

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 86116 OF 2024

(Arising out of Order-in-Original No. 31/SJ(31)/PCC(ADJN.)/MUMBAI/2023-24 dated 21.12.2023 passed by Principal Commissioner of Customs (Adjudication), Mumbai)

The Commissioner of Customs (Import-I),

New Customs House,
Mumbai-400 001

.....Appellant

VERSUS

M/s. Adani Enterprises Limited

Adani House, Shrimali Society,
Navrangpura, Ashram Road,
Ahmedabad, Gujarat-380009

.....Respondent

WITH

**C/86117/2024
C/86120/2024**

**C/86118/2024
AND**

**C/86119/2024
C/86121/2024**

APPEARANCE:

Shri Shambhoo Nath, Special Counsel of the Department

Shri V.S. Nankani, Senior Advocate, Shri J.H. Motwani, Shri Sachin Mishra and Shri Archi Aditya, Advocates for the Respondents

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**Date of Hearing: 16.04.2026
Date of Decision: 05.06.2026**

FINAL ORDER No's. 85706-85711/2026

JUSTICE DILIP GUPTA:

All the aforesaid six appeals have been filed by the Commissioner of Customs (Import-I), Mumbai¹ to assail the order dated 21.12.2023 passed by the Principal Commissioner of Customs (Adjudication), Mumbai² that has dropped the proceedings initiated against the six respondents by the show cause notice dated 31.08.2016.

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1. the Commissioner
 2. the Principal Commissioner

2. The respondents in the aforesaid six Customs Appeals are:

Appeal No.	Name of the respondents
C/86116/2024	Adani Enterprises Limited ³
C/86117/2024	Adani Renewable Energy LLP ⁴
C/86118/2024	Adani Hazira Port Private Limited ⁵
C/86119/2024	Adani Port and Special Economic Zone Limited ⁶
C/86120/2024	Adani International Container Terminal (P) Limited ⁷
C/86121/2024	Adani Vizag Coal Terminal Private Limited ⁸

3. It transpires from the records that a common investigation by the Directorate of Revenue Intelligence⁹ led to issuance of three separate show cause notices. The details of the show cause notices and the parties are as follows:

Sr. No.	Show cause notice dated	Party
1.	15.05.2014 (first show cause notice)	M/s. Adani Power Maharashtra Ltd. (APML) and M/s Adani Power Rajasthan Ltd. (APRL)
2.	15.05.2014 (second show cause notice)	M/s. Maharashtra Eastern Grid Power Transmission Company Ltd. (MEGPTCL)
3.	31.08.2016 (third show cause notice involved in these appeals)	AEL, AREL, AHPPL, APSEZL, AICTPL and AVCTPL

4. It also transpires from the records that the first show cause notice dated 15.05.2014 was adjudicated by the Additional Director General, DRI (Adjudication)¹⁰ by order dated 22.08.2017. The second show cause notice also dated 15.05.2014 was adjudicated by the Additional Director General by order dated 17.10.2017. The Additional Director General dropped the

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- 3. AEL
 - 4. AREL
 - 5. AHPPL
 - 6. APSEZL
 - 7. AICTPL
 - 8. AVCTPL
 - 9. DRI
 - 10. the Additional Director General

proceedings initiated by these two show cause notices, each dated 15.05.2014.

5. It also transpires from the records that as the Additional Director General had discharged the two show cause notices dated 15.05.2014, the proceedings of the third show cause notice, which has given rise to these six appeals, were transferred to the call book and this fact was communicated to the respondents by a letter dated 26.09.2019.

6. The department challenged the two orders dated 22.08.2017 and 17.10.2017 before the Tribunal. The Tribunal, by final order dated 18.07.2022, dismissed Customs Appeal No. 87758 of 2017 filed by the department to assail the order dated 22.08.2017 passed by the Additional Director General dropping the proceedings initiated by the first show cause notice dated 15.05.2014. The department had also filed Customs Appeal No. 85476 of 2018 to assail the order dated 17.10.2017 passed by the Additional Director General discharging the second show cause notice dated 15.05.2014. This appeal of the department was also dismissed by the order dated 17.10.2017. These two orders of the Tribunal were assailed by the department by filing Civil Appeals before the Supreme Court. Both the Civil Appeals were dismissed by the Supreme Court on 27.03.2023.

