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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
B.V. NAGARATHNA; J., R. MAHADEVAN; J.
CIVIL APPEAL NO. 4489 OF 2023; AUGUST 28, 2025
UNION OF INDIA THROUGH SECRETARY & OTHER *versus* M/S ADANI POWER LTD.

Customs Act, 1962 - Special Economic Zone (SEZ) Act, 2005 - Whether export duty can be imposed on goods supplied from the Domestic Tariff Area (DTA) to SEZ units under the provisions of the Customs Act or SEZ Act – Held, export duty on goods moved from DTA to SEZ units is not justified under the prevailing law, such goods are not subjected to export duty - It is a domestic supply and not an export outside India - SEZ Act creates a self-contained legal framework where the movement of goods from the DTA to an SEZ is defined as a form of 'export' for the purposes of entitlements and benefits under that Act, but it is not an export that would trigger a levy under the Customs Act - Section 12 of Customs Act is a charging provision which levies duty only on goods physically exported out of India - Section 26 of the SEZ Act, power is reserved to grant an exemption or a concession if under the provisions of the Customs Act, 1962, a duty is leviable as per the charging sections.

[Paras 4, 6, 7]

WITH CIVIL APPEAL NO.4494 OF 2023, CIVIL APPEAL NO.4398 OF 2023, CIVIL APPEAL NO.4485 OF 2023, CIVIL APPEAL NO.4487 OF 2023, CIVIL APPEAL NO.4486 OF 2023, CIVIL APPEAL NOs.5703-5706 OF 2023, CIVIL APPEAL NOs.5733-5734 OF 2023, CIVIL APPEAL NOs.6754-6770 OF 2023, CIVIL APPEAL NOs.6866-6874 OF 2023, CIVIL APPEAL NO.5696 OF 2023 AND CIVIL APPEAL NO.5708 OF 2023

For Appellant(s): Mr. N Venkataraman, A.S.G. Ms. Nisha Bagchi, Sr. Adv. Ms. Swarupma Chaturvedi, Sr. Adv. Mr. Gurmeet Singh Makker, AOR Mr. Raghvendra S Srivatsa, Adv. Mr. Ishaan Sharma, Adv. Mr. Mukesh Kumar Maroria, AOR Mr. Shashank Bajpai, Adv.

For Respondent(s) : Mr. Vikram S. Nankani, Sr. Adv. Mr. Kumar Visalaksh, Adv. Mr. Udit Jain, Adv. Mr. Pranav Bansal, Adv. Mr. Praveen Kumar, AOR Mr. Shamik Shirishbhai Sanjanwala, AOR Mr. Aditya Tripathi, Adv. Ms. Aarushi Gupta, Adv. Mr. Ks Naveen Kumar, Adv. Mr. S Sukumaran, Adv. Mr. Anand Sukumar, AOR Mr. Bhupesh Pathak, Adv. Mr. Bhupesh Kumar, Adv. Mrs. Ruche Anand, Adv. Mr. Vikram S. Nankani, Sr. Adv. Mr. Kumar Visalaksh, Adv. Mr. Udit Jain, Adv. Mr. Abhishek Vikas, AOR Mr. R. Parthasarathy, AOR Mr. Chirag M. Shroff, AOR Mr. Sahil Monga, AOR Mr. Gurmeet Singh Makker, AOR Ms. Charanya Lakshmikumaran, AOR Ms. Neha Choudhary, Adv. Ms. Umang Motiyani, Adv. Mr. Ayush Agarwal, Adv. Ms. Nitum Jain, Adv. Mr. Swastik Mishra, Adv. Ms. Medha Sinha, Adv. Mr. A. Lakshminarayanan, AOR Mr. Niranjan, J.V., Adv. Mr. M Laxmi Mahendraa, Adv. Mr. M Munusamy, Adv. Mr. Pinaki Misra, Sr. Adv. M/S. Karanjawala & Co., AOR Ms. Ruby Singh Ahuja, Adv. Mr. Dhruv Dewan, Adv. Ms. Akanksha Thapa, Adv. Ms. Megha Dugar, Adv. Ms. Shruti Pandey, Adv. Mr. Tribhuvan N Singh, Adv. Mr. Sudarsh Menon, AOR Mr. Udbhav Singh, Adv. Mrs. Nimisha Menon, Adv.

O R D E R

Since common questions of law arise in these civil appeals, they have been clubbed together and heard and disposed of by this common judgment.

