	<p>OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-I), कार्यालय आयुक्त सीमा शुल्क (आयात -I) 1st FLOOR, NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400 001. प्रथमतल, नवीन सीमा शुल्क भवन, मुंबई- ४०० ००१</p>
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F. No. CUS/APR/PROV/185/2024-GR-4

Date: 15.07.2024

DIN: 2024077700000000E54A

SCN No. 04/24-25 68 IV

SHOW CAUSE NOTICE UNDER SECTION 124 OF THE CUSTOMS ACT, 1962

Subject: Show Cause Notice in consequence of SVB Bengaluru Investigation Report No. 63/2023 for M/s Nordex India Private Limited (Formerly known as Acciona Wind Power India Private Limited) (IEC No. 0715902725) having address at 210, 2nd Floor, Prestige Emerald Building, Lavelle Road, Bengaluru- 560001.

M/s Nordex India Private Limited [Formerly known as Acciona Wind power India Private Limited.] having address at 201, 2nd Floor, Prestige Emerald Building, Lavelle Road, Bengaluru-560001 (hereinafter referred to as the Importer/ Indian Company), are engaged in manufacture and export of Wind Turbine Generators and related components viz. Moulds, Ball bearing, Hydraulic Distribution blocks, front frame, bottom frame & Gear Box. M/s Nordex India Private Limited is having registered office at 201, 2nd Floor, Prestige Emerald Building, Lavelle Road, Bengaluru-560001 and factory at Survey No 274, Sathyavedu Road, Ketnamalli Village, Gummidipoondi, Thiruvallur, Tamil Nadu-601201 & at No. 5B, No. 235/1B, 257, 258, Casa Grande District Park, Thiruvallur, Tamil Nadu-631203. They have imported goods from related party viz.

- i. M/s. Nordex Energy International S.L.U. Spain,
- ii. M/s Nordex Energy Spain S.A.U.
- iii. M/s Nordex Blades Spain S.A.U.
- iv. M/s Nordex Blades Technology Centre APS
- v. M/s Nordex Energy SE & Co. KG. Germany (Formerly Known as Nordex Energy GMBH)
- vi. M/s Nordex SE, Germany
- vii. M/s Acciona S.A. Spain (till 31.03.2016)
- viii. M/s Acciona Windpower S.A Spain,
- ix. M/s Acciona Blades S.A. Spain
- x. M/s Acciona Windpower Mexico SRL DE CV, Mexico

xi. M/s Acciona Windpower Brazil Ltd, Brazil.

(Hereinafter referred to as the 'Foreign companies' or "Suppliers"). In the instance case for consideration for investigation of related party transactions, letter C.No. VIII/10/45/2020 BACC Gr.5 dated 14.02.2020 received from the Deputy Commissioner of Customs, ACC, Bangalore 560300 intimating the permission granted by the Principal Commissioner of Customs for reference of the case to SVB and ordering goods imported by the importer to be assessed provisionally on execution of PD bond in terms of Board's Circular No.05/2016 dated 09.02.2016, pending investigation in the matter to ascertain whether the relationship between the importer and their suppliers has influenced the sale price and referred the matter to SVB, Bengaluru for further investigation. The case of SVB investigation was registered under DOV0012898.

2. The importer vide letter dated 05.03.2021 has submitted following documents for SVB investigation in respect of related suppliers. The case has been taken up for investigation as per Board Circular No.05/2016 Cus. dated 09.02.2016.

- Duly filled Questionnaire in Annexure B in terms of Board Circular No.05/2016-Cus dated 09.02.2016.
- Copy of IEC, PAN & GSTR
- Copy of Certificate of Incorporation
- List of sales
- Profile of the Company
- Annual financial statements for the year 2017-18 to 2021-22
- Copy of the Agreement with parent company
- Copies of Bills of Entry

3. During the SVB investigation, the importer has submitted that M/s Nordex India Private Limited [Formerly known as Acciona Wind power India Private Limited.] having corporate office at 201, 2nd Floor, Prestige Emerald Building, Lavelle Road, Bengaluru-560001 are a private limited company registered on 29th June, 2015 under the provision of the Companies Act, 1956 and are engaged in manufacture and export of Wind Turbine Generators and related components viz. Moulds, Ball bearing, Hydraulic Distribution blocks, Front Frame, Bottom Frame & Gear Box. M/s Nordex India Private Limited were allotted with PAN AANCA5590P, IEC Code No. 0715902725 and they have registered with GSTIN 29AANCA5590P under the jurisdiction of Bangalore North Division CND2 Range. They are manufacturer and are having factory at Survey No. 274, Sathyavedu Road, Ketnamalli Village, Gummidipoondi, Thiruvallur, Tamil Nadu-601201 with GSTIN 33AANCA5590P2ZZ under the jurisdiction of Gummidipoondi Circle Commissionerate & at No. 5B, No. 235/18, 257, 258, Casa Grande District Park, Thiruvallur, Tamil Nadu-631203 with GSTIN 33AANCA5590P2ZZ under the jurisdiction of Thiruvallur Circle Commissionerate; that the importer is subsidiary of Nordex Energy International S.L.U.

