

AUTHORITY FOR ADVANCE RULINGS  
(CENTRAL EXCISE, CUSTOMS AND SERVICE TAX)  
NEW DELHI

PRESENT

Mr. Justice P.K.Balasubramanyan (Chairperson)  
Mr. J.K.Batra (Member)  
Mr. J.Khosla (Member)

The 18th March, 2011

Ruling No. AAR/CE/ 01/2011

In

Application No. AAR/44/CE-1/10/2010

Applicant : M/s Enercon (India) Limited,  
Enercon Tower, A-9 Veera Industrial  
Estate, Veera Desai Road, Andheri (West),  
Mumbai- 400053,  
Maharashtra.

Commissioner : The Commissioner of Central Excise,  
concerned Customs and Service Tax, Daman,  
IIIrd Floor, Adarshdham Building,  
Vapi-Daman Road, Vapi-396191  
Gujarat.

Present for the applicant : Shri Paresh M. Joshi, Advocate  
Shri Praveen Kakulte, AVP Technical Services  
Shri Girish Paliwal, VP

Present for the :  
Commissioner Shri S.N . Singh, Jt. CDR  
Shri Sonal Bajaj, SDR

Ruling  
( By J.K.Batra)

M/s Enercon ( India) Limited, Mumbai, the applicant, is a joint venture company set up in collaboration with Enercon GmbH of Germany. The applicant has set up a plant for the manufacture of Wind Operated Electricity Generators (WOEG). The applicant proposes to manufacture “specially designed transformers” (sealed corrugated tank integrated wind turbine transformers) for wind operated electricity generators E-48/E-53(800 KW). The generators are being manufactured

by the applicant in India. The purpose of these transformers is to step up or step down the voltage while wind operated electricity generator is made to run for the generation of electricity by harnessing wind power.

2. The applicant has sought a ruling on the eligibility of the transformers for exemption from Central Excise duty in terms of Notification No. 6/2006-Central Excise dated 1<sup>st</sup> March, 2006. The application has been allowed under Section 23 D (2) of the Central Excise Act, 1944 and the question raised by the applicant has been recast as follows:

*“Whether specially designed transformers for wind operated electricity generators E-53/E-48 (800 KW), of the specifications as given in the application, sought to be manufactured by the applicant will be eligible for exemption from the levy of central excise duty by virtue of the entry at Serial No. 84 [Item No. 13 of List 5] in the Table of the Notification No. 6/2006-Central Excise, dated 1.3.2006 as amended”*

3. As per the said Notification 6/2006-Central Excise, goods specified in the Table read with relevant List appended thereto, are exempted from the levy of Central Excise duty specified thereon under the First Schedule to the Central Excise Tariff Act, 1985 subject to the conditions specified in the annexure to the Notification. The extent of exemption has also been specified in the Table against the corresponding entry. The applicant is seeking a ruling in respect of goods specified against Serial No. 84 of the Table to the Notification read with List 5. As per the said Serial No. 84 “Non-conventional energy devices / systems specified in List 5” falling under “Any Chapter” of the said First Schedule are exempted from the whole of the duty leviable thereon without any condition. Serial No. (13) of List 5 in respect of which the applicant has claimed that his goods are covered within the said entry reads as follows:

“Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller”.

4. The applicant has claimed that the transformers proposed to be manufactured by it are essential parts of wind operated electricity generators and are designed exclusively for such generators of Enercon make / application only. These transformers perform dual functions i.e. 'step down' the voltage before generation of electricity by the WOEG and 'step up' the voltage after commencement of generation of electricity by the WOEG. In their "step down" mode the specially designed transformers for WOEG step down the voltage from the grid to requisite level for the input power required for excitation of the generator during its start-up. The transformer is thus used in the system at a stage prior to the generation of electricity by Wind Operated Electricity Generator. Most of the transformers used in the electrical grids of the State Electricity Boards on the other hand, are single function transformers.

