APHC010074192022

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3529]**
(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION Nos.: 4799 & 4801 of 2022 and

WRIT PETITION Nos.: 17132 & 17177 of 2024

WRIT PETITION NO: 4799/2022

Between:

1. M/S. SIEMENS GAMESA RENEWABLE POWER PRIVATE LIMITED, REP. BY ITS HEAD-INDIRECT TAXES, MR. LAKSHMINARAYAN GANESHWAR, 1, IKSEZ OFFICE PREMISES, ADJACENT TO NH-5, RACHARLAPADU VILLAGE AND POST, NELLORE DISTRICT-514 319.

...PETITIONER

AND

1. THE ASSISTANT COMMISSIONER ST, KAVALI CIRCLE, NELLORE DIVISION, NELLORE.

2. THE JOINT COMMISSIONER, (STATE TAX) AND APPELLATE AUTHORITY, TIRUPATHI.

3. THE STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, REVENUE (CT-II) DEPARTMENT, SECRETARIAT, VELAGAPUDI, AMARAVATHI, GUNTUR DISTRICT.

4. THE UNION OF INDIA, REP. BY ITS SECRETARY, MINISTRY OF FINANCE, 3RD FLOOR, JEEVAN DEEP BUILDING, SANSAD MARG,

NEW DELHI-110 001.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased tomay be pleased to issue a Writ of Certiorari or any other appropriate writ or order or direction - (a) quashing the order of the 2nd Respondent in Order No.ZD371021005685Q, dated 29.10.2021 confirming the Order No.ZH3712200D16075 dated 29.12.2020 and Order No. ZH3712200D40688 dated 29.12.2020 and the Form GST DRC-07 No.ZD3712200063035 dated 30.12.2020 passed by the 1st Respondent as illegal, arbitrary without jurisdiction, pre-determined and contrary to Law. (b)declare that the nature of the transactions executed by the Petitioner, viz., supply, erection and commissioning of . the Wind Turbine Generators is a composite supply of goods and services under Section 2(30) of the CGST and SGST Acts 2017 on which the Petitioner is liable to pay tax @5percent on the entire value of the contract for the tax period 1.7.2017 to 31.03.2018. (c)declare the imposition of interest on output liability from the date of filing of the return as illegal and contrary to the Section 50 read with Section 78 of the Goods and Services Tax Act. and (d)declare that the interest cannot be imposed under Section 50 (3) of the Central Goods and Services Tax Act, 2017 on reversal of the credit consequent upon the ascertainment of ineligible input tax credit which does not result in any additional tax liability, and pass such

<u>IA NO: 1 OF 2022</u>

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to grant stay of all further proceedings including recovery of the demand pursuant to the impugned order of the 2nd Respondent, dated 29.10.2021 and the order of the Respondent dated 29.12.2020 for the tax period July, 2017 to March, 2018, pending disposal of the Writ Petition as otherwise the Petitioner will be put to severe loss and hardship.

Counsel for the Petitioner:

1. KARTHIK RAMANA PUTTAMREDDY

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX
2. Asst Solicitor General

WRIT PETITION NO: 4801/2022

Between:

1. M/S. SIEMENS GAMESA RENEWABLE POWER PRIVATE LIMITED,, REP. BY ITS HEAD-INDIRECT TAXES, MR. LAKSHMINARAYAN GANESHWAR, 1, IKSEZ OFFICE PREMISES, ADJACENT TO NH-5, RACHARLAPADU VILLAGE AND POST, NELLORE DISTRICT-514 319