Spain, who are manufacturer and seller of Wind Turbine Generators and related components and importer and supplier are related as per the Rule 2(2)(v) of the CVR 2007; the goods are bought based on the transaction value agreed by both the parties merely on the basis that there is increase in prices in the international market between the time of contract and actual shipment of the product and that no collusion between the parties exists, as well the payment was received within the same terms under which the contract was entered into and there is actual no misstatement or undervaluation and the case was also not falling under any of the criteria as mentioned under Rule 4(2) of the Customs Valuation Rules, 1988; that they have also imported capital goods from the related party exclusively for R&D purposes; Identical goods were imported earlier, also from Nordex S.E., Germany and Nordex Energy Spain S.A.U. and the seller of the imported goods supplied the goods directly to M/s Nordex India Private Limited [Formerly known as Acciona Wind power India Private Limited.] #201, 2nd Floor, Prestige Emerald Building, Lavelle Road, Bengaluru-560001, a related buyer and finished goods are exclusively sold back to the related party and no sales of the finished goods are undertaken either to independent parties or any local customers across India.

4. As per the SVB report, the price has been settled in the manner consistent with the way the price is settled by the seller based on transaction value agreed by both the parties merely on the basis that there is increase in prices in the international market and no collusion between the parties exists with related buyer and the price is as per Rule 3(3)(b)(i) of CVR 2007; that the prices are determined on the basis of transfer price and payment are made through normal banking channels, that the goods imported are sold without any Trade Mark or design or license and as per the evidence provided by the importer, royalty has been paid during FY 2016-2017 by M/s Acciona Windpower India Private Limited towards the use of technology licensed by M/s Acciona Windpower S.A., Spain and apart from the above it is confirmed that no royalty agreement exists as per the submissions and declaration provided by the company, that no part of other payment made or to be made as conditions of sale of the imported goods either to seller and third party buyers either directly or indirectly that no service is rendered by or on behalf of the importer relating to the goods imported or undertaken on behalf of the seller of the goods and no price is paid or payable by them by means of debit note/credit note; that they have not entered any transfer price agreement with Income Tax Authority. Further, importer has submitted that during the early tenure of the Indian company, there was an expression of interest issued to the parent company where in technical personnel visited Bengaluru to impart know how on usage of Wind blade technology during the service tax regime, that the price paid/payable by the importer shall be settled with the seller by way of actual cash outflow through Banking channels only; that Importer its associates have not entered into any advance pricing agreement.

5. Further, during the SVB investigation, the importer has submitted the copy of the provisional assessed Bill of Entry along with Annual Financial report for the year 2019-20 and attached TP report, that they have imported Capital Goods from their related seller; that imported goods are not component part of CKD /SKD sets for local assembly into finished goods; that no identical or similar goods are internationally quoted in any database, commodity exchange or industry publications, that the imported items are exclusively supplied by the seller to the importer in India; that the imported goods are sold without brand Trade Mark; the importer is not incurring any expenses on behalf of the seller or their associate; that there is no payment made in the form of agency commission, overriding commission or any other remuneration, including that for services rendered by or on behalf of the seller to other importer in India or to the seller of the imported goods, or their related or associated concerns; that all the bills are paid as per invoice provided from parent company, that the price paid or payable by the importer is not be settled with the seller at a future date by means of debit note/credit note; that the supplier is manufacturer; that the **seller** is not in a position, directly or indirectly, to exercise restraint over the importer, legally or operationally, in any manner; that the **importer** is not in a position, directly or indirectly, to exercise restraint over the seller, legally or operationally, in any manner; that **third party** is not in a position, directly or indirectly, to exercise restraint over both the importer and the seller of imported goods, legally or operationally, in any manner; that the importer and the seller of the imported goods, together are not in positions, directly or indirectly, to exercise restraint over the third persons, legally or operationally; that imported goods are not for stock and sale; that the imported goods are exclusively supplied by the seller to the importer in India; that the product imported are not sold under any trade mark, design or patent owned or controlled by the seller of the imported goods; that no expenses incurred on behalf of the seller or their associate; that no amount paid by the importer in the form of Agency Commission, Overriding Commission or any other remuneration, including that for services rendered by or on behalf of the seller to the other importer in India or to the seller of the imported goods to their related or associated concerns or persons.

