

F. No.14/28/2013-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, Parliament Street, New Delhi - 110001

Dated 28th May, 2018

Sub:- Re-examination of the Final Finding dated 28.07.2017 issued by the Designated Authority, pursuant to the CESTAT Final Order No. AD/A/50938-50942/2018-CU[DB] dated 13.03.2018 in the matter of Anti-dumping investigation concerning imports of “Castings for Wind Operated Electricity Generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators” originating in or exported from China PR.

A. Background of the Case

No.14/28/2013-DGAD - Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act), and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter also referred to as the Rules) thereof, M/s Larsen & Toubro Limited had filed Anti-dumping petition and the Authority had issued **Final Finding** dated 28th July, 2017 (hereinafter also referred as ‘FF’) recommending imposition of AD Duty on imports of “Castings for Wind Operated Electricity Generators, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component meant for wind-operated electricity generators” (hereinafter also referred as ‘PUC’ or ‘the product’) originating in or exported from China PR (hereinafter also referred as ‘subject country’). The investigation concerning the subject matter captioned above was initiated on 01st February, 2016. The case was **initiated** considering 18 months (from 01.04.2014 to 30.09.2015) as Period of Investigation (**POI**). Thus, the POI was 18 months and the Injury period was 2011-12, 2012-13, 2013-14 and POI. After the issue of the FF, a **corrigendum** to the abovesaid FF dated 11th August, 2017 was also issued for bringing out the clarification in the duty table in para 140 of the FF. In pursuance of the above mentioned Final Findings including corrigendum, Department of Revenue through **Customs Notification** No. 42/2017-Customs (ADD) dated 30th August, 2017 imposed antidumping duty.

2. **CESTAT Order:** Thereafter, three appeals were filed by the exporters from China PR (M/s Jiangsu FAW Foundry Co. Ltd, M/s Dalian Huarui Heavy Industry Casting Co. Limited and M/s Dalian Huarui Special Transmission Equipment Co. Limited), one by the importer from India (M/s Inox Wind Limited) and another one appeal by the Domestic Industry (M/s Bradken India Pvt. Ltd., DI in terms of para 23 to 33 of the FF as upheld by the Hon’ble CESTAT in para 14 of its abovesaid judgement). The Hon’ble

CESTAT issued Final Order No. AD/A/50938-50942/2018-CU[DB] dated 13.03.2018 in the said investigation case.

3. The appellant three exporters and one importer filed appeals mainly agitating the scope of PUC and DI as well as contesting the imposition of AD Duty alleging no injury to the DI. The Hon'ble CESTAT, in para 15 of its judgement, upheld that there was no merit in the appeals filed by the three China exporters and one Indian importer against the levy of anti-dumping duty on the subject goods and accordingly these appeals were dismissed by the Hon'ble CESTAT.
4. The Domestic Industry filed appeal against fixation of lesser AD duty on the imports of PUC. DI (as noted in para 9 and 11 of the judgement) submitted that the exporters are from China and it is a recognized fact that the China PR is a non-market economy. Referring to Annexure-I para 7 of the AD rules, DI submitted that having treated China as non-market economy, the normal value has been computed based on the cost of raw castings of the DI. The exporters have exported finished castings to India. Dumping margin has been computed by taking computed price (based on cost of DI) of raw casting and the export price has been taken for finished castings. This is in clear violation of para 6 (i) of Annexure-I to AD Rules. Accordingly, the quantum of AD duty imposed is much lesser than what ought to have been correctly determined by D.A.
5. The Domestic Industry further elaborated the issue in the court and contended that the Non-Injurious Price (NIP) and the Constructed Normal Value/ CNV (broadly based on NIP) have been calculated by dividing the total cost by the Raw weight quantity (as supplied by the Domestic Industry in its petition. While the Landed Value (LV) and Net Export Price (NEP) have been calculated by dividing the Export value by the Finished weight quantity (which usually is lower than raw weight). Hence, according to DI, the Injury Margin (NIP less Landed Value) and the Dumping Margin (Constructed Normal Value less Net Export Price) are calculated to be a lesser amount resulting into lower duty than otherwise. The DI has requested to calculate all the four factors (NIP, CNV, LV and NEP) by taking only one weight into account (either the raw weight or finished weight) so that a fair comparison can be made to determine the Dumping Margin and Injury Margin.
6. Based on the appeal filed by the DI, the Hon'ble CESTAT has remanded the case to the Designated Authority, only on the limited 'weight issue' as raised by the domestic industry in para 4 above, with the direction to examine, afresh, the factual claims made by the DI on this aspect and complete the same within a period of eight weeks from the date of receipt of the order. The relevant extracts as given in Para 16 and para 17 of the CESTAT Order are given below:

16. "Considering the appeal by the DI, we note the only grievance of the appellant is that the DA has committed a serious error in quantifying the dumping margin and injury margin. This is because the DA adopted the same weight comparison for normal

value/non-injurious price and export price/landed price of imports. The exported goods were mainly machined castings. Comparison made is with rough castings made by DI. Since, the final finding did not come out with clear analysis and specific finding on this claim of the appellant/DI we have specifically directed the learned Counsel for the DA to file his comments with supporting data. However, no such written comments were filed by the DA, we are constrained to go by the facts and analysis to the extent available in the final finding dated 28/07/2017. As already noted this crucial aspect regarding the export items being substantially being finished castings and the data comparison details for DI is for rough castings, we note that this aspect requires re-examination by the DA for clear and informed decision on the correctness of the data analysis by the DA for fixing the quantum of AD duty. **Since, the appellant DI had forcefully contended that person is a factual error in the comparison and the weight difference between rough and finished casting will be in the range of 3% to 12% depending on the casting type, we note that a clear and specific finding on this aspect should have been recorded by the DA.** The same is not forthcoming in the final finding. In terms of Para 6 (i) of Annexure II of AD rules while arriving at margin of dumping the DA shall make a fair comparison between export price and the normal value. Due allowance shall be made in each case on its merits for difference which affect price comparability. In the present case, the weight and physical characteristics of PUC are crucial for such comparison. Accordingly, while upholding the imposition of AD duty as per the final finding, we direct the DA to examine, afresh, the factual claims made by the DI on this aspect. After due examination, the DA may issue his finding on this aspect. In case based on the factual input, the margin of dumping and thereby the injury parameters vary then the AD duty shall accordingly be fixed by the DA. The said exercises may be completed by the DA within 8 weeks of receipt of this order. As already noted the AD duty imposed and being collected in terms of the final finding and the customs notification shall continue in the meantime as the imposition of AD duty has been upheld on merit.

17. In view of the above discussion and analysis, the appeals filed by Indian importer and Chinese Exporters were dismissed. The appeal by DI is disposed of with the above direction.”

7. Thus, the Hon’ble CESTAT upheld whole of the abovesaid Final Finding but for the limited issue raised by the DI as mentioned in para 4 above (hereinafter also referred as **‘weight issue’**) to be reconsidered by the DA.

B. Procedure

8. In compliance with the above direction of Hon’ble CESTAT, the Authority conducted a Public Hearing on 09.04.2018 which was attended by 10 participants including representatives of domestic industry, the exporters and other interested parties. The parties attending the Public Hearing were requested to make their submissions in writing and rejoinders, if any. In response to the Public Hearing, the following parties made their submissions, either in the Written Submissions or in the Rejoinders:

- a. Zhejiang Jiali Wind Power Technology Co., Ltd.
- b. Domestic Industry
- c. Yeong Guan Energy Tech. Group Company Limited

C. Submission of Domestic Industry

9. The legal counsels representing the Domestic Industry have given written submissions as under:
 - a. CESTAT admitted that weight and physical characteristics of PUC are crucial for fair comparison, and remanded the matter to the Designated Authority for re-examination and limited the scope of the present remand proceedings to the claims of domestic industry on the weights adopted for the domestic and imported castings in order to determine normal value, export price, dumping margin, landed price, NIP, and injury margin.
 - b. **The domestic industry has supplied castings in semi-finished form from its factory to one of its vendors, who carries out the finishing operations.** The domestic industry pays charges for such finishing work. Since the invoice is raised at the time of supply to such vendor, the weight of such casting reported by the domestic industry during the investigation was the weight of the semi-finished castings, as this is the form in which it has shipped the material from its factory.
 - c. **The exporters supplied all castings in finished form and also reported weight of finished castings only.** The finishing of the product leads to a **significant reduction** in the weight thereof, in the **range upto 20%**. Thus, for the same product, the weight reported by the domestic industry, being unfinished weight, is more than the finished weight reported by the importers.
 - d. Yeong Guan Energy Tech. Group Company Limited at the time of hearing clearly stated that they have reported weights of finished castings. All the exporters barring Jiangsu Faw Foundary Co., Ltd have reported weights of finished castings, as they have shipped weights as mentioned in the packing list which contains weights of the castings shipped by these parties.
 - e. The domestic industry never requested the Authority to change the weight. The domestic industry merely asked the Designated Authority to make adjustments to either the weight of the exporters "finished castings" or the domestic industry's "raw castings" in order to ensure fair comparison as prescribed under the Rules.
 - f. The invoices of domestic industry do not have weight of the castings. Invoices contain only number of castings. Such being the case, final findings contains severe factual error.
 - g. There is the difference in raw as cast and finished casting weights **ranging 5% to 12%**. With such a significant difference in the weight of the two products, if NIP of one type is compared with landed price of other type, it would naturally lead to highly distorted dumping margin and injury margin.
 - h. All parties to the present investigations are very well aware that there is a significant difference in cost and price of "as cast" and "finished" castings. The difference is to such an extent that it led to different PCN for this reason.
 - i. 91% of sales by the petitioner were of "as cast" castings. Thus, the production information given by the petitioner substantially pertained to "as cast" castings.