7. The third show cause notice dated 31.08.2016 was thereafter taken up for adjudication by the Principal Commissioner.

8. It for this reason that Shri V.S. Nankani, learned senior counsel appearing for the respondents assisted by Shri J.H. Motwani, Shri Sachin Mishra and Shri Archi Aditya submitted that these six appeals filed by the department should also be dismissed as they are squarely covered by the aforesaid two decisions of this Tribunal against which the Civil Appeals filed by the department before the Supreme Court were dismissed. Learned

senior counsel pointed out that the dispute in the present appeals emanates from the very same investigation conducted by the DRI as would be clear from the show cause notice as well as the impugned order. In this connection, learned senior counsel placed various paragraphs of the show cause notice and the impugned order, reference to which shall be made at the appropriate stage.

9. Shri Shambhoo Nath, learned special counsel appearing for the department, however, submitted that the Principal Commissioner committed an error in discharging the show cause notice against all the respondents in this appeal.

10. The submissions advanced by the learned special counsel for the department and the learned senior counsel for the respondents have been considered.

11. In order to appreciate the contention that have been advanced by learned special counsel for the department and the learned senior counsel appearing for the respondents, it will be appropriate to first refer in brief to the facts of the six appeals.

Facts of the Six Appeals

Customs Appeal No's. 86116 of 2024 and 86117 of 2024

12. Pursuant to the Solar Power Policy issued by the Government of Gujarat in 2009, AREL undertook the setting up of a 40 MWP Solar Photovoltaic Power Project at Bitta, Gujarat. It is stated that to ensure transparency, AREL issued a global Notice Inviting Tender on 06.10.2010, adhering to International Competitive Bidding guidelines.

13. Following pre-bid discussions, final commercial offers were received from following five pre-qualified global bidders:

Sr. No.	Bidder Particulars	Final Bid (Total Project Cost in INR Crores)	Cost per MW (in INR Crores)
1.	Sichuan Machinery & Equipment Imp. & Exp. Co. Ltd.	671.60	16.79
2.	Indure Private Limited	690.00	17.25
3.	SEPCO-III Electric Power Construction Corporation	657.68	16.44
4.	Gammon India	720.00	18.00
5.	M/s. Electrogen Infra FZE ¹¹	623.45	15.59

15. EIF emerged as the lowest bidder with a project cost of Rs. 15.59 crores per MW, which was well within the Central Electricity Regulatory Commission¹² prescribed estimates.

16. Consequently, AREL awarded the contract to EIF on an engineering, procurement and construction¹³ basis. A formal contract was executed on 22.11.2010. The said contract was not a simple agreement for the import of goods but a comprehensive EPC contract encompassing significant value-added services and risks undertaken by EIF, inter-alia including:

- (a)** Supply of imported Solar PV modules, inverters, and accessories;
- (b)** Extended warranty of 10 years for manufacturing defects (as opposed to the standard 2 years warranty offered by Original Equipment Manufacturers);
- (c)** Power output generation guarantee for 25 years (up to 90% for years 1-10 and 80% for years 11-25);
- (d)** Free replacement of defective modules and inverters;
- (e)** On-site training for operation and maintenance, testing, and bearing of inspection costs; and
- (f)** Stringent liquidated damages for delays (up to 5% of contract price) and for any shortfall in guaranteed power generation.

11. EIF
12. CERC
13. EPC

17. Subsequently, by a Novation Agreement dated 17.03.2011, all rights and obligations of AREL under the supply contract were assumed by AEL.

14. The imports for the project, namely, thin film solar modules and solar inverters were executed under 28 Bills of Entry. Four were filed by AREL and twenty four were filed by AEL. The assessments were finalized in 2011.

Customs Appeal No. 86118 of 2024

15. AHPPL was incorporated on 07.12.2009 as 100% subsidiary of APSEZL and had developed a bulk cargo port facility for handling container cargo at Hazira Port. It carried out port operations to load, unload, and move cargo for docking vessels. AHPPL required three variations of cranes, namely, Rail Mounted Mobile Harbor Cranes, Rail Mounted Quay Cranes and Rubber Tyred Gantry Cranes as also tugs for the smooth execution of its expanding port operations. To procure this equipment, AHPPL followed a competitive bidding process, in which only foreign bidders participated since no indigenous manufacturer could meet the required specifications, capacity, scope of supply, and extended warranty terms. With a view to ensure transparency, AHPPL invited tenders for design, supply, delivery and transportation of the three variations of cranes and four tugs. The Notice Inviting Tender was issued on 28.10.2010.