2. For ease of reference, the details of these appeals are extracted by way of the following table:

S. No.	Civil Appeal No.	Date of the Impugned Order	Name of the High Court	Remarks
1.	CIVIL APPEAL NO. 4489 OF 2023	04.11.2009	High Court of Gujarat at Ahmedabad	
2.	CIVIL APPEAL NO. 4494 OF 2023	04.11.2009	High Court of Gujarat at Ahmedabad	

3.	CIVIL APPEAL NO. 4398 OF 2023	18.12.2009	High Court of Gujarat at Ahmedabad
4.	CIVIL APPEAL NO. 4485 OF 2023	04.11.2009	High Court of Gujarat at Ahmedabad
5.	CIVIL APPEAL NO. 4487 OF 2023	04.11.2009	High Court of Gujarat at Ahmedabad
6.	CIVIL APPEAL NO. 4486 OF 2023	18.12.2009	High Court of Gujarat at Ahmedabad
7.	CIVIL APPEAL NOs. 5703- 5706 OF 2023	30.07.2010	High Court of Andhra Pradesh at Hyderabad
8.	CIVIL APPEAL NOs. 5733- 5734 OF 2023	09.02.2011	High Court of Karnataka at Bangalore
9.	CIVIL APPEAL NOs. 6754- 6770 OF 2023	27.04.2012	High Court of Judicature at Madras
10.	CIVIL APPEAL NOs.6866- 6874 OF 2023	27.04.2012	High Court of Judicature at Madras
11.	CIVIL APPEAL NO. 5696 OF 2023	18.02.2014	High Court of Andhra Pradesh at Hyderabad
12.	CIVIL APPEAL NO. 5708 OF 2023	13.01.2023	High Court of Judicature at Bombay

3. We have heard learned senior counsel and learned counsel appearing for the respective parties.

4. We take into consideration the impugned judgment in Civil Appeal No. 4489 of 2023 (*Union of India through Secretary and others vs. M/S Adani Power Ltd.)* for the purpose of our discussion.

4.1 In the impugned judgment, the following three questions were raised:

"1. Whether export duty can be imposed under the provisions of the Customs Act, 1962?

2. Whether export duty can be levied under the Provisions of the Special Economic Zones Act, 2005?

3. Whether export duty can be imposed under the Customs Act, 1962 by incorporating the definition of the terms `Export' under the SEZ Act, 2005 into the Customs Act, 1962?"

The answer to the first question has been given in paragraphs 41.1.3 and 41.1.4 of the said judgment.

4.2 Insofar as the second question is concerned, on discussion of the point of controversy in paragraphs 41.2.10 and 41.2.11, the High Court has answered against the appellant(s) herein.

4.3 Similarly, the third question has been considered by the High Court in paragraph 41.3 and after discussion, the answer to the said question has been given in paragraph 41.3.4 of the impugned judgment. Consequently, the High Court has held in paragraph 42 as under:

"42. In view of the above discussion and findings arrived at as well as conclusion drawn, the levy of export duty on goods supplied from the Domestic Tariff Area to the Special Economic Zone is not justified. The petitioners are, therefore, not to be called upon to pay export duty on movement of goods from Domestic Tariff Area to Special Economic Zone units or developments."

5. We have considered the contentions raised by the learnedsenior counsel for the appellant(s) in light of the points for consideration raised by the High Court as well as the provisions of the Acts, which are Section 12 along with Sections 2(18) and 2(27) of the

Customs Act, 1962 in juxtaposition with Sections 2(i), 2(m) and 2 (za) as well as Section 51 of the Special Economic Zones Act, 2005 (for short, `the SEZ Act) which are extracted as under for immediate reference -

"THE CUSTOMS ACT, 1962

2. Definitions.—In this Act, unless the context otherwise requires,—

XXX

(18) "export" with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(27) "India" includes the territorial waters of India;

12. Dutiable goods.- (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

SPECIAL ECONOMIC ZONES ACT, 2005

Sections "2(i) "Domestic Tariff Area" means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones;

2 (m) "export" means –

(i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or

(ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or

(iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone;

2 (za) "Special Economic Zone" means each Special Economic Zone notified under the proviso to sub-section

(4) of section 3 and subsection (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;

51. Act to have overriding effect. - (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

6. We find that the High Court has rightly arrived at the conclusions in the aforesaid paragraphs on a correct interpretation of the provisions of the aforesaid two Acts. In the circumstance, we do not find any reason to interfere with the impugned judgment. Hence, the appeals are dismissed.

7. On a conjoint reading of the aforesaid provisions, we find that Section 12 of the Customs Act, 1962 is the charging Section. However, under Section 26 of the SEZ Act, power is reserved to grant an exemption or a concession if under the provisions of the Customs Act, 1962, a duty is leviable as per the charging Sections.

8. It is also necessary to observe as submitted by the learned senior counsel for the respondent(s) that the Madras High Court as well as the Andhra Pradesh High Court have also taken a similar view as discussed in the aforesaid impugned judgment. In the circumstances, all appeals arising therefrom are also dismissed.

All pending application(s) shall stand disposed of.