Domestic industry has reported the sales and production in respect of raw casting regardless of whether the castings were sold as raw casting or finished castings.

- j. Comparison of domestic industry's raw casting NIP with imported finished casting landed price has led to proportionately understated injury margin. Similar is the impact on dumping margin. Since the export price has been adopted on the basis of imported castings and the weights reported by the exporters, the export price is in respect of finished castings weights. Thus, there were significant differences in the physical characteristics of the domestic and imported product, which require an appropriate treatment. The authority is required to either make comparison by considering comparable product types, or, in the alternative, make an appropriate adjustment for this difference.
- k. The exporters have not clarified what form of castings has been exported by them. Even when the Authority had specifically asked the same during the public hearing, the exporter only responded that source of weight reported by them and not the form of product exported by them.
- l. The scope of the product under consideration is not the subject matter of the present investigation and the Authority cannot go beyond the limited scope of the remand proceedings as has been fixed by CESTAT. It is also relevant to point out that the form of casting is one of the parameters of PCN and therefore there can be no exclusion of a product which is either as cast or as machined.
- m. There is no question of domestic industry deliberately not providing complete information. The domestic industry had provided information based on castings shipped by them.

D. Submissions by Other Interested Parties

10. Following are the post-hearing submissions given by the other interested parties:
 - (i) The legal counsels representing M/s Zhejiang Jiali Wind Power Technology Co., Ltd have given written submissions as under:
 - a. It was noticed by the Authority that two parts namely Hub and Main Frame constituted majority of the volume and rest of the parts which were large in number but having negligible contribution in volume. Therefore, in order to facilitate a fair comparison, PCN devised during initiation of investigation were regrouped in consultation with all the interested parties including domestic industry.
 - b. CESTAT stated that the crucial aspect regarding the export items substantially being finished castings and data comparison details for Domestic Industry is for rough castings, requires re-examination by the Designated Authority for clear and informed decision on the correctness of the data analysis by the Designated Authority for fixing the quantum of AD Duty.
 - c. The Verification Officers examined the invoices, commercial invoices, packing list, drawings, weight etc. They physically weighed the product under consideration and instantly took the pictures of the weighing machine to record the weights. The Verification Officers took all necessary precautions to verify the actual weights of the subject goods exported by Zhejiang Jiali.

- d. The exporter further claimed that no additional information shall be called for and taken into consideration by the Authority while finalizing the Findings based on order of CESTAT. The Domestic Industry has deliberately not provided the complete information with the Authority during the investigation proceedings. Since the applicants have not made any claim of finished products at the time of verification or investigation, they cannot bring such claims at this stage and the findings of the authority with the available facts shall be final.
 - e. The Domestic Industry shall be considered as non-cooperative and its claims shall be rejected by the Authority simultaneously. The determinations made by the Authority are in accordance with the Rules and final. The Authority shall not consider any additional information provided by the Domestic Industry.
 - f. The exporter also submitted that machined products shall not be considered as a part of product under consideration as Domestic Industry produces only rough castings and machining is done by the other party/contractor and further sold to the consumers. Thus, no further information shall be taken into consideration by the Authority and conclude its findings as per facts available with the Authority.
- (ii) The legal counsels representing Yeong Guan Energy Tech. Group Company Limited have submitted in its rejoinder as under:
- a. It is submitted that at the time of hearing although there was an error on part of representatives of the Exporters while mentioning that the said Exporter group exported only finished castings, it can be seen that while Yeong Chen Taiwan exported both raw and finished castings and Yeong Shang Ning exported only finished castings. Further, it is reiterated that all data provided to the DA at the time of investigations were based only on raw weights of finished castings which has been verified at the time of onsite verification by the designated investigation team. Furthermore, on query raised by the jurisdictional Deputy Director, DGAD vide its email dated 17.07.2017, the exporter confirmed that by email dated 19.07.2017 that the exporter reported raw weights of finished castings in its Appendix-2. Hence, allegation of the Domestic Industry that all exporters have calculated export price on the basis of weight of finished castings does not hold ground.