...PETITIONER

AND

1. THE ASSISTANT COMMISSIONER ST, KAVALI CIRCLE, NELLORE DIVISION, NELLORE.
2. THE JOINT COMMISSIONER STATE TAX, AND APPELLATE AUTHORITY, TIRUPATHI.
3. THE STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, REVENUE (CT-II) DEPARTMENT, SECRETARIAT, VELAGAPUDI, AMARAVATHI, GUNTUR DISTRICT.
4. THE UNION OF INDIA, , REP. BY ITS SECRETARY, MINISTRY OF FINANCE, 3I'D FLOOR, JEEVAN DEEP BUILDING, SANSAD MARG, NEW DELHI-110 001.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased topleased to issue a Writ of Certiorari or any other appropriate writ or order or direction - (a) quashing the order of the 2nd Respondent in Order No.ZD371021005696N, dated 29.10.2021 confirming the Order No.ZH3712200D16075 dated 29.12.2020 and Order No. ZH3712200D40688 dated 29.12.2020 and the Form GST DRC-07 No.ZD371220006307X dated 30.12.2020 passed by the 1st Respondent as illegal, arbitrary without jurisdiction, pre-determined and contrary to Law, (b) declare that the nature of the transactions executed by the Petitioner, viz., supply, erection and commissioning of the Wind Turbine Generators is a composite supply of goods and services under Section 2(30) of the CGST and SGST Acts 2017 on which the Petitioner is liable to pay tax @5percent on the entire value of the contract for the tax period 1.4.2018 to 31.03.2019, (c) declare the imposition of interest on output liability from the date of filing of the return as illegal and contrary to the Section 50 read with Section 78 of the Goods and Services Tax Act, and (d) declare that the interest cannot be imposed under Section 50 (3) of the Central Goods and Services Tax Act, 2017 on reversal of the credit consequent upon the ascertainment of ineligible input tax credit which does not result in any additional tax liability, and pass

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to grant stay of all further proceedings including recovery of the demand pursuant to the impugned order of the 2'd Respondent, dated 29.10.2021 and the order of the 1st Respondent dated 29.12.2020 for the tax period 1.4.2018 to 31.03.2019, pending disposal of the Writ Petition as otherwise the Petitioner will be put to severe loss and hardship.

IA NO: 2 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to vacate the interim Orders granted in WP.No.4801 of 2022 dated 24-03-2022 and pass

Counsel for the Petitioner:

1. KARTHIK RAMANA PUTTAMREDDY

Counsel for the Respondent(S):

1. Asst Solicitor General
2. THE ADVOCATE GENERAL (AP)

WRIT PETITION NO: 17132/2024

Between:

1. M/S SIEMENS GAMESA RENEWABLE POWER PRIVATE LIMITED, SIEMENS GAMESA RENEWABLE POWER PRIVATE LIMITED, REP. BY ITS GENERAL MANAGER, HEAD - INDIRECT TAXES, MR. ASHOK RAJ 1, IKSEZ OFFICE PREMISES, ADJACENT TO NH-5, RACHARLAPADU VILLAGE AND POST, NELLORE DISTRICT-524 319.

...PETITIONER

AND

1. ASSISTANT COMMISSIONER, KAVALI CIRCLE, NELLORE DIVISION, NELLORE.
2. ADDITIONAL COMMISSIONER STATE TAX AND APPELLATE AUTHORITY, TIRUPATHI.
3. STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT REVENUE (CT-II) DEPARTMENT, SECRETARIAT, VELAGAPUDI, AMARAVATHI, GUNTUR DISTRICT.
4. UNION OF INDIA, REP. BY ITS SECRETARY, MINISTRY OF FINANCE, 3RD FLOOR, JEEVAN DEEP BUILDING, SANSAD MARG, NEW DELHI-110 001.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased toMay be pleased to issue a Writ of Certiorari or any other appropriate writ or order or direction quashing the order of the 2nd Respondent in Order No.ZD370424007656C, dated 10.4.2024 confirming the levy of penalty vide Orders of the 1st Respondent vide A.O.No.ZH3711210D 95903 dated 18.11.2021 (COST) and vide AO No.ZH3711210D95054 dated 18.11.2021 (SGST) and proceedings in Form GST DRC-07 vide Ref.No.ZD 3711210067581 dated 29.11.2021 passed by the 1st Respondent for the tax period July, 2017 to March, 2018 as illegal, arbitrary without jurisdiction and contrary to Law and pass

<u>IA NO: 1 OF 2024</u>

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to grant interim stay of recovery of the disputed penalty in a sum of Rs.2,72,07,208/- for the tax period July, 2017 to March, 2018, as assessed by the 1®* Respondent and as confirmed by the 2^^ Respondent vide order dated 10.4.2024, under the GST Act, 2017, pending disposal of the Writ Petition, as otherwise the Petitioner will be put to severe loss and hardship

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to vacate the interim stay order granted Dt. 07.08.2024 in W.P. No. 17132 of 2024 and pass

Counsel for the Petitioner:

1. KARTHIK RAMANA PUTTAMREDDY

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX

WRIT PETITION NO: 17177/2024

Between:

1. SIEMENS GAMESA RENEWABLE POWER PRIVATE LIMITED, REP. BY ITS GENERAL MANAGER, HEAD - INDIRECT TAXES, MR. ASHOK RAJ 1, IKSEZ OFFICE PREMISES, ADJACENT TO NH-5, RACHARLAPADU VILLAGE AND POST, NELLORE DISTRICT-524 319.