16. The final commercial offers were received from two pre-qualified global bidders:

Sr. No.	Bidder Particulars	Initial Bid (Total Project Cost in USD)	Final Bid (Total Project Cost in USD)
1.	M/s Roberts & Schaefer	177,533,936	165,919,566
2.	EIF	173,701,563	157, 138,788

17. EIF emerged as the lowest bidder with a project cost of USD 15.71 crores. Consequently, AHPPL awarded the contract to EIF on an EPC basis as the price quoted was the lowest and the scope of supply including offer of extended guarantee/warranty and delivery schedule was found to be the best. Accordingly, following contracts, all dated 23.03.2011, were entered into between EIF and AHPPL:

- (a)** Contract No. AHPPL/TUGS/03/2010-11 for supply of four numbers of Tugs;
- (b)** Contract No. AHPPL/MHC/03/2010-11 for supply of four numbers of Rail Mounted Mobile Harbour Cranes; and
- (c)** Contract No. AHPPL/CRANES/01/2010-11 for supply of four numbers of Rail Mounted Quay Cranes and twelve numbers of Rubber Tyred Gantry Cranes.

18. As per the aforesaid Contract, EIF was to provide the following goods and services:

- (a)** Design & Supply and handing over of four Rail Mounted Mobile Harbour Cranes as per detailed technical specifications;
- (b)** Design & Supply and handing over of twelve Rubber Tyred Gantry Cranes as per detailed technical specifications;
- (c)** Delivery by June 2012;
- (d)** Warranty of 10 years for any manufacturing defects;
- (e)** Paint job guarantee of 10 years;
- (f)** Structural warranties for 20 years;
- (g)** Gear box warranty for 20 years for Rail mounted quay cranes and Rubber tyred gantry cranes and 5 years for mobile harbor cranes;

- (h)** Commissioning spares and tools required sufficiently to ensure that required handing over of the crane will be completed as per schedule without any delay;
- (i)** Organize training of 8 AHHPL engineers on equipment site of the manufacturer;
- (j)** Packing, forwarding, loading on the vessel, sea fastening, sea freight till Hazira Port, and unloading on jetty of the buyer;
- (k)** Provide 3 sets of documentation including "As Built" drawings in hard copy and two sets on CD ROM per equipment including operation, maintenance and training, manual (circuit diagrams included), spare parts lists, working drawings;
- (l)** Guarantee and warranties as specified in article 13 of the respective contracts;
- (m)** Commissioning of spares and tool required sufficiently to ensure the handing over of the crane shall be scheduled without any delay;
- (n)** As per article 6, EIF was required to submit a performance security in the form of a corporate guarantee towards contract-cum-crane performance guarantee, in the format attached at General Terms and Conditions, for 10% of the contract price, had to be submitted within 20 days of opening of letter of credit and the same shall remain valid until one month from the expiry of Warranty Period;
- (o)** Apart from supply of the said cranes, the same had to be handed over in a fully erected condition by June, 2012 for Rail Mounted Quay Cranes and Rubber Tyred Gantry Cranes; September, 2012 for Mobile Harbor Cranes and May, 2013 for the tugs. Also, if required, trained expatriate supervision

engineers, having sufficient knowledge and experience were to be made available at the time of handing over;

- (p) EIF was also to ensure the said goods at their full replacement value during manufacturing as a back-to back-arrangement;
- (q) EIF was solely responsible for delivery in accordance with the requirements of the contract and expediting all matters to the contract; and
- (r) In the event, any inspection or test indicates that the said goods fail to meet the requirements of the said Contract, then in that case, EIF to take immediate steps to rectify the failure at its own cost and expense.

19. The imports for the project were executed under 9 Bills of Entry and the assessments were finalized in 2013.

Customs Appeal No's. 86119 of 2024 and 86120 of 2024

20. APSEZL is a private multi-port operator. Port Terminal Rights at Mundra were granted to APSEZL by the Gujarat Maritime Board and Government of Gujarat for a period of 30 years from the date of award of concession dated 17.02.2011.

21. To handle increasing cargo traffic at Mundra, APSEZL urgently required supplementary essential equipment, which included 6 Rail Mounted Quay Cranes and 14 Rubber Tyred Gantry Cranes. Since the standard manufacturing delivery period of 15 to 18 months would not meet urgent expansion requirements of APSEZL, it sought an immediate alternative.

22. APSEZL was informed that AICTPL, another Joint Venture entity of Adani awaiting notification as a Special Economic Zone Co-Developer, had

already executed a supply contract with EIF on 09.08.2011 for the same cranes, and the goods had already been dispatched.

23. Accordingly, it was decided that since the requirement of APSEZL was more pressing than that of AICTPL, the said goods would be purchased on High Sea Sales basis. Consequently, four High Sea Sales Agreements dated 30.04.2012, 23.05.2012, 28.05.2012 and 11.06.2012 were entered into between AICTPL and APSEZL to transfer the title of the goods to APSEZL.

