GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	

ADVANCE RULING NO. GUJ/GAAR/R/2022/16

(In Application No. Advance Ruling/SGST&CGST/2021/AR/39)

Dated: 12.04.2022

Name and address of the applicant	:	M/s Suzlon Energy Limited, 5, Suzlon House, Near Shri Krishna Centre, Shrimali Society, Mithakhali, Navrangpura, Ahmedabad, Gujarat - 380009
GSTIN of the applicant	:	24AADCS0472N1Z8
Date of application	:	14-10-21
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	*(a)*
Date of Personal Hearing	:	18-02-2022
Present for the applicant	:	Shri Dhruvank Parikh, CA

Brief Facts

M/s. Suzlon Energy Ltd. (hereinafter referred to as Suzlon for the sake of brevity) submits as follows:

2. It is primarily engaged in supply of goods required for setting up of power projects, enabling generation of power through renewable sources of energy on its own and through its subsidiaries companies.

3. Suzlon manufactures Wind Operated Electricity Generators (hereinafter referred to as WOEG for sake of brevity) falling under Chapter 85023100 and parts thereof mainly consisting of the manufacture of Nacelle, Blades and Towers falling under Chapter Heading 8503 and allied products being considered as parts falling under Chapter 85030090 suitable for use solely or principally with the machines of Heading 8501 or 8502 and the Transformers specifically meant to be used with WOEGs and falling under Chapter Heading 8504.

4. Suzlon submits that it receives Orders from for supply of WOEG consisting of Nacelle, Hub, Controller, Transformer, Set of 3 Rotor Blades and hybrid Lattice Tower – a component of Renewable Energy Device / Wind Operated Electricity Generator in respect of a Wind Farm Project.

5. Suzlon receives a consolidated contract for supply of Wind Turbine Generator consisting of WOEG (nacelle including hub, controller – microprocessor, accessories, set of 3 rotor blades, hybrid tower) and supply of transformer. A copy of Order: Supply/001/SMEIPL dated 30-8-21 entered with Shree Malaiamman Energy India Private Limited was submitted

6. Suzlon submits that the transformer supplied by it is specially designed for WOEG application and is installed on the ground adjoining to each Wind Operated Electricity Generator. Its transformer performs dual function of a Step-Down Transformer and a Step-Up Transformer unlike a normal Transformer. In as much as it performs dual function, it is different from other general use transformers like used by the State Electricity Board, which have a single function of either stepping down or stepping up the voltage, and does not perform both the functions simultaneously.

6.1 Step-Down function: To activate the generator inside WOEG. The transformer draws electricity from the electricity grid of Electricity Board having a voltage of 33kv, and steps it down to 0.690 kv for supply to the WOEG. The voltage of 0.690 kv electricity provided by transformer activates the generator inside WOEG to enable rotation of blades/fan. Further, electricity is continuously required for the monitoring panel etc. installed in WOEG.

6.2 Step-Up function: Once the WOEG starts functioning and reaches the required speed, wind energy gets generated and converted into electricity with the help of generator, which has a voltage of 0.690kv. The electricity so generated is transferred to the transformer, which converts the electricity to higher voltage of 33kv.

6.3 The electricity with higher voltage of 33kv from multiple transformers is then transmitted to a common sub-station which further steps-up to 66/110/132/220/230 kv (as may be required) for transmitting to the grid.

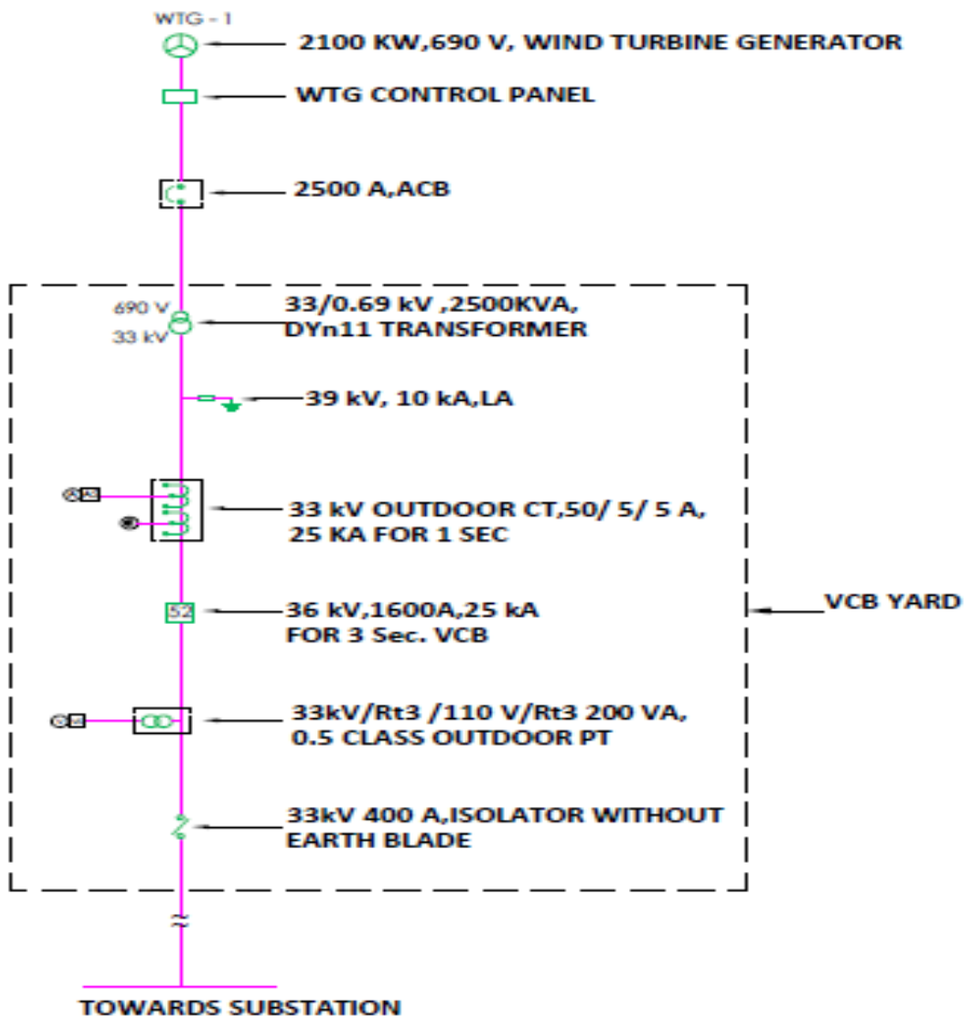
6.4 An image of the Transformer is as below:

7. Suzlon submits that in a Wind Turbine application, the above depicted Transformer specifically meant for use in WOEG is placed either in the nacelle, or in the tower or outside the tower. Due to variable nature of power generation, the transformer is specially designed to withstand intermittent and variable generation loading pattern.