...PETITIONER

AND

1. ASSISTANT COMMISSIONER, (ST), KAVALI CIRCLE, NELLORE DIVISION, NELLORE.
2. ADDITIONAL COMMISSIONER STATE TAX AND APPELLATE AUTHORITY, TIRUPATHI.

3. STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, REVENUE (CT-II) DEPARTMENT, SECRETARIAT, VELAGAPUDI, AMARAVATHI, GUNTUR DISTRICT.
4. UNION OF INDIA, REP. BY ITS SECRETARY, MINISTRY OF FINANCE, 3RD FLOOR, JEEVAN DEEP BUILDING, SANSAD MARG NEW DELHI-110 001.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased topleased to issue a Writ of Certiorari or any other appropriate writ or order or direction quashing the order of the 2nd Respondent in FORM GST APL-4 vide Order No.ZD370424007691I, dated 10.4.2024 confirming the levy of penalty vide Orders of the 1st Respondent vide AO NO.ZH3711210D95903 dated 18.11.2021 (COST) and vide AO No.ZH 3711210D95054 dated 18.11.2021 (SGST) and proceedings in Form GST DRC-07 vide Ref.No.ZD371121006763R dated 29.11.2021 to the extent of tax period April, 2018 to January, 2019 as illegal, arbitrary without jurisdiction and contrary to Law and pass

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to grant interim stay of recovery of the disputed penalty in a sum of Rs.2,27,56,036/- for the tax period April, 2018 to January, 2019, as assessed by the 1st Respondent and as confirmed by the 2nd Respondent vide order dated 10.4.2024, under the GST Act, 2017, pending disposal of the Writ Petition, as otherwise the Petitioner will be put to severe loss and hardship.

Counsel for the Petitioner:

1. KARTHIK RAMANA PUTTAMREDDY

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX
2.

The Court made the following Common Order:

(per Hon'ble Sri Justice R. Raghunandan Rao)

Heard Sri Karthik Ramana Puttam Reddy, learned counsel for the petitioner and the learned Government Pleader for Commercial tax, appearing for the respondents.

2. The petitioner, who is registered under the Central Goods and Services Tax Act (CGST) and the State Goods and Services Tax Act (SGST) 2017, is in the business of designing, manufacturing, supplying, developing, assembling, erecting and installing Wind Turbine Generators. The petitioner, in the course of its business, during the periods 2017-2018 and 2018-2019, had entered into various contracts for manufacture and erection of Wind Turbine Generators, for its customers. The petitioner treated these contracts as composite supplies of goods and services and paid tax @ 5%. However, the 1st respondent initiated assessment proceedings on the ground that the contracts executed by the petitioner should be treated as works contracts involving immovable property, taxable @ 18%. The 1st respondent, had passed two separate Orders of Assessment, for the periods July 2017 to March 2018 and April 2018 to September 2019 (the disputed turn-over is only up to March 2019), dated 30.12.2020. Aggrieved by these orders, the petitioner has approached the 2nd respondent, by way of an appeal. The 2nd respondent affirmed the orders of the 1st respondent, by way of two separate orders, dated 29.10.2021.

3. Aggrieved by these orders, the petitioner has approached this Court, by way of W.P.Nos.4799 of 2022 and 4801 of 2022.

4. The 1st respondent also initiated penalty proceedings, culminating in two separate orders, dated 29.11.2021, levying penalty on the petitioner. Aggrieved by these orders of penalty, the petitioner again approached the 2nd respondent, who confirmed the orders of penalty, by way of two separate orders, dated 10.04.2024.

5. Aggrieved by these orders, the petitioner has approached this Court, by way of W.P.Nos.17132 of 2024 and 17177 of 2024.