24. To maintain transparency and to ensure good corporate governance, AICTPL had followed the process of competitive bidding and invited tenders for design, supply, delivery and transportation of the said cranes. Only foreign bidders participated in this process since no indigenous manufacturer could meet the required specifications, capacity, scope of supply, and extended warranty terms.

25. Following pre-bid discussions, final commercial offers were received from following pre-qualified global bidders:

Sr. No.	Bidder Particulars	Initial Bid (in USD)	Final Bid (in USD)
1.	M/s Kowa India Pvt. Ltd. ("Kowa")	115,000,600	(No final offer)
2.	EIF	112,760,000	101,714,000

26. EIF emerged as the lowest bidder with a project cost of USD 101,714,000. Consequently, AICTPL awarded the contract to EIF on an EPC basis. A formal contract was executed on 09.08.2011. The said contract was not a simple agreement for the import of goods but a comprehensive EPC contract encompassing significant value-added services and risks undertaken by EIF.

27. After entering the four High Sea Sales Agreements, the said cranes were imported by APSEZL through 8 Bills of Entry into the SEZ area at Nil rate as permitted by Letter of Permission dated 30.05.2008.

28. The imports for the project were executed under 8 Bills of Entry, and the assessments were finalized in 2012.

Customs Appeal No. 86121 of 2024

29. AVCTPL was engaged in the development of a bulk cargo port facility for handling steam coal in the inner harbor of Vizag port on "design, build, finance, operate and transfer"¹⁴ basis under the Concession Agreement dated 01.08.2011, effective for the period of 30 years from the date of award of concession on 08.08.2012.

30. AVCTPL required two Rail Mounted Mobile Harbor Cranes for execution of port operations. To procure this equipment, AVCTPL followed a competitive bidding process, in which only foreign bidders participated since no indigenous manufacturer could meet the required specifications, capacity, scope of supply, and extended warranty terms.

31. With a view to ensure transparency and maintain good corporate governance, AVCTPL invited tenders for design, supply, delivery and transportation of the two rail mounted harbor cranes. The Notice Inviting Tender was issued on 11.12.2012.

32. Following pre-bid discussions, final commercial offers were received from two pre-qualified global bidders:

Sr. No.	Bidder Particulars	Initial Bid (in Euro)	Final Bid (in Euro)
1.	EIF	10,619,750	9,925,000
2.	M/s Kowa India Pvt. Limited ('Kowa')	10,917,500	1,04,21,250

14. DBFOT Basis

33. EIF emerged as the lowest bidder with a project cost of Euro 9,925,000. Consequently, AVCTPL awarded the contract to EIF on an EPC basis. A formal contract was executed on 01.02.2013.

34. According to the respondents, apart from supply of the said cranes, the same had to be handed over in a fully erected condition by 25.10.2013. Further, if required, trained expatriate supervision engineers, having sufficient knowledge and experience were to be made available at the time of handing over. Further, EIF had earlier provided onsite training to the 8 engineers of the respondents and limited onsite training to 30 crane operators for familiarization of the functionality of the said goods. EIF was to assume all responsibility and risk of loss or damage to the goods till the delivery of the said goods. EIF had also to insure the said goods at their full replacement value during manufacturing. EIF was also solely responsible for delivery in accordance with the requirements of the contract and expediting all matters to the contract.

35. The imports for the project were executed under one Bill of Entry and the assessments were finalized in 2013.

Contentions

36. Having briefly noted the aforesaid facts, it will now be appropriate to examine the contentions advanced by the learned senior counsel for the respondent that the Principal Commissioner was justified in discharging the third show cause notice dated 31.08.2016 for the reason that the allegations raised in this show cause notice had already been decided against the department by the Additional Director General in the two orders dated 22.08.2017 and 17.10.2017 while adjudicating the first and the second show cause notice, and the two Customs Appeals filed by the department before

this Tribunal were dismissed on 18.07.2022 and 11.08.2022, and the two Civil Appeals filed by the department before the Supreme Court against these two orders of the Tribunal were also dismissed on 27.03.2023, and even the two Review Petitions filed by the department were also dismissed by the Supreme Court on 23.11.2023.