E. Re-examination by the Authority pursuant to CESTAT Order dated 13.03.2018

11. The Authority has examined the above comments to the Oral Hearing in the light of its Final Finding dated 28.07.2017 including the concerned corrigendum dated 11.08.2017 and the Hon'ble CESTAT judgement dated 13.03.2018 as under:
12. **Domestic Industry (DI):** The petition had been originally filed by M/s Larsen & Toubro Limited (hereinafter referred as "L&T"). However, M/s Bradken India Pvt. Ltd. (hereinafter referred as "Bradken") had taken over the manufacturing facility of the subject goods at Coimbatore plant from L&T on 3rd March, 2016 (after the date of initiation and the POI) as ongoing concern. As the takeover took place after the initiation of this investigation, Bradken impleaded to be the co-petitioner in the present investigation which was duly considered by the then Designated Authority vide para 4 of the notes at page 22/N and vide para 9 of the notes at page 37/N. Therefore, hereinafter

L&T and Bradken together/ independently has been referred as 'Domestic Industry/ DI' or 'the petitioner'. This conclusion is in consonance with para 23 to 33 of the FF as upheld by the Hon'ble CESTAT in para 14 of its abovesaid judgement.

13. **Products under Consideration (PUC):** The products under consideration in the present petition is "Castings for wind operated electricity generators also known as castings for windmills or wind turbines, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/component, meant for wind-operated electricity generators".

Products Description: A Windmill requires a number of casting parts, including the Hub, Rotohub, Rotor Nabe, Main Frame, Base Frame, Main Foundation, Nacelle, Nacelle Frame, Nacelle Foundation, Bearing Housing, Bearing Support, Hollow Shaft, Main Axle, Rotor Shaft, Rotor Coupling, Axle Pin, Main Shaft, Lateral Suspender, Pitch Stop, Stator, Generator castings, Part of Generators, Rotor, Torque Arm support, etc. These castings are used in the wind turbines along with some other non-casting parts and components like blades, etc. which leads to the generation of electricity. All such castings, whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/ component, meant for wind-operated electricity generators are covered in the present investigation.

14. **Domestic Verification:** L&T had manufacturing facilities of PUC located at Coimbatore, Tamil Nadu and Kansbahal, Odisha. Kansbahal unit had suspended its production in 2012-13. Therefore, costing data relating to only Coimbatore plant has been considered for NIP determination. All the records and data relating to PUC of L&T (now owned by Bradken) are available at Casting Manufacturing Unit, Coimbatore. Therefore, the domestic verification was conducted by the designated investigation team at their Plant at Coimbatore, Tamil Nadu from 16.09.2016 to 17.09.2016. **It is notable here that the Domestic Industry (DI) did not raise the concerned 'weight issue' at the time of domestic verification before the concerned investigation team.**

15. **Exporter Verification:** There were two verification visits undertaken to investigate this case which are mentioned as under:

(a) **First Exporters' Visit:** The data submitted by the following three producers/ exporters (represented by consultant M/s World Trade Consultants and Advocates) of the subject goods in China, as filed in their questionnaire responses, was verified by the designated investigation team from 17.10.2016 to 21.10.2016 in the premises of the respective entity located in three different provinces of China:

- (i) M/s Jiangsu Faw Founder Co. Ltd. (producer/Exporter),
- (ii) M/s Dalian Huarui Heavy Industry Casting Co. Ltd. (Producer/Exporter) and
- (iii) M/s Zhejiang Jiali Wind Power Technology Co. Ltd. (Producer/Exporter).