Further, the power electronics converter system in wind turbine is interfaced through this transformer and hence require special design consideration like heating due to harmonics and cyclic temperature variation. Further these transformers are used to suitably step down the grid voltage and connect to the electrical generator. The wind turbine control system needs this voltage to synchronize the generator with grid and feed power into grid. These transformers impedance is used in harmonic filter at turbine level to limit the injection/absorption of harmonics into the grid / Wind Turbine Generator. In addition, reactive power compensation is an important part of grid code requirement and hence these transformers also acts as one of the source for consuming reactive power.

6.1 Suzlon in its submission incorporated the following picutres:

Wind Operated Electricity Generator – Pic:1



Transformer – Pic:2

Transformer – Pic:3

Transformer – Pic:4

7.2 Suzlon submitted key parameters of Transformers in Power, Solar and Wind Applications as follows:

Type of transformer → Features ↓	Power transformer	Distribution transformer	Wind turbine transformer	Transformer for PV Solar
IEC standard	IEC 60076-1	IEC 60076	*IEC 60076-16*	IEC 61378
IS standard	IS 2026-1	IS 1180-1	*IS 2026-16*	IS 2026-1
Loading	Continuous	Continuous	*Cyclic*	Cyclic
Average annual loading	60% - 100%	80% - 100%	*30% - 40%*	20% - 30%
Category	Oil insulated transformer	Oil insulated / dry type transformer	*Oil insulated / dry type transformer*	Oil insulated / dry type transformer
Installation	Outdoor	Indoor / Outdoor	*Indoor / Outdoor*	Indoor / Outdoor
Mounting	Ground mounted	Ground / Plinth mounted	*Ground / Plinth / Nacelle / Tower mounted / Inside enclosure*	Ground / Plinth mounted / Inside enclosure
Cooling type	Oil natural / Oil forced / Air natural / Air forced / combination of above	Oil natural / Air natural / Air forced / combination of above	*Oil natural / Air natural / Air forced / combination of above*	Oil natural / Air natural / Air forced / combination of above
Ambient temperature correction	No correction	In case of enclosure mounting	*In case of enclosure / tower / nacelle mounting*	In case of enclosure mounting
Harmonics	No special care	In case of special	*Special care*	Special care

		cases		
Over excitation	No special care	No special care	*Special care*	No special care
Humidity and salinity	Only in specific case	Only in specific case	*Generally for all cases*	Only in specific case
Corrosion protection	Only in specific case	Only in specific case	*Generally for all cases*	Only in specific case
Vibration consideration	Generally no special consideration	Generally no special consideration	*Specially in case of inside nacelle*	Generally no special consideration
Rated frequency	50 / 60 Hz	50 / 60 Hz	*50 / 60 Hz*	50 / 60 Hz
HV side voltage class	400kV	33kV	*72.5kV*	72.5kV
Winding conductive material	Copper	Copper / Aluminum	*Copper / Aluminum*	Copper / Aluminum
Thermal cycling	Normal	Normal	*Significant*	Moderate

7.3 The IEC Standard and IS Standard for Wind Turbine Transformer as mentioned in the above Comparison reads as follows:

IEC 60076 part 16: 2018

This is a dedicated international standard defining the technical requirements for step up voltage Transformer for use in wind turbine application (Renewable energy generation):

"The part of IEC 60076 applies to dry-type and liquid-immersed transformers for wind turbine step-up applications having a winding with highest voltage for equipment up to and including 72,5 kV. This document applies to the transformer used to connect the wind turbine generator to the wind farm power collection system or adjacent distribution network and not the transformer used to connect several wind turbines to a distribution or transmission network.

Transformers covered by this document comply with the relevant requirements prescribed in the IEC 60076 standards or IEEE C57 standards."

IS2026 part 16: 2021

This is a new standard included in the Indian standard for Transformer for wind turbine application. National forward of the document is mentioned below:

"This Indian Standard (Part 16) which is identical with IEC 60076-16 : 2011 'Power transformers — Part 16: Transformers for wind turbine applications' issued by the International Electro technical Commission (IEC) was adopted by the Bureau of Indian Standards on the recommendation of the Transformers Sectional Committee and approval of the Electro technical Division Council."

7.4 Suzlon submits that Transformers manufactured and supplied by them complies with the aforementioned IEC and IS.

8. Suzlon submits that Sr. No. 201A to the Schedule – II to Notification No. 1/2017-Central Tax (Rate) dated 28-6-17 (hereinafter referred to as the said Notification) read with Notification No. 1/2017-State Tax (Rate) dated 30-6-17 issued under the Gujarat GST Act, 2017 as amended vide Notification No. 8/2021-Central Tax(Rate) dated 30-9-21 wherein the rate of GST is 6% + 6% which earlier vide Entry No. 234 to Schedule I was 2.50% + 2.50%. The said entry for Chapter No. 84, 85 or 94 reads as follows:

‘Following renewable energy devices & parts for their manufacture:

(a) Bio-gas plant

(b) Solar power based devices

(c) Solar power generating system

(d) Wind mills, Wind Operated Electricity Generator (WOEG)

(e) Waste to energy plants / devices

(f) Solar lantern / solar lamp

(g) Ocean waves/tidal waves energy devices/plants

(h) Photo voltaic Cells, whether or not assembled in Modules or made up into panels.

Explanation: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.’

9. Suzlon submits that the supply of specially designed Transformers is a part of WOEG which was liable to CGST and SGST at the rate of 2.5% each falling under Entry No. 234 to Schedule No. I to said Notification and thereafter with effect from 1-10- 21, 6% each towards CGST and SGST by virtue of Sr. No. 201A inserted to Schedule II in said Notification vide Notification No. 8/2021-Central Tax (Rate) dated 30-9- 21.

10. Suzlon submits that it was charging 2.5% each towards CGST and SGST on WOEG up to 30-9- 21and currently charges 6% each towards CGST and SGST and there is no ambiguity with respect to the same but have some confusion and ambiguity on the rate being differently charged for the Transformers by it.