37. To substantiate this submission that the allegations raised in all the three show cause notice were same as they emanated from the same investigation, learned senior counsel for the respondents referred to the relevant paragraphs of the show cause notice dated 31.08.2016 as also the relevant paragraphs of the order. These paragraphs are summarized below:

Document Name	Internal paragraph	Relevant Extract																			
Show cause notice	Paragraph number 2.0	"On the basis of the said intelligence, enquiries were initiated into goods invoiced by M/s Electrogen Infra FZE, UAE (for short - "EIF") which were imported and cleared in the name of various Adani Group companies engaged in different business sectors. Enquiries revealed that several Adani Group entities were importing goods invoiced by EIF."																			
	Paragraph number 2.1	<p>"Pursuant to investigation two Show Cause Notices have been issued to three entities of Adani Group earlier on account of alleged over-valuation as below:-</p> <p style="text-align: center;">Table-1</p> <p style="text-align: center;">Details of SCNs earlier issued to Adani Group entities</p> <table border="1"> <thead> <tr> <th>Party</th> <th>SCN No./date</th> <th>Declared Value (CIF)</th> <th>Value proposed to be determined (CIF)</th> <th>Difference (Quantum of over-valuation)</th> </tr> </thead> <tbody> <tr> <td>M/s Adani Power Maharashtra Ltd., M/s. Adani Power Rajasthan Ltd. & Others</td> <td>F.NO. DRI/MZU/C.I. /224/APML/APRL/2013/4486 dated 15-05-2014</td> <td>3469,07,79,941 (USD 721,653,099) 3692,65,37,178 (USD 756,281,171)</td> <td>1557,44,21,785 (USD 323,999,537) 1630,16,82,151 (USD 333,580,286)</td> <td>1911,63,58,156 2062,48,55,027</td> </tr> <tr> <td>M/s Maharashtra Eastern Grid Power Transmission Company Limited, M/s PMC Projects (India) Private Ltd. & Others</td> <td>F.NO. DRI/MZU/C.I. /224/APML/APRL/2013/4488 & 4489 both dated 15-05-2014</td> <td>1887,06,49,088 (373240994 USD)</td> <td>393,21,76,604 (77773847 USD)</td> <td>1493,84,72,484</td> </tr> <tr> <td colspan="2">TOTAL IN RUPEES</td> <td>9048,79,66,207</td> <td>3580,82,80,540</td> <td>5467,96,85,667"</td> </tr> </tbody> </table>	Party	SCN No./date	Declared Value (CIF)	Value proposed to be determined (CIF)	Difference (Quantum of over-valuation)	M/s Adani Power Maharashtra Ltd., M/s. Adani Power Rajasthan Ltd. & Others	F.NO. DRI/MZU/C.I. /224/APML/APRL/2013/4486 dated 15-05-2014	3469,07,79,941 (USD 721,653,099) 3692,65,37,178 (USD 756,281,171)	1557,44,21,785 (USD 323,999,537) 1630,16,82,151 (USD 333,580,286)	1911,63,58,156 2062,48,55,027	M/s Maharashtra Eastern Grid Power Transmission Company Limited, M/s PMC Projects (India) Private Ltd. & Others	F.NO. DRI/MZU/C.I. /224/APML/APRL/2013/4488 & 4489 both dated 15-05-2014	1887,06,49,088 (373240994 USD)	393,21,76,604 (77773847 USD)	1493,84,72,484	TOTAL IN RUPEES		9048,79,66,207	3580,82,80,540
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TOTAL IN RUPEES		9048,79,66,207	3580,82,80,540	5467,96,85,667"																	
Impugned order	Paragraph number	"***** This data was collectively sought in the cases of M/s Adani Power Maharashtra Limited (APML) and M/s Adani Power																			

