

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH- COURT NO. 1

Service Tax Appeal No. 12697 of 2018-DB

(Arising out of OIA-VAD-EXCUS-002-APP-138-139-2018-19 dated 29/06/2018 passed by Commissioner (Appeals), Central Excise, Customs and Service Tax-Vadodara-II)

R & S Fabrication Works

Village-Mangad, Tal-Jambusar,
Bharuch, Gujarat

..... Appellant

VERSUS

Commissioner of C.E. & S.T.-Vadodara-II

1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat- 390023

.....Respondent

With

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APPEARANCE:

Shri S J Vyas, Advocate for the Appellant

Shri Jaspreet Singh Sukhija, Additional Commissioner (AR) for the Respondent

CORAM:

HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

HON'BLE Ms. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 10498-10499/2025

DATE OF HEARING: 19.06.2025

DATE OF DECISION: 19.06.2025

SOMESH ARORA

In the instant case, the dispute relates to whether the fabrication work done by the appellants will amount to manufacture or will amount to providing of service to the service recipients?

2. Ther brief facts are that the appellants at the relevant time i.e. from the year 2014-15 to 30th June, 2017 were doing fabrication works and bringing in

the larger parts of Wind Mill into existence which were eventually sold to the M/s. Fedders Lloyds Corporation Ltd. (FLCL). The charges paid to them by M/s. FLCL were only for the fabrication works, and not for the materials supplied to the appellants by the service recipient. It is not denied by either side that during the relevant time, Central Excise Notification No. 12/2012-CX dated 17.03.2012 had exempted vide entry No. 332 goods falling in any chapter till the time they were relating to non-conventional energy charges, devices or systems specified in list 8. Learned Advocate take us to list and draws the attention to Sr. No. 13 which reads as:-

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

3. He thus emphasizes that goods were clearly, excisable and therefore not liable to service tax. The learned Advocate seeks to rely on the decision reported in 2023 (3) TMI 754- CESTAT Chennai in the case of M/s RRB Energy Ltd. Vs. Commissioner of Customs (Seaport-Import), Chennai in which dealing with the same Notification has dealt with in para 10 reproduced below, the issue as to what are parts tower, rotor, wind turbine control, nacelle, etc. which were similarly worded and it was decided as follows:-

"10. *The larger Bench of the Tribunal in the case of Rakhok Enterprises Vs. Commissioner of Central Excise 2016 (338) ELT 449 (Tri. L.B.) observed that the issue having been settled by the Hon'ble Apex Court as per the judgment reported in 2015 (323) ELT 220 (SC), the anchor rings and load spreading plates which is specifically designed for the purpose of attaching the tower to the ground by providing necessary bolts are eligible for exemption under Notification No.6/2006 dated 01.03.2006 as these are parts of the tower. The larger Bench also relied upon the Circular No.1008/5/2015 CX, dated 20.10.2015 which was issued clarifying that tower, nacelle, rotor, wind turbine controller are eligible for exemption. The relevant paragraph of the Larger Bench decision is reads as under:*

"5.2 *The learned AR argued that the anchor rings and load spreading plates are not parts of the tower and are parts of the foundation of the tower. He argued that Circular No. 1008/15/2015, dated 20-10-2015 covers only the following items :*

2. Ministry of New and Renewable Energy had earlier clarified to CBEC on the subject that the following are parts of wind operated electricity generators :

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

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

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

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

He pointed out that the foundation is not covered as part of the wind operated electricity generator in the said circular. He argued that views of Ministry of New and Renewable Energy should be taken before arriving at any conclusion in this regard, in terms of Para 5 of the Circular dated 20-10-2015 which reads as under :

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

He argued that while Ministry has clarified the tower is part of a wind operated electricity generators, no such clarification has been issued, for items like anchor rings and load spreading plates.

5.3 We have gone through the rival submissions. We find that the anchor rings consists of large rings with long bolts attached to this at the circumvent. The load spreading plates is also a ring with matching holes to accommodate anchor bolts fixing to the anchor rings. The load spreading plates and the anchor rings can be joined together into one item by fixing the anchor bolts at the matching holes of the load spreading plates. When assembled it would form in the shape of a cylindrical cage. The tower has holes at its base matching with the bolts of the anchor rings and the load spreading plates and together they can be joined by bolts. However, the assembly of anchor rings and the load spreading plates is first fixed together and made a part of the foundation by using reinforced cement concrete. Thereafter the tower is attached to the bolts of the anchor rings and load spreading plates assembly. A picture of the said arrangement of the anchor rings, load spreading plates and the tower base given by the appellant is reproduced below.

5.4 We find that the anchor rings and the load spreading plates are specifically designed for the purpose of attaching the tower to the ground by providing necessary bolts for the same. The anchor rings and the load spreading plates

are an extension of the tower, though the same is fixed to the foundation first and later attached to the tower. Thus they are parts of the tower.

5.5 *In view of the above, we find that the anchor rings and load spreading plates are parts of tower specially designed for wind operated electricity generators and are eligible for exemption under Notification No. 6/2006, dated 1-3-2006."*

4. Learned AR seeks a remand stating that in the impugned order the Commissioner (Appeals) was focused on whether whatever was done was service or not and did not actually look into the scope of Notification No. 12/2012-CX and specifically what was being manufactured were actually parts of "Wind operator, electricity generator its components and parts thereof including rotor and wind turbine control."

5. We have gone through the rival submissions we find from the submissions that at the relevant time, the goods being fabricated by the appellants were bringing into existence what would have been normally "excisable goods" being manufactured articles liable to Central excise duty, but for the exemption as contained in 12/2012-CX which made them "exempt goods". We therefore, answer the issue in affirmative holding that what is excisable at the relevant time could not have been subjected to service tax, if that be so, the appeals are allowable. The same are allowed with consequential relief.

6. Appeals are allowed.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)