11. Suzlon cites CBIC Circular No. 80/54/2018-GST dated 31-12-18, the relevant extract, reproduced as follows:

‘11. Applicability of GST on supply of Waste to Energy Plant:

11.1. Representations have been received regarding applicable GST rate on the goods used in the setting up of Waste to Energy plants (WTEP) in term of Sr. No. 234 of Schedule I of Notification No 1/2017-Central Tax (Rates) dated 28th June, 2018. The said entry 234 prescribes 5% rate on the following renewable energy devices & parts for their manufacture: (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d)Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Solar

lantern / solar lamp (g) Ocean waves/tidal waves energy devices/plant (h)Photo voltaic cells, whether or not assembled in modules or made up into panels

11.2 The notification specifically applies only the goods falling under chapters 84, 85 and 94 of the Tariff. Therefore, this concession would be available only to such machinery, equipment etc., which fall under Chapter 84, 85 and 94 and used in the initial setting up of renewable energy plants and devices including WTEP. This entry does not cover goods falling under other chapters, say a transport vehicle falling under Chapter 87 that may be used for movement of waste to WTEP.

12. Suzlon submits that as evident from the above, what is being perceived from the above clarification is that the concessional rate is being extended for the machineries, equipment etc. falling under Chapter 84, 85 and 94 and used in the initial setting up of renewable energy plants. It is a fact that a specially designed Transformer for WOEG is always being required to set up a Wind Farm and accordingly it believes that the specially designed Transformer supplied along with WTG as a part of WOEG be liable to CGST and SGST at the rate of 2.5% up to 30th September, 2021 and 6% thereafter.

13. Suzlon submit that to determine the applicability of Sr No. 234 up to 30th September, 2021 and Sr. No. 201A with effect from 1st October, 2021 for Specially Designed Transformers, what is important is whether the specifically and specially designed transformers to be used for WOEG application be considered as 'Devices and / or Parts' because the Windmill and WOEG have neither been defined in the Act nor the Rules as well as the Rate Notifications. Therefore, what is essential is an independent examination as to what constitutes 'parts' or 'devices' for manufacture of Windmill or WOEGs. The second condition to be fulfilled to get the benefit of Sr. No. 234 up to 30th September, 2021 and Sr. No. 201A with effect from 01st October, 2021 is that the goods must be falling within Chapter 84, 85 or 94.

14. Suzlon submits that the WOEG converts wind energy into electrical energy. The electrical energy generated has a voltage of 0.690kv. The electrical energy with voltage of 0.690kv is not consumable or marketable. The voltage of electrical energy is too low for any usage or for the purpose of evacuation or distribution. The specially designed transformers for WOEG is installed on the ground adjoining to each WOEG to make the electrical energy usable for consumption or distribution and accordingly it is understood that the specially designed Transformers are the parts of WOEGs and hence be liable to CGST and SGST at the rate of 2.5% each as per Sr. No. 234 to Schedule I to Notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017 and 6% each towards CGST and SGST as per Sr. No. 201A to Schedule II to Notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017 as amended by Notification No. 8/2021-Central Tax(Rate) dated 30th September, 2021 with effect from 1st October, 2021.

15. Suzlon further submits that the test of whether the specially designed Transformers be considered as 'part' and / or 'device' it is essential to know the meaning of 'device' and 'part.' Suzlon submits that what constitutes 'parts' can be inferred from the decision of Larger Bench of Mumbai CESTAT in case of *Rakhoh Enterprises vs. Commissioner of Central Excise, Pune (2016) 338 ELT 449 (CESTAT-MUMBAI)* whose findings are re-iterated as follows:

> *'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.'*

16. Suzlon submits that the above findings leads to the conclusion that if something is specially or specifically designed, it should be treated as part of that item for which it is specifically or specially designed. In the case of Suzlon, the Transformers are specially or specifically designed to be used along with WOEGs and hence be considered as parts liable to CGST and SGST at the rate of 2.5% each up to 30th September, 2021 and CGST and SGST at the rate of 6% each thereafter with effect from 1st October, 2021.

17. Suzlon submitted a copy of contract, as mentioned in para 5 along with the Annexure to the said contract, for supply of WTG:

> 'WTG" shall mean a 2.1 MW S111_140 type wind turbine consisting of nacelle, hub and control systems, blades (set of three blades), tubular towers, lightning protection, cables, aviation lights (if required) and transformer and any other equipment required to commission the WTG as per prevailing Grid standards and as per the technical specifications for the WTG'

18. Suzlon cites case law of M/s. *Elecon Engineering Co. Ltd., Vs Commissioner of Customs [1998 (103) ELT 395 (Tri)] = 1998 (3) TMI 359 - CEGAT, MUMBAI* the issue involved in the case was whether power cables, earthing cables, wind farmer computer will be eligible for benefit of exemption under Notification 64/94-Cus. The Tribunal held that power cables and control cables together form part of inside cabling of wind turbine controller, since, control cables are eligible for exemption, the benefit of exemption has to be extended to power cables also.

19. Suzlon states that the broad understanding of the intention of legislature in conferring exemption to non-conventional energy devices is also reflected from the decision by the Honourable Ahmedabad CESTAT in case of *M/s. SKF Technologies India Pvt. Ltd. M/s. SKF India Ltd, M/s. Chandramowli Srinivasan vs. CCE Ahmedabad-II (2020) TaxCorp(IDT) 124987 (CESTAT-AHMEDABAD)* whose findings are reproduced as:

> '11.3 Appellants have contended that the bearings are used at various places in the wind mill like rotor shaft, gearbox, generator, yaw gearbox, etc. We find that the interpretation sought by Revenue is very narrow. The term wind operated electricity generator appeared in notification 06/2006-CE dated 01.03.2006 includes the entire setup i.e. the tower, the generator, the blades which are used to generate electricity from wind. The term "wind operated electricity generator" in the notification does not refer to solely to the generator which is just one of the parts of the wind operated electricity generator. In view of above, we do not find any merit in the argument of Revenue and the demand on that is set aside. Hence, the appeal is consequently allowed.'

20. Suzlon submits that in the absence of any Tariff Item in the Customs Tariff which mentions Windmill, WOEG or parts for manufacture of Windmill, WOEG, no specific tariff entry is required to be examined to evaluate what constitutes a part for manufacture of Windmill, WOEG. A general examination of the term parts is required in order to evaluate whether transformer constitutes a part for manufacture of Windmill, WOEG.