Document Name	Internal paragraph	Relevant Extract
	5.6.2.1	Rajasthan Limited (APRL) [Para no. 2.0 of SCN No. DRI/MZU/CI-224/(APML/APRL)/2013 Dt:15.05.2014] and present impugned SCN."
	Paragraph number 5.6.2.4	"***** These are the common observations in all three cases arose because the data received was identical and collected in a single instance [Para no. 1.22 of SCN No. DRI/MZU/CI-224/(PMC)/2013 dt: 15.05.2014, para no. 2.3 of SCN No. DRI/MZU/CI-224/(APML/APRL)/2013 dt:15.05.2014 and Para no. 5.3 of present impugned SCN dt: 31.08.2016]."
	Paragraph number 5.6.2.5	"***** This consistent observation was reiterated in all the notices [Para no. 1.23 of SCN No. DRI/MZU/CI-224/(PMC)/2013 dt: 15.05.2014, para no. 2.4 of SCN No. DRI/MZU/CI-224/(APML/APRL)/2013 dt:15.05.2014 and Para no. 5.4 of present impugned SCN dt: 31.08.2016]."
	Paragraph number 5.6.2.8	"***** which are the same in all cases. Further, the scanned images produced in all the SCNs are the same [Para no. 1.25 of SCN No. DRI/MZU/CI-224/ (PMC)/2013 dt: 15.05.2014, para no. 3 of SCN No. DRI/MZU/CI-224/(APML/APRL)/2013 dt:15.05.2014 and Para no. 6 of present impugned SCN dt: 31.08.2016]."
	Paragraph number 5.7.1	"It is apparent that the common investigation and common set of documents resulted into three separate cases, indicating uniformity in the collection of data & evidences...Along with the data collected by above means and the examination of the data related to the imports made by the respective companies, the invoices generated and the financial transactions made, the following three Show Cause Notices had been issued: i. SCN no. DRI/MZU/CI-224/(APML/APRL)/2013 dt:15.05.2014 ii. SCN no. DRI/MZU/CI-224/ (PMC)/2013 dt: 15.05.2014 iii. SCN no. DRI/MZU/ CI-224/ (Others)/2013 dt: 31.08.2016"
	Paragraph number 5.7.3	"The evident commonality in the investigation process is noticeable through uniform methodology employed in data and evidence collection. It is apparent that the underlying facts in these cases reveal a notable similarity, as emphasised by the overall similarity in the 'summaries' presented in the respective show cause notices as discussed above."

38. The aforesaid findings recorded by the Principal Commissioner have not been disputed by the department in the six appeals.

39. Even otherwise, the show cause notice dated 31.08.2016 records that the earlier two show cause notices, each dated 15.05.2014, had been issued on the basis of a common investigation and same set of documents. In such

circumstances, when the present proceedings arise from the common investigation and rests on the very set of documents, the consequence would be that the six appeals should meet the same fate as the earlier two appeals filed by the department in respect to the first two show cause notices. It needs to be noted that the proceedings arising from the first two show cause notices, each dated 15.05.2014, resulted in two orders dated 22.08.2017 and 17.10.2017 passed by the Additional Director General dropping the proceedings. These two orders were upheld by the Tribunal in the two appeals filed by the department to assail the aforesaid two orders. The two Civil Appeals filed by the department against the aforesaid two orders of the Tribunal were dismissed by the Supreme Court on 27.03.2023 and even the Review Petitions were dismissed on 23.11.2023.

40. The order dated 27.03.2023 passed by the Supreme Court in the two Civil Appeals filed by the department is reproduced below:

“Delay condoned.

2. We have heard Mr. Balbir Singh, learned Additional Solicitor General appearing for the appellant(s) and Mr. Mukul Rohatgi, learned senior counsel appearing for the respondents at length.

3. **We are of the considered opinion that the matters are concluded by the findings of fact recorded by the authorities below and the impugned order(s) does not require any interference at our behest.**

4. The appeals accordingly stand dismissed. Pending application(s), if any, shall also stand disposed of.”

(emphasis supplied)

41. The orders passed by the Supreme Court dismissing the two Review Petitions on 23.11.2023 are reproduced below:

- "1 Delay condoned.
- 2 **Having perused the review petitions, there is no error apparent on the face of the record. No case for review under Order XLVII Rule 1 of the Supreme Court Rules 2013 has been made out. The review petitions are, therefore, dismissed.**
- 3 Pending applications, if any, stand disposed of."

(emphasis supplied)

42. Thus, when all the three show cause notices are based on the same investigation and on the same set of documents, the Principal Commissioner was justified in discharging the third show cause notice, more particularly when the order discharging the first two show cause notices had attained finality.

43. It also needs to be noted that the ground no. 7.1(b) of the Grounds of Appeal filed by the department relating to rejection of declared assessable value and its redetermination is as follows:

"7.1(b) It is also submitted that the order dated 27.03.2023 in the APML and MEGPTCL appeals filed by the department, the Hon'ble Supreme Court has held that the matter has been concluded by the findings of fact recorded by the lower authority and the impugned order does not require any interference. Accordingly, from the said order dated 27.023.2023 it is apparent that the points raised by the department had not been examined on merit by the Hon'ble Supreme Court."

44. The department filed Miscellaneous Application No's. 85690-85695 of 2026 with a prayer that the department may be permitted to withdraw the said ground. The relevant paragraphs 6, 7 and 8 of the application are reproduced below:

"6. In this regard, it is most respectfully submitted that the inclusion of Ground No. 7.1(b) in the Grounds of Appeal was inadvertent and erroneous, and does not accurately reflect the correct or intended position of the Appellant.