5. The applicant has further stated that these transformers have special features and characteristics which differentiate them from the usual transformers. A power point presentation was made by a technical representative on behalf of the applicant during the course of the hearing. Due to the varying wind speeds at different times, the power generated by the Wind Operated Electricity Generators has variable voltage and frequency. Special equipments are required to stabilize the raw power and make it compatible with the power required to be fed into electricity grid. The specially designed transformers for WOEG take into account the specific requirements of such generators and are designed to withstand the cyclic loads and the electrical stresses that the system is subjected to. Its specially designed sensing system interfaces and integrates with turbine mean control system to deliver stable power of prescribed specifications. The absence of such a transformer would lead to disablement of Wind Operated Electricity Generators and it has been urged before us that for these reasons, it is an essential part of WOEG entitled to the benefit of exemption in terms of Notification 6/2006-Central Excise. The applicant has also quoted the decision of the Tribunal in the case of Hyundai Unitech Electrical Transmission Ltd. vs Commissioner of Central Excise, Nagpur [2005(187) ELT 312(Tri-Mumbai)] to point out that even parts of tower and lattice masts have been held to be parts of Wind Operated Electricity Generators.

6. The applicant has emphasized the fact that entry against Serial No. 84 of the Table in the Notification 6/2006 covers non conventional energy devices/systems falling under **any chapter** of the tariff. Thus it is claimed that there is no restriction placed to the items/goods falling under any specific chapter or heading or sub heading of tariff item. The applicant has also cited the observations of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in the case of Commissioner of Central Excise, Chennai vs Tamilnadu Electricals [2002(150) ELT 1251(Tri-Chennai)] to substantiate its argument that when the notification does not lay down any restriction for grant of benefit of any item falling under any specific heading then the benefit to the class of goods described in the Table of notification is required to be extended. The expression “non conventional energy devices/systems” used in Serial No. 13 of List 5 to specify goods eligible for exemption would, as per the definition given in various dictionaries, include “combination of several pieces of equipment integrated to perform a specific function.....”. Therefore all devices and systems of Wind Operated Electricity Generator which is non conventional energy should be eligible for exemption from the payment of duty in accordance with the stated objectives of the fiscal policy.

7. The applicant has during the course of arguments also referred to the fiscal policy adopted by the Union and various State governments which promotes setting up of infrastructure for harnessing sources of non conventional energy. The applicant has cited the case of Commissioner of Customs (Preventive), Gujarat vs Reliance Petroleum Limited [2008 (227) ELT 3(SC)] to convey that the purpose for which an exemption is granted must be considered in its entirety notwithstanding the need to construe an exemption notification strictly.

8. The Commissioner of Central Excise, Daman has contested the claim of the applicant for exemption from payment of Central Excise Duty on “specially designed transformers” under the said Notification No. 06/2006-Central Excise. It has been argued that transformer does not fall under the category of “wind operated electricity generators, its components and parts thereof”. The transformer only connects the wind operated electricity generator to the power grid and has therefore a separate and an independent function and cannot be a part or a component of WOEG. Transformers are not specified in said Serial no. (13) of List

5 appended to the Notification 06/2006-Central Excise either as parts or as components. It has been averred that the applicant has therefore failed to discharge the burden cast upon him to claim the benefit of exemption notification.

9. During the course of arguments also the Departmental Representative observed that to be eligible for exemption the transformer has to be demonstrated to be a component or a part of the Wind Operated Electricity Generator; it is not sufficient that the transformer is specially designed for WOEG. The transformers have been designed only to integrate the Wind Operated Electricity Generator with the power grid. The transformer is specially designed to the extent that it is compatible with the functioning of Wind Operated Electricity Generators. The words “parts” and “components” imply something that which along with others make up a whole, one of the elements of which anything is made up. The transformer proposed to be manufactured by the applicant and for which a ruling has been sought does not fit in the definition of parts or components of WOEG. The Department has also cited a number of decisions of Supreme Court to emphasize that the burden of proof lies on the claimant claiming the benefit of exemption notification. It has been further pointed out that exemption notifications are to be construed strictly and if intention of legislature is clear and unambiguous, then it is not open to courts to add words in exemption notification to extend the benefit of exemption to other items which are not mentioned in the notifications. Following decisions of the Hon’ble Supreme Court have been referred to in this behalf:-