6. The contention of the petitioner is that movable property is created, by virtue of contracts executed by it, and consequently, the supply of goods and services, made by the petitioner, in the course of its contracts, can only be treated as composite supply of goods and services, liable to tax @ 5%.

7. The respondent authorities, on the other hand, took the view that the Wind Turbine Generators, which are attached to earth, would amount to immovable property and consequently, the contracts executed by the petitioner would attract tax @ 18%.

8. The central issue, in all these Writ Petitions, is about the nature of the Wind Turbine Generators assembled and erected by the petitioner. For the

purpose of these Writ Petitions, the facts, as assumed by the 2nd respondent-Appellate Authority, are being taken as undisputed facts in the present cases. The said facts are extracted in extenso:

<u>What is Wind Turbine Generator</u>

14. As per technical note dt.01.06.2020 on 'Turbine movability', Wind power is generation of electricity from wind. Wind power is converted to electrical energy by wind turbines. As per IEC 61400-1 design standards, a wind turbine generator system (WTG) is defined as that which "converts kinetic energy in the wind into electrical energy". Wind turbines generate electricity using generators. It is designed to convert the kinetic energy of wind into electricity. Wind power generation means getting the electrical energy by converting wind energy into rotating energy of the blades and converting that rotating energy into electrical energy by the generator. Wind energy increases with the cube of the wind speed, therefore WTGs should be installed in the higher wind speed area.

15. The functioning of the wind mill works in the following manner : the rotor blades capture the wind energy and convert it to rotational energy of shaft to which the rotor blades are fixed. The shaft transfers the rotational energy into the generator. Then the *role of the casing that holds the gear box, generator and electronic control unit comes into play. The gear box increases the speed of the shaft between the rotor hub and generator. The generator uses rotational energy of the shaft to generate electricity using electromagnetism principle.*

Parts and components of Wind Turbine Generator

16. As per the Ministry of New and Renewable Energy clarification to CBEC, the parts of Wind Operated Electricity Generators are (i) Tower: which supports the nacelle and rotor assembly of a wind operated electricity generator; (ii) Nacelle: which consists of gear-box, generator, yaw components, flexible couplings, brake hydraulics, brake calipers, sensors, nacelle plate, nacelle cover and other smaller components; iii) Rotor: consists of blades, hub, nosecone, main shaft and special bearings, and iv) Wind turbine controller, nacelle controller and control cables.

17. As per IEC 61400-1 design standards, a wind turbine generator system (WTG) comprises of the following major units:-

- *One unit of nacelle comprising an assembly of relevant electrical and mechanical components (including high voltage step-up transformer if any). It is within the nacelle that majority of the processes related to conversion of wind to* *electrical power production occur. The Nacelle is the heart of the equipment. It weights around 80 tonnes. It is made up of several components, assembled together. The Nacelle is a strong, hollow shell that contains the inner workings of the wind turbine. Usually made of fiberglass, the nacelle contains the main drive shaft and the gearbox. It also contains the blade pitch control, a hydraulic system that controls the angle of the blades, and the yaw drive, which controls the position of the turbine relative to the wind. The generator and electronic controls are standard equipment whose main components are steel and copper.*

- *One unit of rotor consisting of a hub (comprising an assembly of relevant electrical and mechanical components) and of 3 units of rotor blades and associated hardware add-ons. The mechanical energy generated by the rotation of the blades is converted to electrical energy within the nacelle. The rotor is a set of three blades which when propelled cuts the magnetic waves, which eventually produces electricity. The approximate length of each blade would be 60 Mts to 90 Mts and weights around 9 to 10 tonnes, depending on the capacity of the Generator. Blades or Rotors (rotor is a set of these blades) are formed from fiberglass.*

- *One unit of the tubular tower and associated internals (lift, platforms, lighting etc.). The Tower is the tall vertical structure and it is made of Steel, on which the Nacelle and rotor are mounted. The tower is a steel structure consisting of multiple sections, typically 5 sections –T1 to T5, stacked on top of each other and fitted using torque bolts and nuts. The tower is either a steel lattice tower like electrical towers or a steel tubular tower with an inside ladder to the nacelle. Each tower is generally 90 to 120 Mts tall, depending on the capacity of the machine. The machine capacity varies from 0.75 MW to 2.2 MW.*
- *One unit of control system*

18. On a utility-scale, a WTG is normally installed in multiple units, known as a wind farm or wind project, to constitute a power plant. The wind farm is typically spread over several sq.kms areas based on a layout optimized to generate the maximum energy within the given constraints.