(b) **Second Exporters' Visit:** The second round of verification of data of following producers/ exporters (consisting of fifteen entities) of the subject goods in China, as filed in their questionnaire responses, was completed during the period from 28.11.2016 to 03.12.2016 by the aforesaid investigation team in the premises of the respective companies located in China:

I. The Yeong Guan Group of Companies, China PR (represented by consultant M/s Ashok Dhingra Associates) consisting of:

- (iv) M/s Yeong Guan Energy Tech. Group Company Limited (Producer),
- (v) M/s Dongguam Yeong Guan Mould Factory Co. Ltd. (Producer),
- (vi) M/s Jiangsu Bright Steel Fine Machinery Co. Ltd. (Producer),
- (vii) M/s Ningbo Lu Lin Machine Tool Foundry Co. Ltd. (Producer),
- (viii) M/s Ningbo Yeong Shang Casting Iron Co. Ltd. (Producer and Exporter),
- (ix) M/s Yeong Chen Asia Pacific Co. Ltd. (Producer and Exporter),

II. The Jiangsu Sinojit Group of Companies, China PR (represented by consultant M/s. Lakshmikumaran & Sridharan) consisting of:

- (x) M/s Jiangsu Sinojit Wind Energy Technology Co. Ltd. (Producer and exporter),
- (xi) M/s Techtone HK Ltd. (Exporter),
- (xii) M/s Changzhou Sinojit Wind Energy Tech. Co. Ltd. (Producer),
- (xiii) M/s Jiangyin Henghua Machinery Co. Ltd. (Producer),
- (xiv) M/s Jiangyin Qixing Technology Co. Ltd. (Producer),
- (xv) M/s Jiangyin Changling New Energy Co. Ltd. (Producer),
- (xvi) M/s Nantong Hongde Mechanical Co. Ltd. (Producer and Exporter) and
- (xvii) M/s KOIZUMI Machinery Co. Ltd. (Producer).

III. One participant of the companies as referred in para 15(a) above (represented by consultant M/s World Trade Consultants and Advocates) consisting of:

- (xviii) M/s TECHTONE (HK) Energy Technology Co. Ltd. (Exporter).

16. Here following was noted by the investigation team in para 9 under 'verification of Appendix-2' of the Exporter Verification Report (EVR) issued for M/s Dalian Huarui Heavy Industry Casting Co. Ltd. (Producer/Exporter):

"It was noticed that exporter has indicated the weight of the products in appendix-2 as per the approved drawings of the customers whereas the packing list indicated marginally different weights. It was clarified by the technical team of the company that in casting operation, it is difficult to achieve exact weight as per the drawing and a tolerance limit of 8% to 10% is a standard norm. However, since the customer pays on per piece basis drawing weight has been indicated in the appendix-2. Since, for the purpose of Dumping and Injury Margin determinations, weight has been considered as the criteria the exporter was asked to incorporate the number of pieces and net weight as per the packing list in the appendix-2 against each transactions. The exporter

complied with the requirements and revised appendix-2 was taken on record. Sample products were also weighed to cross check the finished weight of the products.”

17. It is noted here that the earlier total drawing weight reported by M/s Dalian (para 8 of its EVR) was **8,950 MT** which was revised and **increased by 4.30%** to **9,335.13 MT** (para 10 of the EVR) as per the packing list weight. The similar observation and **consequent corrections were carried out by the investigating team in the cases of appendix-2 of other exporters also.**
18. **Public Hearing:** Three Public Hearings were held during the investigation period of 18 months in this case which are mentioned as under:
 - (a) The first Public Hearing in this case was held on 07.09.2016 which was attended by 21 participants including the domestic industry.
 - (b) Second Public Hearing was held on 16.12.2016 due to change in the Designated Authority which was attended by the interested parties including the domestic industry. Since this hearing remained restricted only to the locus of the present petitioner to maintain the present petition. The DA decided to hold another hearing thereafter.
 - (c) Third Public Hearing was held on 03.05.2017 which was attended by the interested parties including the domestic industry. Para 20 of the post-hearing written submissions dated 11.05.2017 as given by the DI is reproduced as below:

*“There are no known differences in subject goods produced by the petitioner and exported from China PR. **Both products have comparable characteristics** in terms of parameters such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification, etc. The goods produced by the domestic industry **are comparable** to the imported goods from China PR in terms of essential product properties. **In fact, the subject goods are largely produced to meet specific customer requirements.** The goods offered by the domestic industry are like article to the goods imported from China PR. All parts are made only as per customer specifications.”*
19. It is notable here that **none of the interested parties including the Domestic Industry raised the concerned ‘weight issue’ in either any of these hearings or in its written submissions to these hearings.**
20. **Meetings with DI:** Two meetings were held between the then Designated Authority and the Domestic Industry represented by Dr. Nithyanandan Devaraaj and Mr. A.K. Gupta, TPM Consultants on 22.11.2016 and 27.04.2017. Apart from this, the DI had numerous conversations on regular basis with the investigation team during the 18 months of investigation process. **The Domestic Industry did not raise the concerned ‘weight issue’ in any of these meetings with/ representations to the DA.**

