELT 33.

iv) **Ajay Exports and another** Vs. **Collector of Customs, Madras,** (1986) 26 ELT 873 (Tri.)

(v) **Jairath International** Vs. **Union of India, 2019** (370) E.L.T. 116 (P & H).

(vi) **ITC Limited** Vs. **Commissioner of Central Excise, Kolkata-IV, 2019** (368) E.L.T. 216 (SC).

vii) **Commissioner of Income Tax, Delhi** Vs. **Kelvinator of India Limited,** (2010) 320 ITR 561 (SC) / (2010) 2 SCC 723.

viii) **Commissioner of Income Tax-VI, New Delhi** Vs. **Usha International Limited,** (2012) 348 ITR 485.

13. We have considered the arguments advanced by the learned counsel for the appellant and the learned Senior Standing Counsel for the respondents.

14. We are of the view, the writ petition was devoid of merits and it has been rightly rejected vide Impugned Order dated 09.01.2020 by the learned Single Judge of this Court. Therefore, it does not call for any interference.

15. In fact, all the issues relating to valuation and the rate of duty are not appealable before the High Court even under Section 130E of the Customs Act, 1962. This High Court in the exercise of its Appellate Jurisdiction is not entitled to adjudicate the issue relating to valuation and the rate of duty.

16. We are therefore of the view that the present Writ Appeal is liable to be dismissed. The writ petition was wrongly invoked the jurisdiction of this High Court which was correctly rejected by the learned Single Judge of this Court vide Impugned Order dated 09.01.2020 in W.P.No.3763 of 2013.

17. We are therefore dismissing the present Writ Appeal filed by the appellant with liberty to the appellant to file a Statutory Appeal, if any, before the Appellate Authority within a period of 30 days from the date of receipt of a copy of this order.

18. In case such an appeal is filed within such time, same shall be disposed on merits on its turn subject to the appellant also complying with the requirement of pre-deposit.

19. This Writ Appeal, is thus, dismissed. No costs. Connected Civil Miscellaneous Petition is closed.

[R.S.K., J.] **[C.S.N., J.]**

05.09.2024

Neutral Citation : Yes / No

kkd / arb

To

1.The Revenue Secretary,
Government of India,
Department of Revenue,
North Block, New Delhi - 110 001.

2.The Commissioner of Customs (Sea Port-Import),
Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

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