21. Suzlon submits that the Customs Tariff and HSN Explanatory Notes stresses on the independent functioning of machines to determine the classification as parts of the machine. Heading 84.79 of the Customs Tariff deals with machines having individual functions. The HSN Explanatory Notes to Heading 84.79 explains that a 'machine' is something which has an individual function. The said Notes further explain that a machine which cannot perform its function unless it is mounted on another machine or appliance, or is incorporated in a more complex entity, is considered as a 'part' and not a machine. Thus, there is a twin test i.e. (a) the function performed by such machine is not distinct from that which is performed by the entity wherein it is to be incorporated, and (b) it plays an integral and inseparable part in the operation of such entity.

22. Suzlon submits that said HSN Explanatory Notes also give the example of a carburettor for an internal combustion engine and that the function performed by carburettor is distinct from that of engine, but it is not an individual function, as the

operation of the carburettor is inseparable from that of the engine. Hence, the carburettor is considered as a part of the engine as opposed to an independent machine. Another similar example has been provided in the relation to mechanical or hydraulic shock absorbers.

23. Suzlon cites the judgment of Hon'ble Supreme Court in the case of *CCE Vs. Insulation Electrical (P) Ltd.* reported at 2008 (224) ELT 512 (SC), wherein the Court held that a part is an essential component of the whole without which the whole cannot function. Relevant extract of the judgment is as follows:

> ***'17.*** *To the same effect are the judgments of this Court in the case of Pragati Silicons Pvt. Ltd. v. Commissioner of Central Excise, Delhi reported in* 2007 (211) E.L.T. 534 *(S.C.) and Annapurna Carbon industries. Co. v. State of Andhra Pradesh (1976) 2 SCC 273* .
>
> ***18.*** *After considering in detail, the difference between the 'accessories' and 'parts', this Court in the case of Pragati Silicons (supra) came to the conclusion that 'accessory' is something supplementary or subordinate in nature and need not be essential for the actual functioning of the product.*
>
> ***19.*** *Chapter 9401 covers all types of seats and not only the seats of a car and a seat is complete even without the rail assembly from seat, adjuster/assembly slider seat and rear back lock assembly. They are not essential parts of the seat. Chapter heading 9401 covers only the parts of seats and not accessories to the seats. A 'part' is an essential component of the whole without which the whole cannot function.'*

24. Further, in *CTO vs Prasoon Enterprises* reported at 2019 (23) G.S.T.L. 441 (SC), the Hon'ble Supreme Court has reiterated the test laid down by it as to what constitutes a part. The relevant para reads as follows:

> *'27. This Court has laid down the test as to how the Court should decide the question as to whether a particular item is a part of other. The test is "a thing is a part of the other if the other is incomplete without it". In other words, "a thing is a part of the other, if the other cannot function without it". [See M/s. Annapurna Carbon Industries v. State of Andhra Pradesh [(1976) 2 SCC 273 and Commissioner of Central Excise, Delhi v. Insulation Electrical Private Limited (2008) 12 SCC 45) = 2008 (224) E.L.T. 512 (S.C.)] '*

25. Suzlon submits that WOEG converts wind energy into electrical energy. The electrical energy generated has a voltage of 0.690kv. The electrical energy with voltage of 0.690kv is not consumable or marketable. The voltage of electrical energy is too low

for any usage or for the purpose of evacuation or distribution. The specially designed transformers for WOEG is installed on the ground adjoining to each WOEG to make the electrical energy usable for consumption or distribution. Accordingly, it can be deduced and inferred that the transformer is a part for manufacture of WOEG and the rate of 2.5% each towards CGST and SGST be applicable to the specially designed Transformers up to 30th September, 2021 and 6% each towards CGST and SGST thereafter.

26. Suzlon submits that the Transformer also needs to be looked upon from the angle of the general principles of interpretation. The general principles of interpretation, which are meant for interpreting sections in the taxing statutes, are required to be adopted for interpreting the definitions also but at the same time when the word 'Wind Mills' and 'WOEGs' have not been defined in the Act as well the Rate Notification it is also equally well established principles of law that in the absence of such definitions in the statutes, they should be understood in their popular meaning and as per the definition in the market or commercial parlance and if the goods are by themselves technical or if there is no definition available in the market parlance, it is the scientific definition which requires to be adopted.

27. Suzlon cited the Honourable Karnataka High Court in case of *Enercon (India) Ltd. vs. State of Karnataka (ILR) 2004 KAR 4020* wherein while deciding Whether the Karnataka Appellate Tribunal erred in law in holding that the turnover relating to electrical works, transformer, foundation work is not part of the turnover of the wind mill and is not eligible for exemption under entry 57 of the Fifth Schedule to Karnataka Sales Tax Act, 1957, the Honourable Karnataka High Court held as follows:

> *'19. The electrical work and transformers are vital parts of a wind mill and the wind mill cannot be put to use and it would not be functional device without the electrical works and the transformers. Therefore, the findings of the Tribunal in this regard requires to be set aside.'*

28. Further, the aforesaid view of the Honourable Karnataka High Court been affirmed by the Honourable Apex Court in Civil Appeal No(s) 1954/2006 and Suzlon submits that it has a reason to believe that the specially designed Transformers are part of the Windmill / Wind Turbine Electricity Generators and liable to CGST and SGST at the rate of 2.5% each up to 30th September, 2021 and 6% each thereafter.

Question on which Advance Ruling sought:

29. The specially designed Transformers for Wind Operated Electricity Generators which are meant to perform dual function of Step Down and Step Up manufactured by Suzlon and supplied to the customers of Suzlon as a part of Wind Operated Electricity Generator be treated as part of Wind Operated Electricity Generator and falls under Sr. No. 234 in Schedule-I to Notification No. 01/2017-Central Tax (Rate) dated 28th June,

2017 read with Notification No. 1/2017- State Tax(Rate) dated 30th June, 2017 and liable to Central GST at the rate of 2.5% along with Gujarat State GST at the rate of 2.5% up to 30th September, 2021 and 6% each towards CGST and SGST with effect from 1st October, 2021 by virtue of omission of the said entry and addition of Entry No. 201A to Notification No. 01/2017-Central Tax (Rate) dated 28th June, 2017 vide Notification No. 08/2021-Central Tax (Rate) dated 30th September, 2021 read with Notification No. 08/2021-State Tax(Rate) dated 30th September, 2021?