1. *Novopan India Ltd. Vs. CCE, Hyderabad* 1994(73)ELT 769 (S.C)
2. *Commissioner of C.Ex., Jaipur Vs. Mewar Bartan Nirman Udyog*  
2008(231)E.L.T.27(S.C.)
3. *Commissioner of C.Ex.&Cus., Indore Vs. Parenteral Drugs(I) ltd.*  
2009(236)E.L.T.625(S.C.)
4. *Hotel Leela Venture Ltd. Vs. Commissioner of Custom.(Gen.),Mumbai*  
2009(234)E.L.T.389(S.C.)
5. *Mihir Textiles Ltd. Vs. Collector of Customs, Bombay*  
1997(92)E.L.T. 9(S.C.)
6. *Orient Traders Vs. Commercial Tax Officer, Triupati*  
2009(237) E.L.T.447(S.C.)

10. It is noted that Serial No. 84 in the Table of Notification No. 6/2006-Central Excise extends the benefit of duty exemption to

“Non-conventional energy devices/systems **specified in list 5**”

*(Emphasis supplied)*

It is apparent from the wording of this entry that the exemption is not available to each and every non-conventional energy device or system. The scope of exemption has been restricted only to such devices or systems which have been specified in List 5. In order to examine whether the transformer proposed to be manufactured by the applicant is eligible for the exemption contained in Notification No. 6/2006-Central Excise, it has to be verified whether the transformer is covered under any of the entries in List 5.

11. It would be necessary here to examine the items specified in List 5 appended to the Table in the Notification. The following non conventional energy devices/systems have been included in the list, namely:-

*(1) Flat plate solar Collector*

*(2) Black continuously plated solar selective coating sheets (in cut length or in coil) and fins and tubes*

*(3) Concentrating and pipe type solar collector*

*(4) Solar cooker*

*(5) Solar water heater and system*

*(6) Solar air heating system*

*(7) Solar low pressure steam system*

*(8) Solar stills and desalination system*

*(9) Solar pump based on solar thermal and solar photovoltaic conversion*

*(10) Solar power generating system*

*(11) Solar photovoltaic module and panel for water pumping and other applications*

*(12) Solar crop drier and system*

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

*(14) Water pumping wind mill, wind aero-generator and battery charger*

*(15) Bio-gas plant and bio-gas engine*

- (16) Agricultural, forestry, agro-industrial, industrial, municipal and urban waste conversion device producing energy*
- (17) Equipment for utilising ocean waves energy*
- (18) Solar lantern*
- (19) Ocean thermal energy conversion system*
- (20) Solar photovoltaic cell*
- (21) Parts consumed within the factory of production of such parts for the manufacture of goods specified at S. Nos. 1 to 20 above.*

It may be noticed that while some entries in List 5 above refer to individual items or devices, some other entries include systems as a whole or a combination of an equipment and the corresponding system. Flat Plate solar collector at Serial No.(1), Solar Cooker at Serial No. (4) and Solar Lantern at Serial No. (18) are some of the examples of individual items of equipment covered by the entries in the List. On the other hand solar air heating system at Serial No.(6), solar power generating system at Serial No. (10), ocean thermal energy conversion system at Serial No. (19) are some examples where the entire system has been included. List 5 covers both individual devices and complete systems; the entry in Serial No. 84 in the Table of the Notification No. 6/2006-Central Excise therefore reads as “Non-conventional energy devices/systems specified in List. 5”. It is apparent that wherever it is intended that a device alone should be granted the benefit of exemption it has been so stated; on the other hand where it is intended that the system as a whole needs to be exempted, it has been clearly described as such.

12. In view of the aforesaid manner of describing the goods eligible for exemption adopted in the Notification, we are not convinced by the arguments advanced by the applicant that all items of electrical machinery required to work in conjunction with a wind operated electricity generator are covered by the entry at Serial No.84 of the Table read with Item No. (13) of List 5. We are unable to accept the contention that the scope of the entry should be expanded to cover a generating system and its parts. Entry in Serial No. 84 uses the expression “devices / systems” because List 5 has some entries pertaining to devices and several other pertaining to systems. In fact the entry at Serial No. 21 of List 5 covers only “parts” and neither a device nor a system. In this background each of

the entries in List 5 would have to be construed strictly as per the text of the entry itself without expanding the scope merely because group heading in Entry 84 of the Table refers to systems.