19. Typically, a WTG is certified for a design life of 20 years as part of the Type Certificate.

20. The foundation is a key requirement for installing a WTG.

<u>Erection and De-erection of a Wind Turbine Generator</u>

21. As per the technical note dt. 01.06.2020 provided with their reply dt.,09.09.2020. The many components that make up a WTG need to be brought to the selected site, fitted with each other and then get erected on the foundation.

WTG Erection

22. As per them, the steps/ processes involved in erection and commissioning of WTG at customer site are:

(i) Manufacture and Supply of Nacelle assembly, hub assembly, blades, towers, internal cables, internal platforms and internal ladders, power and ground control panel, transformer, WTG earthing system and other associated fittings and accessories of WTG;

(ii)Transportation of WTG components from factory to customer site;

(iii) Insurance of stores and parts and components;

(iv) Site preparation;

(v) Construction of civil foundation for installation of WTG;

(vi)All civil works including all equipment support structure foundation, cable trench;

(vii) Excavation and refilling of earth,

(viii)Erection, installation and mechanical completion of WTG as per technical specifications;

(ix) Electrical installations;

(x) Supply and installation of DP yard;

(xi) Installation of wind mast with all sensors;

(xii) Start up and testing of WTGs;

(xiii)Laying of transmission line for transmission of the electricity generated upto grid or storage;

(xiv) Commissioning of WTGs;

(xv) Synchronisation with state utility grid and

(xvi) Defect rectification and warranty.

23. As per their technical note dt.01.06.2020 provided with their reply dt.09.09.2020, the process of establishing a WTG at a given location or site involves transporting the various components of a WTG, as follows:-

- *The nacelle of a WTG contains most of the major components of a WTG. These components are assembled at a factory and the assembled system is then transported* *to the site. Similar to the nacelle, the hub of a WTG also contains several key components which are assembled at a factory and then transported to site.*

- *The tower is transported from the manufacturing factory as different blocks or sections to the site. The other internals of a tower including control system cabinet, convertor cabinet, lift etc., are also transported from the source to the site.*
- *The blades, manufactured at the blade factory, are transported to the site, typically, in one piece.*

24. At the site, the foundation is first constructed before the WTG can be set up, which is a cast-in-situ element. Once the foundation is constructed, the tower section/blocks are erected. Following the tower erection, the nacelle is lifted and placed on top of the tower. Parallelly, the hub and blades are assembled on the ground to form the rotor which is then raised and connected to the nacelle. Following these activities, a WTG is considered erected. The typical erection and commissioning cost for a 2MW turbine ranges from 30-60 lakhs INR/turbine exclusive of taxes depending upon the OEM, site location, price distribution, hub height and rotor diameter, type of tower etc. The erection and commissioning cost excludes the cost of construction of the wind turbine foundation.

25. The activities carried on by the Appellant for erection and commissioning are explained by them in their reply are that - wherever a wind farm is to be built, the roads are cut to make way for transporting parts. At each wind turbine location, the land is graded and the pad area is leveled. A concrete foundation is then laid into the ground, followed by the installation of the pooling substation and the transmission lines. These lines connect the wind turbines to each other in series, and also connect all of them to the pooling substation; that -The tower's sections are received in the site and the tower is kept horizontal until placement. A crane lifts the tower into position, all bolts are tightened, and stability is tested upon completion. The height of the towers range between 90 Meters to 130 Meters; that -The fiberglass nacelle having main drive shaft, gearbox, and blade pitch and yaw control are mounted onto a base frame. The nacelle is then bolted around the equipment. At the site, the nacelle is lifted onto the completed tower and bolted into place and that-The blades are usually bolted onto the Rotor hub before it is lifted, and it is bolted to the Nacelle.