Personal Hearing

30. Personal hearing granted on 18-2-22 was attended by Shri Dhruvank Parikh, CA, (virtual hearing) and he reiterated the submissions.

Additional Submissions by Suzlon:

31. Suzlon cited decision of the Honourable Apex Court in case of M/s. Enercon (India) Ltd. vs. State of Karnataka in Civil Appeal No(s). 1954/2006, pronounced on 8th March, 2016 wherein the Honourable Supreme Court considered the Transformer as Part of the Windmill considering the fact that Windmill was never defined in the erstwhile existing VAT Regime and the same is the case with erstwhile existing Central Excise Act and GST Act, 2017 as well read with Notification No. 08/2021-Central Tax (Rate) dated 30th September, 2021 read with Notification No. 08/2021-State Tax(Rate) dated 30th September, 2021.The relevant extracts of the above Ruling of the Honourable Apex Court is reproduced as follows :

> *'The High Court taking Note of the provisions of Section 8 and Entry 57 has observed that meaning of the words 'Windmills' is not defined under the Act and, therefore, some meaning has to be assigned to the same. It has further observed that since Section 8 of the Act exempts certain categories of 'goods' which are specified in the Fifth Schedule of the Act, it is only those items which qualify as goods are to be exempted. Thereafter, an endeavour is made to point out what would be the goods falling within the expression ''Wind Mill." It has been held that the expression "Wind Mill" would include rotor consisting of blades, the hub, assembly, nacelle, yaw system, tower and grid synchronization assembly including transformer unit for delivering the power to the grid network. It is also opined that the electrical work and transformers are vital parts of a windmill and the windmill cannot be put to use and it would not be functional device without the electrical works and the transformers and, therefore, they would also be recorded as parts of Wind Mill."*

32. Suzlon submitted that when something is not defined in the Act, even references to other Acts should be resorted to. The word used in applicable Income Tax Rule is wind mill, which has a wide meaning and not confined to generator or gearbox etc. Any actor

deed attached to bring wind turbine in active use of power generation should be treated as a part of Wind Mill. Wind Mill is a plant as defined under section 43(3) of Income tax act and it is undertaking itself (M/s The Hutti Gold Mines Co. Ltd. vs Department Of Income Tax, ITA No. 832/Bang/ 2012 –A Y 2008-09). If meaning of wind mill is narrowed to only wind turbine or standing structure of tower or together both, will not justify correct legal position. If meaning is narrow down to such extent, active use of wind turbine will not be possible. All standing equipment are bald and useless. It needs to be integrated and therefore any expenses related to such integration and helping this plant to bring them in use must be said as a part of windmill. Any payment made for electrical work within turbine or connecting power generated to grid and transformer expense, metering work charges, surfacing works cost, data lock and control machine cost etc. should be treated as a composite cost of Wind Mill. Even in case of VTM Limited, Virudhunagar vs. Department of Income Tax (ITA No. 1425/Mds/2010), the Honourable Chennai Tribunal has held that the transformer used for the windmill installation is entitled to the depreciation as applicable to the windmill itself as it is to be considered as part of Windmill.

Revenue's submission

33. Revenue neither submitted its comments nor appeared for hearing.

Findings

34. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

35. We have carefully studied all the submissions. The issue before us hinges on determination of GST rate on said transformers. We record out findings, as follows, in Part A & B.

(A)whether Transformers are part of WOEG to determine entry at sr no 201A of schedule II of said Notification.

(B) Determination of GST rate on said Transformers.

A. <u>Transformers, whether part of WOEG.</u>

36. We refer to sr no. 234 of schedule I of Notification 1/2017-CT (Rate) dated 28-6-17; and sr no 201A of schedule II of said Notification, as follows:

i. The Serial number 234 of Schedule I of said Notification, notifying CGST @ 2.5%, as per the following table. This Serial number 234 was omitted

vide NT 8/21-CT(R) dated 30-9-21, w.e.f. 1-10-21 and a new serial number 201(A), notifying CGST rate for the same description @ 6% was inserted

Sr. No.	Description	Sr. No. 234 to Schedule I of Notification No. 1/2017-CT (Rate)	Sr. No. 201(A) of Notification No. 1/2017-CT (Rate)
1.	Following renewable energy devices & parts for their manufacture	(c) Solar power **generating system**	(c)Solar power **generator**
2.		(d) Wind mills, **Wind operated Electricity Generator (WOEG)**	(d) Wind mills, **Wind Operated Electricity Generator (WOEG)**

36.1 Thus WOEG CGST rate was 2.5% and w.e.f. 1-10-21 it is 6%.

37. It is of importance to note that in sr no 234(c) the device was solar power generating system. However, in sr no 201A(c) the device is not solar power generating system but 'solar power generator'. We opine that bringing on record our thought process on the difference between the phrase 'solar power generating system' and 'solar power generator' to be useful in present case. We are of the opinion that solar power generator is different from solar power generating system. We infer that system includes more devices and not just the generator.

38. The 'solar power generating system' and 'solar power generator', both are not one and the same. We have to read the wordings of the said Notification carefully. Prima facie, what is inferred is solar power generating system includes not only the solar power generator but even more device than the generator itself. We find the case **law Belectric Photovoltaic India Pvt. Ltd.[2019(21) GSTL 319(MP)] of H'ble High Court of Madhya Pradesh of immense use** for ready reference in this matter. We reproduce relevant excerpts of said the case law-

2019(21)GSTL 319(MP)- Belectric Photovoltaic India Pvt Ltd vs Commr. of Commercial Tax- writ petition no. 1245 of 2018, decided on 2-1-2019:

*'Solar power generating **system** includes all devices or equipment, which are connected or combined together to complete solar power generating system - Solar power generating system would necessarily include sub-station for evacuation and upliftment of power generated by solar power plants- for setting up **solar power based projects**, the exemption has to be given in respect of a complete project, as all the equipment used in the project are integral part of the project and even without one of the equipments, the **project** cannot function. Once the entry includes "Solar Power Project", all the material equipments used for the purposes of setting up power based project are certainly entitled for grant of exemption*

Para7(2) last para: Contention of the applicant - As stated above since the existence of a sub-station is an essential technical requirement of a solar power plant without which the solar energy generated by such plant cannot be put to consumer use and since in the present case as per the contract between the applicant and the client Focal Energy Solar India One (P) Ltd. and Globus Steel and Power Pvt. Ltd. construction of sub-station, its connection of solar plant and successful transmission of power from plant to sub-station is an essential condition of contract. Thus in the instant case, supply of sub-station equipment being a part of contract for construction/installation of solar power generation plant, such equipments are also covered by exemption under item No. 10 of Entry No. 71 of Schedule I of the MPVAT Act, 2002.