13. The applicant also wants that the purpose of the exemption as also the declared policy of the Government in promoting setting up of infrastructure for non-conventional energy should also be considered while interpreting the law - in this case Notification No. 6/2006-Central Excise. The applicant has therefore requested for adopting a broader approach in interpreting the entry at Serial No. (13) of List 5 and Serial No. 84 of the Table in the Notification. In the case of Commissioner of Customs (Preventive), Gujarat vs Reliance Petroleum Limited [2008 (227) ELT 3(SC)] cited by the applicant, the dispute was whether a crane placed on a special vehicle would fulfill the description of a “mobile crane” or a “material handling equipment” to be eligible for exemption. It was observed by the Hon’ble Supreme Court that apart from other entries, the exemption notification included several categories of goods such as :-

*“16. All types of material transporting equipments, including .....*”

*“18. All types of material handling equipments, including .....*”.

*“44. Special maintenance systems, including hydrojetting tools, pneumatic torque wrenches; EOT / mobile cranes ...”*

It was in this background of overlapping and all inclusive entries that the Hon’ble Court observed that the notification must be interpreted in a broad manner and the purpose for which the exemption was granted must be considered in its entirety. It further, observed “the terminology used in the notification would have an important role to play where the exemption notification ex facie applies, there is no reason why the purport thereof would be limited by giving a strict construction thereto.”

We certainly agree that in case of any doubt or ambiguity in the Legislation, the objectives for which the law was enacted do need to be taken into consideration for interpreting the law. However, in the case before us we find no ambiguity in the text of the Notification for us to be examining the purpose or the policy behind the exemption. The entry at Serial No. (13) of List 5 covers only the generator and its

parts and its scope cannot be expanded to include wind operated electricity generating systems or plants and parts thereof.

14. The next question to be examined is whether the specially designed transformer is a part of wind operated electricity generator to be eligible for exemption by virtue of it being covered under Serial No. 13 of List 5. The transformer is mounted on the tower structure and is connected to the system by wires and cables. It has been claimed that the transformer has been designed keeping in view the special requirements of a wind operated electricity generator. It is noticed that due to cyclic nature of the winds, the rotor of the wind mill would rotate at varying speeds at different times leading to generation of electricity of variable output parameters. The transformer as also the other equipment have therefore to be necessarily designed in such a manner that the system delivers stable power to the electricity grid. We may mention here that transformers as well as other such items of electrical machinery are rarely available off the shelf and such heavy machinery does need to be tailor made to suit the requirements of the electrical systems in which these have to operate. During the course of hearing it has been explained on behalf of the applicant that the transformer has features which make it suitable for use with the Wind operated electricity generators and further that absence of this special transformer would lead to “disablement” of the generator. We do realize that transformer is an essential part of the whole wind operated electricity generating system but does it make a component part of the wind operated electric generator? This question needs to be examined in the background of commercial practice. Parts of a machine which are integral to the machine i.e. which are fitted in the machine itself are no doubt to be considered as a part of that machine. In the case of a pedestal or a table fan which is sold with the speed regulator incorporated (fitted) in it the speed regulator is a part of the fan. However, the regulator of a ceiling fan which is not integral to that fan has been held not to be a part of that fan. Electrical parts which may be inter-connected by wires and cables can be treated as parts of the system provided, these are essential for the working of the system. In a geographical area where Cable Access System (CAS) has been made mandatory by the Government, a Set Top Box working in conjunction with a television cannot be said to be a part of the television. The set top box is essential for receiving signals on the television but it does not

become a part of the television. It is a part of the “reception apparatus for television.” If however, the television has an inbuilt set top box it would no doubt be construed as a part of a television.