21. **Timelines:** This case was initiated on 01.02.2016 and the investigation was to be concluded by 31.01.2017 (12 months' normal timeline). However, two extensions of 3 months each were sought from the Department of Revenue wherein the timeline was revised to 30.04.2017 and 30.07.2017 respectively. Thus, **the case had reached the maximum allowed timeline of 18 months.** The broad timelines in this case are as under:

Particulars	Timelines
Date of Initiation	01-Feb-16
First Public Hearing	07-Sep-16
Visit for Domestic Verification	16-Sep-16
First Visit for Exporter Verification	17-Oct-16
First meeting of DI with DA for representation	22-Nov-16
Second Visit for Exporter Verification	28-Nov-16
Second Public Hearing	16-Dec-16
First Extension of 3 months from TRU sought and received on	23-Dec-16
Expiry of 12 months from Initiation	31-Jan-17
Second Extension of 3 months from TRU sought and received on	06-Apr-17
Second meeting of DI with DA for representation	27-Apr-17
Expiry date of 15 months after First Extension from TRU	30-Apr-17
Third Public Hearing	03-May-17
Date of Disclosure Statement	10-Jul-17
Date of Final Finding	28-Jul-17
Expiry date of 18 months after Second Extension from TRU	30-Jul-17
Date of Customs Notification for the Final Finding	30-Aug-17
Date of CESTAT Order	13-Mar-18
Date of receipt of CESTAT Order in the office of DA	03-Apr-18
Fourth Public Hearing pursuant to CESTAT Order	09-Apr-18
Last Date of Final Finding pursuant to CESTAT Order	29-May-18

22. **Disclosure Statement and comments thereon:** The disclosure statement was issued to all the interested parties including the DI on 10.07.2017 in the said case. The relevant facts (post-disclosure) are as under:

(a) **Post-disclosure comments by the DI:** For the first time since initiation of this case on 01.02.2016, the DI brought before the Authority the concerned 'weight issue' in its post-disclosure comments in July-2017 (i.e. in the 18th month of the initiation). The relevant extracts from para 129 of the FF are as under:

ii. *To facilitate a fair comparison, the PCN devised and regrouped and rationalized by the Authority. Petitioner does not have reservation on such grouping, it needs to be recognized that the petitioner has sold the product in unfinished form whereas product has been imported in finished form.*

iii. *The weight of the products is required to be considered on one uniform basis in order to undertake apple-to-apple comparison for the purpose of injury margin. Mere addition*

of finished costs to the NIP of the domestic industry is insufficient for the purpose. The weight associated are also required to be taken into account.

v. Dumping margin and injury margin determined by the Authority in disclosure statement is significantly lower than what has been determined by domestic industry.

- (b) After the post-disclosure comments received from the DI, the **investigation team discussed this issue at length before the Final Finding** on the file.
- (c) The Investigating Officer in the case examined the issue vide page N/44 to N/45 in the file.
- (d) Thereafter the DA sought comments from the Costing Officer/ Principal Adviser Cost (PAC) in the case. The comments given by the later on the file vide page N/45 to N/46 are reproduced as under:
- (i) *The contention of DI can be examine only after studying the exporters practices. First of all, it is clarified that product is priced on per piece basis as actual weight of the finished product is not relevant for raising export invoice. The weight provided in the appendix 2 by exporter was cross checked from the packing list, is the weight declared by the exporter is the custom authorities and accepted by them seems to have meaning and can not be rejected until the Authority has some other contrary ground.*
- (ii) *It is also to state that DI has supplied machined PUC to a handful domestic buyers. An attempt was made to compare weight of the same article quoted by exporters in their packing list. The result was as under:-*

<u>Parts of the PUC</u>	<u>Weight given by Domestic Industry (in Kg per piece)</u>	<u>Weight given by Jiangsu Faw (in Kg per piece)</u>	<u>Weight given by Yeong Chen (in Kg per piece)</u>
Hub	***	***	***
Mainframe	***	***	-
Variance – Hub		3.9%	1.85%
Variance - Mainframe		0.26%	-