6. According to the SVB report, the details of shareholders mentioned in the notes to the Financial Statements. M/s Nordex Energy International S.L.U, Spain (herein called as Promoter) is holding 321255577 number of shares or 99.99% of the holding of the Indian company.

7. Based on documents, submission, declarations and audited balance sheet submitted by the importer, SVB Investigation Report No. 63/2023 dated 06.12.2023 was issued vide F.No. CUS/SVB/3/2023-SVB wherein it was concluded that the royalty being paid by the importer to their supplier company is corroborated in their audit balance sheets and 3CEB

returns. The royalty being paid to the related companies is deemed to be part of the assessable value of such imports under the provisions of Rule 10(1) (c) of the CVR, 2007. **Hence, the goods imported from the related suppliers needs loading of Royalty of 4.17% in Transaction Value of all the Bills of entries vide which goods were imported during the Financial Year 2016-17 in terms of Rule 10(1) (c) of CVR, 2007 and differential duties need to be demanded as per Section 14 of Customs Act, 1962 read with Rule 10 of CVR 2007.**

8. Therefore, M/s Nordex India Private Limited [Formerly known as M/s Acciona Wind Power India Private Limited] having registered office at 201, 2nd Floor, Prestige Emerald Building, Lavelle Road, Bengaluru-560001 is hereby called upon to show cause to the Assistant Commissioner of Customs, Group-IV, New Custom house, Mumbai Zone-I within 30 days of the receipt of this show cause notice as to why:

(i) M/s Nordex India Private Limited [Formerly known as M/s Acciona Wind Power India Private Limited] and M/s Acciona Widpower S.A. Spain, M/s Nordex Energy International S.L.U. Spain, M/s Nordex S.E. Germany and associated of Nordex Group (Foreign supplier) should not be treated as related persons in terms of Rule 2(2)(iv) of Customs Valuation Rules, 2007.

(ii) The transaction value of the imported goods from holding company and associates/ related enterprises should not be rejected in terms of Rule 12 of Customs Valuation Rules 2007

(ii) the value should not be re-determined by loading of Royalty of 4.17% in Transaction Value of Bills of entries vide which goods were imported during the Financial Year 2016-17 from related supplier Acciona Windpower SA, Spain only in terms of Rule 10(1) (c) of CVR, 2007

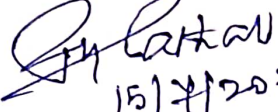
(iii) the differential duties as per Section 14 of the Customs Act, 1962 with usual add-ons under Rule 10(1) (c) to (e) of Customs Valuation Rules 2007, should not be recovered under the provisions of Section 28 of the Customs Act, 1962.

(iv) the interest on the aforesaid duties should not be demanded and recovered under Section 28AA of the Customs Act, 1962.

9. The noticee is hereby required to specifically state along with their written submission/reply as to whether they wish to be heard in person or through the authorized representative before the Adjudicating Authority before the case is decided.

10. If no written submission/reply is received within 30 days from the date of receipt of this Show Cause Notice and if nobody appears for personal hearing before the Adjudicating Authority on the appointed date and time, the case will be decided ex-parte on the basis of evidence already on records without any further reference to anybody.

11. This Show Cause Notice is issued without prejudice to any other action that can be taken against the said goods/importer(s) persons under the Custom Act, 1962 or any other law for the time being in force in the Republic of India


15/7/2024
(R.N. Pathak)
Assistant Commissioner of
Customs, Group IV, Import-1

Encl: SVB Bengaluru Investigation Report No. 63/2023 for M/s Nordex India Private Limited (Formerly known as Acciona Wind Power India Private Limited)

To:

M/s Nordex India Private Limited

(Formerly known as Acciona Wind Power India Private Limited) (IEC No. 0715902725)

210, 2nd Floor, Prestige Emerald Building, Lavelle Road, Bengaluru- 560001

Email id - legal_india@nordex-online.com

Copy to:

1. The Additional Commissioner of Customs, Import-1, NCH, Mumbai
2. The Assistant Commissioner of Customs, SVB Bengaluru (commrapacc-cusblr@nic.in)
3. Assistant Commissioner of Customs, Appraising General Section, Import-1
4. The Deputy Commissioner of Customs, EDI, NCH – for uploading in website
5. CHS Suptd – for Notice Board
6. Guard File