
 <p>सत्यमेव जयते</p>	<p>सीमाशुल्कआयुक्तकाकार्यालय(एनएस-व) OFFICE OF COMMISSIONER OF CUSTOMS (NS-V) जवाहरलालनेहरूकस्टमहाउस, न्हावा-शेवा JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA ताल-उरण, जिला- रायगढ़, महाराष्ट्र-400 707 TAL-URAN, DISTRICT- RAIGAD, MAHARASHTRA-400707</p>	
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F. No.

Date of Order:

S/10-Adj-⁰⁸2026-27/ADC/Gr. VA/ JNCH

Date of issue:

DIN No.: 202605780X0000222972

Passed by: MAZID KHAN

Additional Commissioner of Customs , (NS-V), JNCH, Nhava Sheva.

Order No: 1894/2026-27/ADC/Gr.VA/NS-V/CAC/JNCH

Name of Party/Noticee: M/s VA Tech Wabag Limited (IEC- 0496016784)

मूलआदेश

1. यह प्रति जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए निः शुल्क दी जाती है।
2. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमा शुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र -400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमा शुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए.1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूपमें 1.50 रुपये मात्र का स्टांप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इसपर न्यायालय फीस के रूपमें 1.50 रुपये का स्टांप भी लगाया जायेगा जैसाकि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मदके अंतर्गत निर्धारित किया गया है।
3. इस निर्णय या आदेश के विरुद्ध अपील करने वाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्तिके संबंध में विवाद होने पर शास्तिका भुगतान करेगा।

ORDER-IN-ORIGINAL

1. This copy is granted free of charge for the use of the person to whom it is issued.

2. An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Sheva, Tal: Uran, Dist.: Raigad, Maharashtra - 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs. 1.50 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 1.50 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.

3. Any person desirous of appealing against this decision or order shall, pending the appeal, make payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s VA Tech Wabag Limited (IEC- 0496016784) having address at 11, Murrays Gate Road, Alwarper, Chennai, Tamilnadu - 600018 (hereinafter referred to as "the importer") filed Bill of Entry No. 4758844 dated 27.02.2014 for clearance of imported goods described as GE Jenbacher Biogas Based Engine model JGS 420 GS BL with standard accessories and spares along with Stamford make 415 V alternator for GE Jenbacher Biogas based engine having a declared assessable value of ₹ 6,32,75,087/-. The importer classified the goods under Customs Tariff Heading 85016410 and claimed exemption under Notification No. 12/2012-CE dated 17.03.2012 at Serial No. 332 on the ground that the goods constitute non-conventional energy devices or systems.

2. On Scrutiny of the documents, Docks Officers inter alia made the following observations:

"Kindly see BE No. 4758844 dated 27.02.2014 by M/s VA tech wabag limited for clearance of goods declared to be three numbers of GE Jenbacher Biogas Based Engine model JGS 420 GS BL with standard accessories and spares along with Stamford make 415 V alternator for GE Jenbacher Biogas based engines. The A.V. is Rs. 6,32,75,087/-. The equipment has been classified

under CTH 85016410. CEX duty exemption vide S.No. 332 of Notification No. 12/2012(C. Ex.) was availed. The CTH 85016410 is for AC generators (Alternators). The imported goods are declared for exemption as per s. no. 15 of list 8, s. no. 332 of Notification No. 12/2012(C.Ex)- 'Bio Gas Plant and Bio Gas engine'.

This Bill of Entry was RMS facilitated. The BoE was selected for scrutiny under 3% intervention. The following were noticed on examination of the cargo and scrutiny of the documents;

- On examination the goods were found to be generator sets of a kind classifiable at CTH 85023990.
- The scope of supply clearly indicates that Generator Systems and cogeneration system has been supplied.
- A generator set comprises of an engine and a generator (alternator). The invoice clearly indicates that the subject goods comprise of engine and a generator (alternator). The individual value of the generator (alternator) and the engine has been mentioned separately.
- The goods are under High Sea Sales. The HSS amount that has been added is around 0.7% which is much less than the regular 2% HSS commission that is generally added.
- The generator does not exclusively run on bio gas but on different gas types like natural gas, flare gas, bio gas, landfill gas, sewages gas, coal mine gas, coke gas, woods gas, pyrolysis gas as per the literature submitted by the importer.