7. The Appellant, therefore, does not wish to press or rely upon the said Ground No. 7.1(b), and seeks permission of this Hon'ble Tribunal to withdraw/suitably amend the same in order to present the correct legal position and avoid any unintended misinterpretation.

8. The Appellant submits that all other grounds of appeal remain valid and are relied upon, and the appeal may kindly be adjudicated on merits based on the remaining grounds."

45. This application was allowed by the Tribunal on 16.04.2026.

46. It would now be appropriate to examine the three issues framed by the Principal Commissioner for adjudication of the third show cause notice dated 31.08.2016.

Issues and Findings

47. The Principal Commissioner framed the following three issues to be decided:

- (i) Whether the value declared by M/s. Adani Enterprises Limited (AEL), M/s. Adani Renewable Energy LLP (AREL), M/s. Adani Hazira Port Private Limited (AHPPL), M/s. Adani International Container Terminal (P) Limited (AICTPL), M/s. Adani Ports and Special Economic Zone Limited (APSEZ), and M/s Adani Vizag Coal Terminal Pvt. Limited (AVCTPL) should be rejected in terms of rule 12 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007¹⁵ read with section 14 of

15. the 2007 Valuation Rules

the Customs Act and re-determined under rule 4/9 of the 2007 Valuation Rules read with section 14 of the Customs Act;

- (ii) Whether the goods are liable to confiscation under sub-section (m) of section 111 of the Customs Act; and
- (iii) Whether the noticees, namely, AEL, AREL, AHPPL, AICTPL, APSEZL, and AVCTPL; EIF; Shri Vinod Shantilal Adani © Vinod Shantilal Shah; Shri Jatin Shah, Shri Mitesh Dani and Shri Mehul Jani both Directors/Employee/Representatives of EIF are liable to penalty under section 112(a) of the Customs Act and also under section 114AA of the Customs Act.

48. The third issue is not the subject of this appeal as the finding recorded by the Principal Commissioner on this issue is the subject matter of Customs Appeal No. 86122 of 2024.

First Issue

49. The Principal Commissioner recorded a finding that though the importers and EIF were related but the relationship had not influenced the price and the relevant finding is as follows:

"5.23.6.9 The contracts between AEL, AREL, APSEZ/AICTPL, AVCTPL & AHPPL and EIF includes both supply and service components. The contracts cover design, engineering, manufacturing, procurement, packing, forwarding, supply, transportation, receipt, unloading, installation, erection, testing, commissioning, and performance guarantee tests at a lump-sum price. The contract price was determined through an International Competitive Bidding process, and it was awarded to the lowest bidder, EIF. The decision-making process for arriving at the price was found to be transparent and independent. Despite acknowledging a relationship between the noticees and EIF, it is concluded that this

relationship did not influence the pricing in these transactions. **Therefore, I find that even though I have found that the importers/noticees and EIF were related, the requirement of relationship influencing the price was not satisfied.**"

(emphasis supplied)

50. After reproducing the findings recorded by the Tribunal in Customs Appeal No. 87758 of 2017 and Customs Appeal No. 85746 of 2018 that had earlier been decided by the Tribunal, the Principal Commissioner recorded a finding that the declared transaction value was required to be accepted under rule 3 of the 2007 Valuation Rules read with section 14 of the Customs Act and the relevant finding is as follows:

"5.31 **The Hon'ble CESTAT, Mumbai in above cases has held that in order to accept the invoice value of OEMs under Rule 11 it was necessary to compare the contracts between OEMs, the supplier and the importer. I have already held that the contracts between noticees and EIF on one side and between EIF and OEMs have material difference and cannot be compared. Therefore, the OEM price cannot be considered as assessable value.** It has been further held that Rule 4 can be applied only in cases only when identical goods are available. It cannot be applied in respect of the very same goods for which re-determination of value is being proposed. **Above case laws are squarely applicable in the present case and in view of the factual position as discussed earlier, the declared transaction value is required to be accepted under Rule 3 of of Customs Valuation (Determination of value of imported goods) Rules 2007, read with Section 14 of Customs Act, 1962.**"

(emphasis supplied)

51. The Principal Commissioner thereafter noted that during the relevant period, the other importers involved in Customs Appeal No. 87758 of 2017

and Customs Appeal No. 85746 of 2018 were also investigated and two show cause notices had been issued to them on the same lines for over invoicing of the imported goods which had been dropped. The Principal Commissioner concluded that the said findings would also be applicable for the third show cause notice since the evidence was the same in respect of all the three show cause notices. The relevant finding recorded by the Principal Commissioner on this issue is as follows:

"5.32 I find that during the relevant period other importers were also investigated in the same line for over invoicing of imported goods. The investigation was carried out on similar lines and the allegation was supported in the form of evidence by the overseas Bankers letters providing details such as OEM invoices, remittances details, etc. These documents were directly received by the DRI from the banks. Ultimately, these documents only became the source and evidence for alleging over invoicing. I find that these documents which have been relied upon are the computer printouts and does not contain certificate under Section 138 C (4) of the Customs Act, 1962 and therefore, lose their evidentiary value. The cases of M/s. Adani Power Maharashtra Ltd., M/s. Maharashtra Eastern Grid Power Transmission Company Ltd. and M/s. Knowledge Infrastructure Systems Pvt. Ltd. were such cases besides the present case. Documentary evidences in the form of banker's letters and other documents supplied for alleging over invoicing are identical in all such cases. The cases of M/s. Adani Power Maharashtra Ltd. and M/s. Maharashtra Eastern Grid Power Transmission Company Ltd., have already been decided by Hon'ble CESTAT Mumbai and have attained finality as discussed previously and therefore, the findings therein are squarely applicable in the present case. The noticees have challenged the evidentiary value of documents received from overseas bankers in absence certificate under 138 C of Customs

Act, 1962. **Since present case is exactly identical to above mentioned decided case, I find that this issue stands already decided in favour of noticees. *****"**

(emphasis supplied)

52. The Principal Commissioner, therefore, held that there was no reason to reject the declared transaction value and the finding is as follows:

"5.33 The CESTAT, Mumbai has held the evidence received by DRI from overseas bankers as inadmissible in absence of certificate under Section 138 (4) of Customs Act, 1962. I find that in the present case also there is no certificate under 138 C (4) of Customs Act available on record and therefore, the evidences relied upon by DRI in support of alleged over invoicing cannot be sustained on this ground too. **As such I do not find any merit for rejection of the declared transaction value by the noticee."**

(emphasis supplied)

53. It is, therefore, clear that these findings have been recorded by the Principal Commissioner on the basis of the findings recorded by the Tribunal in the earlier Customs Appeals filed by the department. The appeals filed by the department to assail the order passed by the Tribunal in these two appeals were dismissed by the Supreme Court. There is, in such circumstances, no error in the findings recorded by the Principal Commissioner.

Second Issue

54. The Principal Commissioner, thereafter, examined whether the goods could be confiscated under section 111(m) of the Customs Act. The Principal Commissioner held that they could not be and as the goods could not be confiscated, penalty under section 112(a) of the Customs Act could not be

imposed. The Principal Commissioner also held that penalty under section 114AA of the Customs Act could also not be imposed on the importers. The relevant findings are as follows:

"5.34 The SCN proposed confiscation of impugned imported goods by invoking provisions of Section 111(m) of the Customs Act, 1962. In this regards, in the foregoing paragraphs I have already held that the value of the imported goods was at an arms length and was not influenced by the relationship and that the same had been correctly declared by AEL, AREL, AHPPL, APSEZ/ AICTPL and AVCTPL. As per the law laid down by above judgments, the goods which are neither prohibited nor have any duty implications cannot be confiscated under Section 111(m) of Customs Act, 1962 for mis declaration of value. Since goods are held not liable for confiscation, the penalty u/s 112 (a) of Customs Act, 1962 is not being imposed. There is a proposal in SCN for imposition of penalty u/s 114AA of the Customs Act, 1962. I find that in the SCN, it is stated that since invoices have been manipulated for purpose of over valuation and false and incorrect declaration/ statements have been made in the import document, penalty u/s 114AA is imposable. However, as stated earlier, the charges of over invoicing of import goods have been held as not maintainable, there is no false or incorrect declaration in the import documentation and therefore, no penalty is imposable u/s 114 AA on the importer noticees."

(emphasis supplied)

55. There is no error in the recording of this finding as it has been found as a fact, while deciding of the first issue, that there is no mis-declaration of the value of the imported goods.

Conclusion

56. It, therefore, clearly transpires from the aforesaid discussion that the value declared of the imported goods could not be rejected under rule 12 of the 2007 Valuation Rules and as the goods could not be confiscated under section 111(m) of the Customs Act, penalties under sections 112(a) and 114AA of the Customs Act could not be imposed on the importers.

Order

57. In this view of the matter, the impugned order dated 21.12.2023 passed by the Principal Commissioner, in so far as it concerns the respondents in these six appeals filed by the department, does not suffer from any error. The six appeals filed by the department, therefore, deserve to be dismissed and are dismissed.

(Order Pronounced on **05.06.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)