26. The WTGs come into existence at the site upon being erected. These WTGs cannot function when laid horizontally on the ground. Essentially it needs to be erected to be able to stand vertically, allow propulsion of the blades and eventually generate *electricity. The foundation is essential for the operation of a WTG since it helps holding the WTG terrafirma on to the ground. While WTG is erected component-wise but WTG foundation is a cast-in-situ element. The tower is anchored to the foundation using pre-tensioned bolts. The foundation and the WTG are designed to handle the loads exerted by the wind over their design life. Strong foundation is laid using steel and cement and a bed is prepared. A foundation ring is embedded to the earth and the WTG is fixed on it. The Steel structure, namely Tower is fixed to the ground by using a bolt nut technology and is supported by a foundation, which helps holding the asset terrafirma on to the ground. The tower sections identified as T1, T2, T3, T4 and T5 are stacked one on the other (with T1 at the bottom and T5 on the Top) and are fitted using bolts and nuts which are called Studs. A sound and strong technology is deployed to hold the Tower perpendicular to the earth. The bolts are fastened in a manner that the tower with stands the pressure of wind. The tower provides stability for the load of the components. The door at the base of the tower facilitates entry to the tower for maintenance of the machinery etc. The LSP and anchor rings are parts of the foundation on which the tower is fixed.*

27. The nacelle on which the rotor blades are fixed and which also contains the shafts etc. rests on the tower which may be as high as 40 to 80 mtrs. For the tower construction, generally a tubular construction of concrete or steel is used. The tower carries the weight of the nacelle and the rotor blades and the loads caused by the power of wind. The components of foundation embedment comprise of anchor rings, load spreading plates (LSP), anchor bolts and levelling screws. This foundation transfers the load coming from the nacelle, shaft, tower etc to the surrounding concrete. The LSP couples the tower base with the foundation by means of anchor bolts. The anchor bolts are the parts which hold the tower base and extend into the civil foundation. The anchor rings are applied at the other end of the bolts in the foundation of the tower and are embedded in the concrete foundation to provide a firm base to the WOEG.

WTG De-erection

28. Following the erection, several activities related to commissioning are undertaken and once commissioned; the wind warm is typically operated at least until the end of its design life. Based on the design margins built into the turbine components, the wind farm can sustain operations beyond the design life also.

When WTG is de-commissioned wherein the WTG is de-erected, and the foundation is demolished or left as it is.

29. As per their note dt.01.06.2020, the de-erection of wind turbine can also happen in the following cases. The activities that occur in de-erection are similar to that of erection, the cost is expected to be in the range as the erection cost.

- *If there are deficiencies in any of the components that endanger the structural integrity and efficiency of the WTG, the turbine would have to be de-erected and sent to a specialized workshop for repair. Once the proper repair of the safety shortcomings is attested by the workshop in writing, the WTG can be re-erected at the site.*
- *If there is a structural integrity issue in the foundation, the WTG would have to be de-erected and stored at an appropriate location. Once the foundation is adequately repaired or replaced, the WTG can be re-erected.*
- *If the wind farm owner wishes to shift the WTG from its original location to another location due to factors such as loss of land ownership, expiry of the lease, underperformance etc., then again, the WTG would have to be de-erected. It would then be re-erected at a new location on a different newly constructed foundation.*

- *If the wind farm owner wishes to repower the existing WTG, then certain components or whole of the WTG may be placed. This would lead to partial to full de-erection of the WTG depending on a case-to-case basis.*

30. Hence, a WTG when is required to be re-located, it is possible to dismantle the same and cannibalise the WTG as rotor, tower sections, nacelle, components etc., The cannibalized components can then be shifted to the desired place using specialized vehicles and be re-erected. On account of the bulkiness and weight of the product, the services of cranes are utilized extensively.

31. From the drawings it was shown that the wind mill consists of a foundation embedment which is a foundation on which the tower is fixed. However, it is to be noted that while the WTG can be transported in parts, the foundation to which it is anchored is not movable. Hence, a new foundation would have to be constructed for WTG to erect at new location.

9. This Court, while considering the nature of Solar Power Generators Plant, in the case ***Sterling and Wilson Pvt. Ltd. Vs. The Joint Commissioner and Others,***[1] relying upon the Judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Central Excise,***

[1] 2025 (1) TM1663-HC-GST

Ahmedabad vs. Solid and Correct Engineering Works[2], had held that such Solar Power Generator Plants would have to be treated as movable property amounting to goods. In this Judgment, this Court had also referred to ***T.T.G. Industries Ltd. Madras vs. Collector of Central Excise, Raipur***[3], and that the said Judgment had been distinguished on facts in ***Solid and Correct Engineering*** (supra).