For the goods to be eligible for the claimed C.Ex duty exemption notification benefit the goods have to be Bio-Gas Plant or Bio-Gas Engine. It appears that the importer has claimed the benefit of notification on the strength of their declaration of the goods as engine (bio gasbased engine). The importer declaration dated 10.03.2014 stated that they have imported engines with accessories in assembled condition. However, from the examination and documentary evidence it is clear that the goods are generators and not engines. Engines are anyway classifiable in CTH 8412 and not in chapter 85 as classified by them. Since the goods being engines are ruled out and

although the goods have been declared to be engine with Alternator and not a Bio gas plant, the importer might not attempt to claim that their generator is a bio gas plant.

3. The DC/Docks made the following observations:-

“As per HSN notes to CTH 8501, electric generators with prime movers (biogas engine in this case) is excluded. It is classifiable under CTH 8502 as electric generating set consisting of the generator and its prime mover which are mounted together as one unit on a common base. CVD benefit claimed vide Notification No. 12/2012 at Sl No/ 332, List 8 is applicable to Biogas plant and biogas engine. The consignment is neither a complete plant in itself and nor an engine, but a generating set. Assessable Value Rs. 6,32,75,086/-.”

4. The examination report, invoice, and product catalogue indicate that the importer has mis-declared the goods under CTH 8501 64 10 as “AC Generators (Alternators)”. On examination, the goods were found to be generating sets having GE Jenbacher biogas-based engines. The nature and configuration of the imported goods, as evidenced from the examination report and technical literature, establish that the goods are appropriately classifiable under CTH 8502 39 90 as generating sets.

4.1. Further, the importer has claimed exemption from payment of CVD under Sl. No. 332 of Notification No. 12/2012-C.E. The said exemption is applicable only to goods specified in List 8 appended to the notification. The List 8 shows that the exemption covers “biogas plant” and “biogas engine” only, and when it applied in strict technical sense it does not extend to biogas-based generator sets/generating sets. Therefore, the benefit of exemption claimed by the importer appears to be inadmissible, and the applicable CVD has not been discharged correctly.

5. Accordingly, Order-In-Original No. 15178/2014 AM (I) dated 27.03.2014 was passed by the Joint Commissioner of Customs (Import), Gr-VA/B, JNCH with following order:

- I order that the goods be classified under CTH 85023990. The goods are not eligible for the benefit of duty exemption under Notification No. 12/2012- C.Ex Sl. No. 332. The goods be assessed accordingly and differential duty be recovered from the importer.

- Confiscation of the goods imported vide Bill of Entry No. 4758844 dated 27.02.2014 having declared assessable value of Rs. 6,32,75,086/- under section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the goods on payment of fine of Rs. 6,00,000/- under Section 125(1) of the Customs Act, 1962.

- I impose a penalty of Rs. 2,00,000/- on the importer under Section 112(a) of the Customs Act, 1962.

6. The importer filed an Appeal against Order-In-Original No. 15178/2014 AM(I) dated 27.03.2014 before Commissioner (Appeals), JNCH. The Commissioner (Appeals) passed the Order-in-Appeal No. 2678 (Gr. VA/B)/2014(JNCH)/IMP-2547 dated 04.07.2014 with following order:

"I uphold the classification of the impugned goods Order-in-Original No. 15178/2014 AM (I) dated 27.03.2014 passed by Joint Commissioner of Customs (Imports), Group VA/B, JNCH and the present appeal S/49-1669/2014-MISC-JNCH stands dismissed."

7. Aggrieved by the said OIA dated 04.07.2014, the importer preferred an appeal before CESTAT, Mumbai. The CESTAT, Mumbai vide final order no. 86006/2025 dated 25.04.2025 remand the matter back with following observations:

- *The Prima motive for re-classification appears to have been made on the premises that 'generating sets' would not be covered by the exemption notification. There is nothing on record either in the notification or anywhere else that goods within 8502 of First Schedule to Customs Tariff Act, 1975 or 8501 of First Schedule to Customs Tariff Act, 1975 would not get the benefit of exemption. Even if the goods were covered by the re-determined tariff item and more especially, as there were, admittedly, not 'internal combustion piston engines', it was necessary to examine the characteristics of the*

imported goods to determine if these be non-conventional energy devices or systems.