Para 8 The petitioner has stated that solar power generating system is incomplete without a sub-station or a grid and entire object of grant of exemption stands defeated on account of the order passed by the learned Commissioner.

Para 14, 15, 16. ***According to Oxford Dictionary, system means a set of things work together as parts of a mechanism or a interconnecting work****. The power system as per the Advance Law Laxicon by P. Ramanatha Aiyar, General Editor Hon'ble Shri Justice Y.V. Chandrachud reads as under :*

*"****"Power system"*** *means all aspects of generation, transmission, distribution and supply of electricity and includes one or more of the following namely :-*

(a) generating stations;

(b) Transmission or main transmission lines;

(c) sub-stations;

(d) tie-lines

(e) load despatch activities;

(f) mains or distribution mains;

(g) electric supply-lines;

(h) overhead lines;

(i) service lines;

(j) works. [Indian Electricity Act (36 of 2003) S. 2 (50)]"

In light of the aforesaid, it can safely be gathered that the solar power generating system includes all devices or equipments, which are connected or combined together to complete the solar power generating system. If one ingredient is missing, the solar power generating system will not function.

15. *The dictionary meaning of the word 'system' also finds place at page 4589 of Advance Law Lexicon by P. Ramanatha Aiyar, General Editor Hon'ble Shri Justice Y.V. Chandrachud reads as under :-*

"System. *"The word 'system' is defined by the Encyclopaedic Dictionary as a plan or scheme according to which things are connected or combined into a whole; an assemblage of facts or of principles and conclusions, scientifically arranged or disposed according to certain relations, so as to form a complete whole, as a system of philosophy, a system of government", etc.*

For the purposes of sub-heading 8471 49, the term "SYSTEM" means automatic data processing machines whose units satisfy the conditions laid down in Note 5(B) to Chapter 84 and which comprise at least a central processing unit, one input unit (for example, a keyboard or a scanner), and one output unit (for example, a visual display unit or a printer).[Customs Tariff Act (51 of 1975), I Sch, Import Tariffs S. XVI, Chap. 84, Note 8, Sub-heading]"

Keeping in view the aforesaid, it can safely be concluded that solar power generating system would necessarily include a sub-station for evacuation and upliftment of power generated by solar power plants.

16. *The Hon'ble Supreme Court in the case of CCE v. Hewlett Packard India Sales Pvt. Ltd. reported in (2007) 11 STJ 625 = 2007 (215) E.L.T. 484 (S.C.) has explained the meaning of word 'System' with reference to operating system of the computer and it has been held that the pre-loaded operating system recorded in the hard drive of the computer is an integral part of the computer, without which, the computer cannot open and work and has been classified as operating system under entry relating to computer itself.*

Para 18 ... this Court is of the opinion that power generating system includes all components even the grid/goods related to sub-station, without which, the system cannot work.'

38.1 This case law drives home the point that solar power generating system includes solar power generator and other devices of transmission, and distribution. Thus solar power generator and solar power generating system are not one and the same. The said Notification 1/2017-CT(R) used wording solar power generating system (vide sr no 234 of Schedule I, omitted w.e.f. 1-10-21) and used the wording solar power generator w.e.f. 1-10-21(vide sr no 201A in Schedule II).

38.2 **We hold that the wordings of the Notification should be strictly interpreted. These Wording when clear, plain and unambiguous and only one meaning can be inferred, we are bound to give effect to the said meaning. We give due regard to the clear meaning of words and matter should be governed wholly by the language of the notification. We cannot allow any scope for intendment. We find that our view of strict interpretation of the wordings of the notification is in consonance and compliance to the Supreme Court Judgements, to name a few as follows:**

- **2015 (324) E.L.T. 656 (S.C.) [para 31]**
- **2011 (265) E.L.T. 14 (S.C.) [para 10]**
- **1989 (40) E.L.T. 239 (S.C.) [para 11].**
- **1978(2) ELT(J350)(SC)**
- **CCE1995(77) ELT474(SC)**
- **AIR2000SC66**
- **319 ELT556(SC)**

38.3 Thus, we hold that WOEG is a generator and different from Wind Power project/ Wind Turbine system. If the wording used in said Notification was wind power system/ wind power project/ wind turbine system, the scope of inclusion of Transformer in the said project/ system arises. However, the wording is WOEG and we find no scope to include Transformer as a part of WOEG. In simple words, Transformer itself is a device to link the electricity generated by the WOEG to the distribution grid and thereby Transformer makes the electrical energy usable for distribution/ consumption. However, We do not find that Transformer is a constituent of WOEG. We note Suzlon's submission that said Transformers have dual step up and step down function. Dual function of the transformer does not equate itself to be treated as a part and parcel of WOEG. WOEG, which is the generator functions complete with itself and the use of transformer is to link the WOEG's electricity generated to the distribution grid.

38.4 The notification's relevant serial number 201(A)(d) reads wind mill and WOEG. Wind mill, in simple terms, is a wind powered machine to convert wind energy into mechanical energy to pump water/ grind purposes etc. Now if a step down transformer additionally is attached to a wind mill for it to function, that does not make transformer a part of wind mill, unless the transformer is requisite for the wind mill to function and operate. This issue is further detailed in forthcoming paras 39 to 42. In the same way, WOEG is a device in itself, with its identity in the market, being capable of marketed on its own strength. WOEG is generator for generation of electricity from the kinetic energy of wind. We, repeat ourselves, to bring the matter to clarity that the wording in Notification is WOEG and not wind turbine system/ wind power system/ wind turbine project.