10. The tests that had been applied by this Court were whether the Solar Power Generation Plants, created by the petitioner in that case, would answer the description of movable property set out under Section 3 (26) of the Transfer of Property Act 1882, r/w Section 3 (36) of the General Clauses Act, 1897.

11. In the present cases, both the respondents 1 & 2, after setting out the manner in which the Wind Turbine Generators would be assembled and erected at the site, had held that the Wind Turbine Generators would have to be treated as immovable property, inasmuch as the Turbine Generator Plant cannot be erected without embedding it into the earth and attaching it permanently to the platform created for such purpose. The respondents 1 & 2 also took the view that the installation of such Wind Turbine Generator was with an intention to install the same on a permanent basis and consequently, these units cannot be treated to be movable properties.

---

[2] (2010) 5 SCC 122
[3] (2004) 4 SCC 759

12. The learned Government Pleader for Commercial Tax, while reiterating the said stand of respondents 1 & 2, would also contend that the entire unit would have to be treated as one unit and the same cannot be supplied as movable part and immovable part. He would submit that the generation of power, which is the purpose for which the Turbine Generators had been installed, would not be possible unless they are attached permanently to the platform created for such purpose. He would submit that the said platform is undisputedly, embedded into the earth and the Wind Turbine Generator attached to such a platform would also have to be treated as immovable property.

13. Sri Karthik Ramana Puttam Reddy, learned counsel appearing for the petitioner would rely upon a Judgment of the Hon'ble Supreme Court in the case of ***M/s. Bharti Airtel Ltd. Vs. The Commissioner of Central Excise, Pune***[4].

14. The order of the 2nd respondent contains the description of the equipment, the procedure for erection of such equipment and the procedure for removal of such equipment. Under this description, the Wind Turbine Generator consists of various parts which are all brought to the site and assembled at the site. Simultaneously, a foundation is constructed at the site and the same is embedded into the earth. Thereafter, an assembled tower is attached to the foundation, which has been constructed. The description of the

---

[4] (2024) 132 GSTR 404

Turbine Generator as well as the manner in which it is to be erected and de-erected shows that the tower can be removed and moved around with only the foundation on which it is anchored not being movable. In such circumstances, there is no dispute, on the facts, that the tower can be removed from the foundation without any damage to the tower and can be moved around.

15. The learned Government Pleader would rely upon the Judgment of the Hon'ble Supreme Court, in the case of ***T.T.G. Industries*** (supra). In this Judgment, the Hon'ble Supreme Court had taken the view that any machinery, which is assembled and erected over an immovable property, with an intention of retaining the same by more or less, on a permanent basis, should also be treated as immovable property.

16. This contention of the learned Government Pleader would not detract from the fact that the Wind Turbine Generator, in the present cases, is movable property. In ***Solid and Correct Engineering*** (supra), the Hon'ble Supreme Court, after considering the Judgment in ***T.T.G. Industries*** (supra), had distinguished the said Judgment on facts. Similarly, the Hon'ble Supreme Court in the case of ***M/s. Bharti Airtel*** (supra) had distinguished the Judgment of ***T.T.G. Industries*** (supra), on facts. The Hon'ble Supreme Court in ***M/s. Bharti Airtel*** took the view that in the case of ***T.T.G. Industries***, the permanency test invoked by the Hon'ble Supreme Court would not be applicable in goods where the tower itself was bought and brought in a completely knocked-down or semi-knocked-down condition and was erected

and installed at the site. The relevant observation of the Hon'ble Supreme Court is extracted hereunder:

> *It may be noted that while this Court invoked permanency test in **T.T.G. Industries Ltd.** (supra), what was also observed was that if the machinery cannot be shifted and re-erected without dismantling, it would show that it is an immovable property.*
>
> ***11.7.11*** *In the present case, while mobile tower cannot be shifted to another location without dismantling it, it is to be noted that mobile tower itself was bought and brought in a completely knocked-down (CKD) or semi-knocked-down (SKD) condition and it was erected and installed at the site after assembling the parts. If the said mobile tower is to be shifted to another location, it obviously has to be dismantled and restored to its SKD or CKD condition and thereafter re-erected, which however, would not entail any damage to it. Thus, the present case of the mobile towers differs from the factual matrix of **T.T.G. Industries Ltd.** (supra).*