• *In the absence of such findings, the re-classification and consequent denial of benefit of exemption, as well as detriments under section 111 and section 112 of Customs Act, 1962 does not find favour. In view of the deficiency in the adjudication, we set aside the impugned order and remand the matter back to the original authority for a fresh decision after hearing the appellant herein on coverage by the impugned notification.*

LEGAL PROVISIONS

8. The relevant provisions of the Customs law, Rules and Regulations relevant in the instant case are summarized below:

a. *Section 46(4) of the Customs Act, 1962, the importer while presenting a Bill of Entry shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.*

b. *Section 111(m) of the Customs Act, 1962 provides for confiscation of any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54]*

c. *Section 112(a) of the Customs Acts 1962 provides for penalty for any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act.*

d. *Section 125 (1) of Customs Acts 1962 provides for Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is*

prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 4[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit: Provided that where the proceedings are deemed to be concluded under the proviso to sub-section

RECORD OF PERSONAL HEARING AND WRITTEN SUBMISSIONS

9. In compliance of the Natural Justice, PH was held on 28.01.2026. On behalf the importer, K. Suresh Kumar, Advocate, appeared for Personal Hearing in virtual mode. He submitted that they have already submitted written submission and reiterated the same. He requested time for submission of additional documents and accordingly, one week time was granted. As per written submission dated 19.01.2026, the importer reiterated the facts of the case and further stated that they filed Customs Appeal No. 89395 of 2014 before the Hon'ble CESTAT. Upon considering the importer's submission, the Hon'ble tribunal was pleased to remand the matter for reassessment for extending the benefit of Notification No. 12/2012-Cus dated 17.03.2012 as per eligibility. The remand order is binding on the assessing/adjudicating authority, and the present proceedings are therefore required to be confined to (i) verification of eligibility under Sl. No. 332/List 8; and (ii) passing of a reassessment order granting exemption if the goods answer the description and end-use conditions, followed by consequential refund. Sl. No. 332 expressly covers "Any Chapter" goods, meaning classification under a particular chapter/heading is not determinative, so long as the imported goods satisfy the description of "Non-conventional energy devices or systems specified in List 8." The subject Gas Engine is meant to be operated on biogas generated from sewage/human waste processing, and therefore falls within the scope of List 8 either as a "bio-gas engine" under Entry (15) and/or as part of a "municipal and urban waste conversion device producing energy" under Entry (16). The exemption is purpose-driven and technology-driven, intended to promote non-conventional energy and waste-to-energy systems;

the importer's project squarely fits within the municipal/urban waste conversion producing energy category. Based on the documents already submitted for verification-namely, the EPC/work order and project linkage records with Delhi Jal Board, proof of JICA funding, the process note/flow chart evidencing sewage/human waste conversion into sludge with generation of biogas, the technical literature/specification sheets establishing that the imported gas engine is configured for biogas-based operation, and the Installation/commissioning/usage confirmations (as available) is respectfully submitted that the eligibility under Notification No. 12/2012-Cus dated 17.03.2012, Sl. No. 332 (Any Chapter) read with List 8 (15) and/or (16) stands duly established, and therefore the said Bill of Entry No. 4758844 dated 27.02.2014 may be reassessed by extending the exemption at NIL rate of duty, in strict compliance with the Hon'ble CESTAT remand directions. Once reassessment is completed granting exemption at NIL rate, the duty earlier collected becomes excess and not payable. Since the importer had paid the duty specifically under protest, the importer is entitled to consequential refund of Rs. 80,86,379/- paid vide Challan No. CK42514034 dated 28.03.2014. The importer also prays for interest, wherever applicable, as per the governing provisions, since the amount has been retained by the department despite eligibility under the exemption and remand direction for reassessment.

DISCUSSION AND FINDINGS

10. I have carefully considered the facts of the case, the records available on file, the submissions made by the importer, and the directions contained in the remand order passed by the Hon'ble Customs, Excise and Service Tax Appellate Tribunal. I find that the original adjudicating authority had examined both the classification of the imported goods as well as the admissibility of exemption under Sl. No. 332 of Notification No. Notification No. 12/2012-CE dated 17.03.2012 in respect of the subject goods.

10.1. I further observe that the Hon'ble Tribunal remanded the matter to the original adjudicating authority for passing a fresh decision, after granting an opportunity of hearing to the appellant, limited to the issue of coverage of the imported goods under the aforesaid notification. The classification of the goods under CTH 8502 as 'generating sets' was not disputed by the appellant before the Hon'ble Tribunal and, therefore, the same has attained finality. Accordingly, the present proceedings are confined only to the examination of the admissibility of exemption under Sl. No. 332 of Notification No. 12/2012-CE dated 17.03.2012 in respect of the subject imported goods.

11. Now, from the foregoing discussions, it stands established that the imported goods are 'biogas-based generating sets' classifiable under CTH 8502 and not merely "bio-gas engine" or "bio-gas plant"; therefore, the issue that arises for determination in the present case is whether the benefit of Sr. No. 332 of Notification No. 12/2012-CE dated 17.03.2012 is admissible to such 'biogas-based generating sets' or otherwise.