38.5 Further, we find our views are in line with **Ministry of New and Renewable Energy clarification, reported in Government Circular No1008/15/2015-CX dated 20-10-2015 wherein we note that Transformer is not mentioned as a part of WOEG. Relevant para 3 of the said Government Circular reads as follows:**

> ***3. 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.***

38.6 Our views in GST era are in line with para B-16 of CBEC Instruction dated 7-12-2015 issued vide FNo. 96/85/2015-CX.1 which are the Minutes of Central Excise Tariff Conference for clarifications on technical issues of classification and assessment, which reads as follows:

> *"**B-16:***
>
> ***Issue**:*
>
> *There exists ambiguity regarding exemption to parts of wind-mill in light of Tribunal's order in the case of M/s. Gemini Instratech Pvt. Ltd. V/s. Commissioner of C. Ex., Nashik[2014(300) ELT 446 (Tri-Mumbai)]. On the other hand, Hon'ble Supreme court in case of M/s. Corporation Ltd. V/s. Commissioner of C.Ex., Calcutta [2006 (203) ELT 362 (S.C.)] had held that insulated wires and cables are not parts of wind mill which is complete in itself without electric cables, although wind mill may not be able to function without these cables, hence the benefit of exemption is not available to Cables and wires. Further, in case of M/s. Enercon (India) Ltd., Authority of Advance Ruling had ruled that*

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 electricity. The sponsoring zone was of the view that the towers and others parts, which are not directly related to generation of electricity would not be eligible for exemption. In view of the sponsoring zone, it would be desirable that the list of equipments/parts/components eligible for exemption may be spelt out in the Exemption Notification.

Discussion & Decision

It was noted in the conference that a clarification has already been issued on 20.10.2015 vide Circular No. 1008/18/2015-CX by the Board wherein details of parts on which exemption is available is specified. Ministry of New and Renewable Energy had clarified to CBEC that tower, nacelle, rotor , turbine controller are parts of wind turbine and accordingly the circular has been issued clarifying that exemption is available to these parts. For details, the above noted circular may be referred."

38.7 Suzlon, in para 7.3, submits that IEC 60076 part 16:2018 is a dedicated international standard defining the technical requirements for step up voltage Transformer for use in wind turbine application where the transformer is used to connect the wind turbine generator to the wind farm power collection system or adjacent distribution network and not the transformer used to connect several wind turbines to a distribution or transmission network. What is forthcoming is that Transformers connect/link the WOEG to distribution network. Nothing on record substantiates that Transformers are inalienable part of WOEG. Transformer could have been considered a part of WOEG if WOEG cannot function without it. But the fact is WOEG is able to generate electricity with the kinetic energy of the wind by itself. The very acronym WOEG stands for Wind operated electricity generator. Whereas, transformers for WOEG is installed on the ground adjoining to WOEG to make the electrical energy generated by WOEG usable for consumption or distribution purpose. We note that the transformers are neither placed in nacelle nor tower but on the ground beside the WOEG. Suzlon's submission in this regard that transformers are placed in nacelle/ tower at para 6 is not correct.

38.8 WOEG and transformer inclusive devices to form a wind power system/ wind generating system/ project. But WOEG per se is capable of generating electricity with wind. Now if a specially designed transformer with step down function is designed to rotate the blades/fan in WOEG that does not make it a part of WOEG, but makes the transformer per se a dual function transformer with step up and step down function. For if we go by Suzlon's submission that WOEG needs transformer as its part for its operation to generate electricity, we may as well rename the 'wind operated generator' to

'transformer operated generator'. A Dual function transformer does not alter the status of WOEG per se. **We note the word used in the said Notification is WOEG, which is generator per se.** WOEG generates electricity per se and to include the aspects of transmission, distribution and supply of electricity for which Transformer is requisite is to add extra words 'WOEG system' to a clearly worded Notification with the words 'WOEG' and not 'WOEG system'

B. GST Rate on Transformers.

39. On reading of the agreement entered between i.e. M/s. Suzlon Energy Ltd., Daman and M/s. Shree Malaianman Energy India Pvt. Ltd. we note that the supplier of goods WTG is M/s. Suzlon Energy Ltd, **Daman**. We required the applicant to clarify the following:

(i) As per the referred agreement the supplier is M/s. Suzlon Energy Ltd., Daman and not the applicant (GSTIN 24AADCS0472N1Z8). Please clarify who is the supplier of goods?
(ii) If WOEG is not supplied by you i.e. applicant then what is supplied by you. Please specify.
2. Refer to your application para 1.1 of Annexure wherein it is submitted that the goods is supplied by you or your subsidiaries companies. Also refer para 5.2 of Agreement with M/s. Shree Malaiamman Energy India Pvt. Ltd. Please specify what goods is supplied by you i.e. Applicant.
3. Is there any subcontract by Daman Unit to you? Copy of the contract to be submitted.
4. Copies of few Invoices of any undergoing contracts, including of said referred contract, issued by you to be submitted to verify the nature of supply.

39.1 Suzlon vide email dated 24-3-22 submitted as follows:

" We have filed an application and the additional written submissions in connection to the application filed seeking ruling in the matter of classification of Specially Designed Dual Function Transformers supplied by us to be used with Wind Operated Electricity Generators only before the Honourable Authority for Advance Ruling, Gujarat. In connection thereto, we have received the impugned Letter requiring few clarifications from our end which are provided as under to the best of our understanding and our belief:

1. With reference to the clarification sought for in connection to an agreement entered into between M/s. Suzlon Energy Limited Daman and M/s. Shree Malaiamman Energy India Pvt Ltd. as to who is the actual supplier of the goods,

it is most humbly and respectfully clarified that we based on the provisions of Section 22(1) of CGST Act, 2017 read with the provisions of 25(1) and 25(2) of CGST Act, 2017 respectively requiring a Person to take registration in every State or Union Territory from where the Taxable supplies of Goods and / or Services are made, on our PAN : AADCS0472N are currently registered in the States / Union Territory of Karnataka, Maharashtra, Tamil Nadu, Telangana, Madhya Pradesh, Delhi, Puducherry, Andhra Pradesh, West Bengal, Dadra and Nagar Haveli and Daman and Diu along with the State of Gujarat having GSTIN: 24AADCS0472N1Z8 from where the impugned Application seeking Advance Ruling has been made by us.