17. In the present cases also, even according to the facts recorded by the 2nd respondent, various parts of the tower are purchased and brought to the site area and are then assembled to make up the tower. As the facts in the present cases, are in accord with the facts in ***M/s. Bharti Airtel***, it must be held that the view of the Judgment of the Hon'ble Supreme Court in ***M/s. Bharti Airtel*** would be applicable to the present case. The Hon'ble Supreme Court in the said Judgment had held as follows:

11.7.16 *There can be no dispute that if the newly set up BTS/BSC is relocated to another site it may entail certain damages. However, what is important to be noted is that the damage is qua the BTS/BSC or cables connecting the various components, but not the tower itself or PFB with which we are concerned. If the tower or the PFB can be dismantled and relocated in another site without causing any damage to either the tower or PFB, the mobility or the marketability of these items is retained. Thus, as far as the tower and PFBs are concerned, these exhibit the character of a movable property.*

11.8 *In view of the above decisions, we are of the opinion that merely because certain articles are attached to the earth, it does not ipso facto render these immovable properties. If such attachment to earth is not intended to be permanent but for providing support to the goods concerned and make their functioning more effective, and if such items can still be dismantled without any damage or without bringing any change in the nature of the goods and can be moved to market and sold, such goods cannot be considered immovable.*

11.8.1 *We may summaries some of the principles applied by the Courts in the decisions referred to above to determine the nature of the property as follows:*

1. ***Nature of annexation:*** *This test ascertains how firmly a property is attached to the earth. If the property is so attached that it cannot be removed or relocated without causing damage to its, it is an indication that it is immovable.*

2. ***Object of annexation:*** *If the attachment is for the permanent beneficial enjoyment of the land, the property is to*

be classified as immovable. Conversely, if the attachment is merely to facilitate the use of the item itself, it is to be treated as movable, even if the attachment is to an immovable property.

3. Intendment of the parties: *The intention behind the attachment, whether express or implied, can be determinative of the nature of the property. If the parties intend that the property in issue is for permanent addition to the immovable property, it will be treated as immovable. If the attachment is not meant to be permanent, it indicates that it is movable.*

4. Functionality Test: *If the article is fixed to the ground to enhance the operational efficacy of the article and for making it stable and wobble free, it is an indication that such fixation is for the benefit of the article, such the property is movable.*

5. Permanency Test: *If the property can be dismantled and relocated without any damage, the attachment cannot be said to be permanent but temporary and it can be considered to be movable.*

6. Marketability Test: *If the property, even if attached to the earth or to an immovable property, can be removed and sold in the market, it can be said to be movable.*

18. The aforesaid tests would apply to the facts and circumstances of these cases to show that the Turbine Generator would amount to movable property. The facts recorded by the 2nd respondent states that – 1) The

Turbine Generators can be removed and re-located; 2) The attachment of the Turbine Generators to the foundation is for beneficial enjoyment of the Turbine Generators and the Turbine Generator is not being attached to the foundation for better enjoyment of the foundation; 3) The intention of the parties here is to erect the Turbine Generator at a place which is conducive for generation of electricity and the same can always change depending upon the wind patterns; 4) As held above, the Turbine Generator is not being fixed to the ground to enhance the foundation but is being fixed to the ground for better efficiency of the Turbine Generators; 5) As held above, the Turbine Generator can be dismantled and re-located without any damage and the Turbine Generator can always be sold and for such purpose be dismantled and handed over to the prospective buyer.

19. For all the aforesaid reasons, it must be held that the Turbine Generator would have to be treated as movable property amounting to goods. In such circumstances, the supply of services and such goods can only be treated as composite supply of goods and services and not execution of works being involved in immovable property.

20. These Writ Petitions are allowed, setting aside the orders of assessment and appeals mentioned above, as well as the orders of penalty and appeals mentioned above and the assessments are remanded back to the 1st respondent, for completing the assessment proceedings, in line with the Judgment delivered by this Court. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

Date: 03.12.2025
MJA

173

THE HON'BLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HON'BLE SRI JUSTICE T.C.D. SEKHAR

WRIT PETITION Nos.: 4799 & 4801 of 2022 and

WRIT PETITION Nos.: 17132 & 17177 of 2024

(per Hon'ble Sri Justice R. Raghunandan Rao)

03.12.2025

MJA