12. On perusal of the text of the notification read with List 8 appended to the said notification, I find that the benefit under Sr. No. 332 of Notification No. 12/2012-CE dated 17.03.2012 is available only to non-conventional energy devices or systems namely 'bio-gas plant and bio-gas engine as are specifically enumerated in List 8 appended thereto. The scope of exemption is therefore required to be construed strictly and is confined only to the goods viz. 'bio-gas engine and bio-gas plants' expressly mentioned therein., and not to goods falling outside the scope of the said entries.

13. Before determining the admissibility of exemption under Sr. No. 332 of Notification No. 12/2012-CE dated 17.03.2012 in the present case, it is necessary to examine and distinguish the scope and meaning of the three distinct nomenclatures, namely "bio-gas engine", "bio-gas plant" and "bio-gas based generating sets", so as to ensure a proper, harmonious and legally sound interpretation of the notification.

13.1. A “**bio-gas plant**” is a system or facility designed for generation and processing of biogas from organic or biodegradable waste through anaerobic digestion. Its primary function is production of biogas as a source of renewable fuel.

13.2. A “**bio-gas engine**”, on the other hand, is an engine specifically designed or modified to operate on biogas as fuel. Such engine by itself functions only as a prime mover and does not independently generate electrical energy unless coupled with a generator/alternator.

13.3. A “**bio-gas based generating set**” is an integrated system comprising a bio-gas engine coupled with a generator/alternator, designed specifically for generation of electrical energy. In such systems, the biogas engine acts as the prime mover while the alternator converts mechanical energy into electricity. Therefore, the generating set emerges as a distinct commercially identifiable product having a separate function, character and use from that of a mere bio-gas engine or bio-gas plant.

13.4. Accordingly, though a bio-gas engine may constitute one of the essential components of a bio-gas based generating set, the latter cannot be equated with or reduced to a mere “bio-gas engine” for the purpose of extending exemption under Sl. No. 332 of Notification No. 12/2012-CE dated 17.03.2012, particularly when the notification specifically enumerates only “bio-gas plant” and “bio-gas engine” under List 8 and does not include “bio-gas based generating sets”.

14. As discussed hereinabove, and particularly in view of the examination report and the undisputed observations of the Docks Officer, I find that the imported goods consist of a biogas engine coupled with a generator (alternator), together forming an integrated ‘biogas-based generating set’ designed for generation of electrical energy, wherein the biogas engine functions as the prime mover in place of engines operating on conventional/fossil fuels such as diesel, petrol, coal, furnace oil, natural gas or LPG. Accordingly, the imported goods are appropriately classifiable as

“biogas-based generating sets” under CTH 8502 and not as mere “bio-gas engine” or “bio-gas plant”.

14.1. Further, with regard to the admissibility of exemption under Sr. No. 332 of Notification No. 12/2012-CE dated 17.03.2012, I find that the scope of List 8 appended thereto is specifically restricted to the non-conventional energy devices or systems expressly enumerated therein, including “bio-gas plant” and “bio-gas engine”. The said notification does not include or extend its coverage to “biogas-based generating sets”, which constitute a distinct, commercially identifiable and functionally separate commodity from a mere ‘bio-gas engine or bio-gas plant’.

14.2. In this regard, reliance is placed upon the judgment of the Hon’ble Supreme Court in Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company reported in 2018 (361) E.L.T. 577 (S.C.), wherein it has been held that exemption notifications are required to be construed strictly and the burden to establish eligibility lies upon the claimant. Applying the ratio of the said judgment, I hold that the benefit of exemption under Sl. No. 332 of Notification No. 12/2012-CE is not admissible to the impugned “biogas-based generating sets”.

ORDER

15. *In view of the foregoing discussions and in compliance with the directions contained in the remand order passed by the Hon’ble Tribunal, I hold that the benefit of Sr. No. 332 of Notification No. Notification No. 12/2012-CE dated 17.03.2012 is not admissible to the impugned goods. Consequently, I do not find any infirmity in the findings and conclusions arrived at in the earlier Order-in-Original with regard to denial of exemption benefit, confirmation of differential duty, confiscation of goods under Section 111(m) of the Customs Act, 1962, imposition of redemption fine under Section 125(1), and penalty under Section 112(a) of the Customs Act, 1962, which are accordingly upheld.*

15.1. Accordingly, the earlier Order-in-Original stands reaffirmed to the above extent.

16. This order is issued without prejudice to any other action that may be taken against the Noticee or persons or imported goods under the provisions of the Customs Act, 1962 or any other law for the time being in force in India.

Digitally signed by
Mazid Khan
Date: 26-05-2026
17:54:11

(MAZIDKHAN)

Additional Commissioner of Customs
Group VA, NS-V, JNCH

To,

M/s VA Tech Wabag Limited
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Copy to:

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