2. Nacelle including Hub, Controller and Accessories are manufactured in Dadra and Nagar Haveli and Daman and Diu, Pondy (Puducherry) and Padubidri located in the State of Karnataka. The Rotor Blades are manufactured at Dadra and Nagar Haveli and Daman and Diu, Pondy (Puducherry), Padubidri located in the State of Karnataka, Rajasthan, Gujarat, Madhya Pradesh, Maharashtra and Andhra Pradesh. Hybrid Tower are manufactured in the state of Gujarat, Maharashtra and Tamil Nadu and the Specially Designed Dual Function Transformers for which the impugned Ruling has been sought for are being manufactured in Gujarat. Thus, in the Agreement with M/s. Malaiamman Energy India Pvt Ltd referred to in the impugned Application seeking Advance Ruling, Transformers are going to be supplied by us only i.e the Applicant registered with GSTIN: 24AADCS0472N1Z8 directly to the customer as evident from Para No. 5.3 of the said Purchase Order / Agreement and other components and parts of Wind Operated Electricity Generator which shall be assembled at the site namely Nacelle, Blades and Tower shall be supplied based on the availability and location of the Recipient of Supply from Dadra and Nagar Haveli and Daman and Diu as well as from Gujarat under Bill-to-Ship-to Model.

3. With reference to Para 1.1 of the Annexure and Para No. 5.3 (inadvertently seems to have mentioned as Para No. 5.2) of the Agreement, it is to be stated that

Blades and Towers might be supplied by us i.e your Applicant registered with GSTIN: 24AADCS0472N1Z8 under Bill-to-Ship-to Model along with the specially designed Dual Function Transformers from Gujarat directly to the said Recipient of Supply for which the impugned Application has been preferred seeking Advance Ruling on the GST Rate applicability on the said specially designed Transformers meant to function only with Wind Operated Electricity Generators and the remaining parts / components including nacelle and Blades along with Tower (if not supplied from Gujarat under Bill-to-shipped to Model) might be supplied from Dadra and Nagar Haveli and Daman and Diu.

4. There is no written sub-contract from Daman Unit to Gujarat Unit i.e the Unit which has preferred Advance Ruling.

5. The invoicing has not been done for the Purchase Agreement referred to by your good self and hence the copy of one another Purchase Agreement already executed with the same recipient of supply along with the copies of the invoices are enclosed herewith for the kind consideration of your good self.

6. Hope the above would be sufficient to clarify the clarifications required by your good self and we shall be pleased to provide any other clarification that may be required from our end to decide the question raised before the Honourable Authority for Advance Ruling, Gujarat State.

7. Based on the above, Your Honour would most graciously be pleased to pronounce the Advance Ruling to classify the supply of Specially Designed Transformers as components / parts / devices under Sr. No. 234 to Schedule I to Notification No. 01/2017-CT (Rate) dated 28th June, 2017 read with Notification No. 01/2017 dated 30th June, 2017 issued under Gujarat GST Act, 2017 and that the benefit of concessional rate of 5% GST up to 30th September, 2021 is applicable on the specially designed Transformers and 6% each towards CGST and SGST with effect from 01st October, 2021 by virtue of omission of the said entry and addition of Entry No. 201A to Notification No. 01/2017-Central Tax (Rate) dated 28th June, 2017 vide Notification No. 08/2021-Central Tax (Rate)

dated 30th September, 2021 read with Notification No. 08/2021-State Tax(Rate) dated 30th September, 2021 applicable from 01st October, 2021."

40. We find that Suzlon, Vadodara (the applicant) is supplying **Transformers** directly to recipients, on Principal to Principal basis and the invoices produced before us are not bill to ship with reference to **Transformers supplied**. Also that there is no tripartite agreement between Suzlon Daman, Suzlon Vadodara (applicant) and Malaiamman (recipient). Also that Suzlon Daman has no contract/ sub contract entered with the applicant for supply of transformers to Malaiamman. Further, the phrase 'Bill to Ship to' is misleading and incorrect with respect to Transformers, as the 'bill to' by 'Suzlon the applicant' was not to Suzlon Daman but to Mailaiamman at Erode and 'Ship to' was directly by 'Suzlon the applicant' to Malaiamman at Tuticorin. This view is supported by the Invoices which the applicant raises on Malaiamman wherein the details are as follows (a) the supplier of Transformer who is the applicant before us and (b) 'bill to' is to Malaiamman at Erode and Consignee is Malaiamman at Tuticorin. Suzlon Daman finds no mention in the Invoices of the applicant before us.

41. We find our views that's Transformers are not part of WOEG in consonance with the following:

i. **CBEC Circular No1008/15/2015-CX dated 20-10-2015**

ii. CBEC Instruction dated 7-12-2015 issued vide FNo. 96/85/2015-CX.1

41.1 We find our views in compliance to judicial discipline laid down vide H'ble High Court of Madhya Pradesh in the case of M/s. **Belectric Photovoltaic India Pvt. Ltd.[2019(21) GSTL 319(MP)]**

42. We note Suzlon cited certain case laws. We find that-

i. Rakhoh enterprises case law pertains to anchor rings and load spreading plates and pertained to whether these part parts of towers of WOEG;

ii. Elecon Engineering case law pertains to import and is a customs matter and pertains to eligibility of exemption of CVD on import thereof;

iii. SKF Technologies case law pertains to use of bearing in WOEG's rotor shaft, gear box etc.;

iv. Enercon India case law pertains to assessment under Karnataka Sales Tax Act wherein matter was remanded back to assessing authority to redo the assessment- order also pertained to turnovers of electrical works and transformers. We further note that two income tax case laws of VTM ltd and Hutti gold mines were cited.

v. We find that these case laws are not addressing the issue at hand in light of GST scheme of law. The case laws cited by Suzlon pertains to either

assessment orders under Karnataka sales tax act or to certain part of WOEG such as anchor rings, bearings etc. Also certain case laws cited by Suzlon pertains to either Income Tax Act or Custom import duty exemption issue. The other cited case laws do not address the issue at hand to determine whether taxability of transformers merits entry at sr. no 201A of schedule II of said NT.

vi. We note Suzlon cited Government Circular dated 31-12-18 at para 11 Pertaining to applicability of GST on supply of waste to energy plants. Our issue at hand is GST rate on Transformers and whether Transformer is part of WOEG to merit entry at sr no 201A (d) to Schedule II of Notification 1/2017.

43. In conspectus of aforementioned discussion and findings, we pass the Ruling:

RULING

1. Transformers are not part of WOEG and are leviable to CGST @ 9% vide Sr. No. 375 of Schedule-III of Notification No. 1/2017-CT (Rate) dated 28-6-2017.

(**ATUL MEHTA**)
MEMBER (S)

(**ARUN RICHARD**)
MEMBER (C)

Place: Ahmedabad
Date: 12.04.2022