15. In the case of the specially designed transformer for the wind operated electricity generator, it is noticed that it is no doubt an essential part without which the generating system would not function. But the transformer is not a part of the generator. The transformer is being deployed as an item of a system which works in conjunction with the generator, wind turbine controller, rotor etc., to provide stable electricity to the power grid. In Electrical Engineering Terminology electric motors, electric generators, electric transformers and electric accumulators etc. are separate identifiable items of electrical machinery and equipment. The transformer for wind operated electricity generator is no doubt one of the items which together with other items is integrated to perform a specific function of generating electricity and supplying it to the electric grid. It is an item of electrical machinery which is a part of a whole system rather than a part of wind operated electricity generator. No technical evidence has been placed before us to substantiate the claim that in this case the transformer is a part of a generator and is not a separately identifiable equipment. Though it was not brought to our notice, on accessing the website of the applicant’s German joint venture partner [[www.enercon.de](http://www.enercon.de)], it is noticed that the wind operated electricity generating systems have been described as “ENERCON Wind Energy Convertors” in the webpage titled “Technology and Service”. E-48/E-53 wind energy convertors, for which the specially designed transformers are proposed to be manufactured, have been listed in the “Product Overview” along with the other models of such convertors. The following extracts from the sub-chapter titled “ Enercon Annular Generator and Grid Management System” under the Chapter “Grid Integration and Wind Farm Management” are reproduced for an understanding of the various parts and components of wind energy convertors.

*“Amongst other features, the annular generator is a key component in ENERCON’s gearless wind generator design. This low-speed synchronous generator is directly connected to the rotor. Generator output voltage and frequency vary with the speed and are converted via the ENERCON Grid Management System to be fed into the grid. This allows rotational speed*

*control to be optimized; the annular generator is thus perfectly independent of the grid. By adjusting or 'pitching' the blades and through electrical excitation via the turbine control system, rotational speed and power output are constantly checked and optimized. The electrical power produced by the annular generator passes into the ENERCON Grid Management System which comprises a rectifier, the so-called DC Link and a modular inverter system. The inverter system defines the essential performance characteristics for output to the grid and ensures that the power output corresponds to grid specifications. Here in the inverter system, voltage, frequency and power are converted accordingly. Via the transformer, inverter voltage (400 V) is stepped up to the appropriate medium voltage required by the grid or the wind farm network.*

The chapter also provides a sketch indicating how the rotor, generator inverter etc., are linked. The following components have been specified under the annular generator and grid management system, namely:-

1. Annular Generator
2. Rectifier
3. D.C.Link
4. Invertor
5. Grid Management Control System
6. Transformer
7. Filter
8. Internal Transformer Station

It may be noticed from the aforesaid write-up at the collaborator's website that the transformer is a separate item of electrical machinery and is not a part of the generator. It would appropriately merit to be classified as a part of the grid management system of a wind energy convertor. We are therefore unable to agree that the specially designed transformer is a part of wind operated electricity generator.

16. It is further noticed that the entry at Serial No.13 of List 5 in the notification No. 6/2006-CE apart from specifying the generator and its parts as being eligible for

exemption has by a special mention extended the exemption to “rotor and wind turbine controller”. There cannot be any doubt that “rotor” and “wind turbine controller” are absolutely necessary for generation of electricity from wind energy. They have however, been specifically described in the entry even though these are also essential and indispensable parts of the generating system as is the specially designed transformers. It only confirms that the entry “wind operated electricity generator” covers the generator *per se* and it is not intended to include equipments which are deployed with the generator for production of stable power using wind energy.

17. In view of the aforesaid observations, the applicant is not eligible for the exemption in respect of the specially designed transformers proposed to be manufactured by it, as a part of wind operated electricity generator under Notification No. 6/2006-Central Excise dated 1<sup>st</sup> March, 2006. The ruling with reference to the question raised in the paragraph 2 is therefore answered in the negative.

18. Accordingly, the ruling is given and pronounced on this day, the 18th of March, 2011

Sd/-  
(J.K.Batra)  
Member

Sd/-  
(P.K.Balasubramanian)  
Chairman

Sd/-  
(J.Khosla)  
Member