- (iii) *From the above, it is evident that the basis of indicating weight in the packing list of exporters and data given by DI is **by and large the same** and changing the weight claimed by exporter, duly verified by the DGAD team from the packing list, declaration made before custom authority and accepted by them will not be appropriate especially when there is **no wide variance**.*
- (e) Consequent to the comments by IO and CO/PAC as given in sub-para (c) and (d) above, this issue was **examined by the DA in the Final Finding** dated 28.07.2017 vide para 134 to 136 of the FF. Although, in para 136 of the FF, the words ‘invoice of DI’ may be read as ‘Data given by the DI’. The relevant extracts from the FF are as under:

134. *With regard to the submission concerning dumping margin and injury margin determined by the Authority in disclosure statement is significantly lower than what has been determined by domestic industry, Authority communicated to the interested*

parties vide mail dated 17th July, 2017 to clarify that the weights reported by the interested parties are are finished castings or raw weight of finished castings. Further, in case the interested party has reported the finished castings weight, provide the raw weight of the finished castings i.e. the weight of the unfinished castings.

135. This measure was taken to doubly check the workings and calculations made by Authority and to assure that the workings are in sync with verified data.

136. The Authority notes that the basis of indicating weight in the packing list by exporters and invoice of DI is **by and large the same**. Changing the weight claimed by exporters will not be appropriate as the same is duly verified from the packing list and the declaration made before Custom Authority.

23. **Few more comparisons after the CESTAT order:** Pursuant to the CESTAT order dated 13.03.2018, few more attempts were made to compare the weights reported by the DI (in its petition and during the Public Hearing dated 09.04.2018) with the weights reported by the exporters (in the data given by the exporters). In addition, the correctness of the calculations carried out by the then PAC as referred in the table in para 22(d)(ii) above regarding the concerned 'weight issue' was again re-checked from the base documents/ Appendix-2 of the respective exporter.

a) The results are detailed as under:

<u>Parts of the PUC</u>	<u>Weight given by the DI[^] (in Kg/piece)</u>	<u>Weight given by Jiangsu Faw (in Kg/piece)</u>	<u>Weight given by Yeong Chen (in Kg/piece)</u>	<u>Weight given by Zhejiang Jiali (in Kg/piece)</u>	<u>Weight given by Jiangsu Sinojit (in Kg/piece)</u>
Hub (Gamesa G-97)	***	***	***	Not exported@	Not exported@
Variance from DI		3.90%	13.35%	Not exported@	Not exported@
Mainframe (Gamesa G9X)	***	***	Not exported@	Not exported@	Not exported@
Variance from DI		0.26%	Not exported@	Not exported@	Not exported@
Hub (Suzlon S97)	***	Not exported@	Not exported@	***	***
Variance from DI		Not exported@	Not exported@	Uncomarable# (-6.10%)	Uncomarable# (-12.76%)
Mainframe (Suzlon 1.5MW)	***	Not exported@	Not exported@	***	Not exported@
Variance from DI		Not exported@	Not exported@	0.89%	Not exported@
Mainframe (Gamesa G114)\$	***	Not exported@	***	Not exported@	Not exported@
Variance from DI		Not exported@	Uncomarable# (-11.12%)	Not exported@	Not exported@

[^] Weights have been considered as taken by the DI for its Injury Margin calculations (i.e. raw weights as reported by the DI in its petition and till the time of disclosure).

@ Not Exported to India by the respective Exporter during the POI and therefore, can't be compared.

Not comparable as the finished weight reported by the exporter (in its packing list) is more than the raw weight reported by the DI for the same part, same model and same customer. This may be so because the drawings differ from part-to-part, customer-to-customer, within each customer model-to-model and capacity-to-capacity.

\$ This model was compared by the DI in its post disclosure comments in which the DI shown a positive difference between the raw and finished weights. While it can be seen from the above table that the weight difference is negative (i.e. raw/drawing weight as considered by the DI is more than the finished weight reported by the Exporter in its Appendix-2) for the same Part, PCN, Customer, Model and Capacity. While the fact remains that raw weight is higher than the finished weight. Therefore, no two castings are comparable in absolute characteristics.

- b) So as to doubly check and ensure about this 'difference in weights' issue, few more additional comparisons were carried out on overall basis as below:

S. No.	Producer/ Exporter	part in the PUC	Code for the part in the PUC	RAW*			FINISHED*			DIFFERENCE		Comparison Remarks (Variance)	
				Qty. Raw	Qty. Raw	Raw/ Casting	Qty. Finished	Qty. Finished	Finished/ Machined	Difference b/w Raw and Finished	Difference		
				Kg	as %	Kg/pc	Kg	as %	Kg/pc	Kg/pc	as % of Raw		
1	Average of All Exporters for all their models together for all PCNs	Hub	A	***	4%	***	***	35%	***	-6,828	-73.18%	Uncomparable	
2		Mainframe	B	***	1%	***	***	43%	***	-4,166	-33.21%	Uncomparable	
3		Hub + Mainframe	A+B	***	5%	***	***	78%	***	-6,470	-64.76%	Uncomparable	
4		Others	O	***	3%	***	***	14%	***	-521	-32.90%	Uncomparable	
5		all PUC	A+B+O	***	8%	***	***	92%	***	-4,334	-117.63%	Uncomparable	
6		Finished Hub (Overall DI - Overall all exporters) weight considered in FF			***	5%	***	***	35%	***	-11,058	-216.77%	Uncomparable
7		Finished Mainframe (Overall DI - Overall all exporters) weight considered in FF			***	4%	***	***	43%	***	-11,594	-226.60%	Uncomparable

*For S.No. 1 to 5, the weights are of exporters. While for S.No. 6 & 7, raw weights are overall DI weights and finished weights are overall exporters' weights.

- c) Hence, it is clear from the in-depth analysis carried out in sub-para (a) and (b) of this para above that the PUC as manufactured by the DI and as exported to India by the exporters may not be fully comparable because the finished weight reported by the exporter (in its packing list) is more than the raw weight reported by the DI in many individual comparisons and in all overall comparisons. This may be so because the drawings differ from part-to-part, customer-to-customer, within each customer model-to-model and capacity-to-capacity. This uncomparability was found in most of such comparisons and even in minor cases, where difference was comparable, **it was found that the differences were mostly not significant, rather negligible.** Moreover, no specific model/ product item among the PUC could be found which was supplied both by the DI and all the exporters.
- d) The similar observation has been seen in para 6 of page N/5. As per this observation, the castings (raw) are in various sizes and weight depending on the design and models of the windmills for which they are cast. The cost and prices are, therefore, dependent upon the design engineering and material composition involved as well as the overall weight of the casting. Every manufacturer of windmill has his unique design and drawings based on which the casting and machining (finishing) is done by the casting suppliers, including the exporters. Therefore, **the product is highly design dependant and varies with the model of the windmills and only basis to compare the prices is the weight with certain degree of error margins (which is the standard norms as also stated by the exporters in para 16 above).**
24. Moreover, the Sale profile of the PUC of both DI and exports to India has been seen which is as under:

PUC Sold by	Sale of Raw	Sale of Finished
DI	90%	10%
Average of all Exporters together (All Exports to India)	8%	92%

25. It is also noted here that the DI does not carry out the finishing of the castings, which is carried out by the job workers in India outside the factory of DI. These job workers have not participated in the investigation as part of the 'Domestic Industry'. Therefore, the finished weights of the raw castings sold by the DI to job workers/ end customers are not verifiable at the site of the DI. This fact has been noted earlier in Para 129(ii) of the FF under the post-disclosure comments by the Domestic Industry which reads as "the petitioner has sold the product in unfinished form whereas product has been imported in finished form".
26. **Conclusion:** In light of the arguments and analysis as above, the concerned 'weight issue' raised by the DI in CESTAT doesn't warrant fresh investigation on the following grounds:
- (a) The PUC is a **highly customized product** which can only be broadly compared and can't be compared one to one in all its physical characteristics. Therefore, the products within the PUC as supplied by the DI, as supplied by the Exporters and even within the exporters as supplied by different exporters are different and their weights are **not comparable** with each other in most cases. The drawings differ from part-to-part, customer-to-customer, within each customer model-to-model and capacity-to-capacity. Even after having the drawings in place, it is difficult to achieve exact weight as per the drawing and a tolerance limit of 8% to 10% is a standard norm in the industry.
 - (b) The investigation was time bound with the 18th month (non-extendable) deadline approaching and the **DI never raised this issue till the last 18th month**. The issue raised by the DI in the post-disclosure comments in the 18th month of initiation as well as in the CESTAT was **appropriately considered by the then DA** and examined in detail on file.
 - (c) The appropriate corrections, by increasing the weight reported by the exporter in their originally filed EQRs, were made by the Authority in the Final Finding dated 28.07.2017 as mentioned in para 17 above.
 - (d) The maximum Export to India of the PUC is of Finished Castings (92%), while the **DI has sold only 10% of the Finished castings** (that too from the job workers not forming part of the DI) during the POI. For these finished castings of DI, it makes only raw castings and send them to the other party/contractor and further sold to the consumers.


28.5.18
(Sunil Kumar)

Additional Secretary & Designated Authority