

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.4489 OF 2023**

**UNION OF INDIA**

**THROUGH SECRETARY & OTHER**

**...APPELLANTS**

**VERSUS**

**M/S ADANI POWER LTD.**

**...RESPONDENTS**

**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**

**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:

<b>S. No.</b>	<b>Civil Appeal No.</b>	<b>Date of the Impugned Order</b>	<b>Name of the High Court</b>	<b>Remarks</b>
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	09.02.2011	High Court of Karnataka at	

S. No.	Civil Appeal No.	Date of the Impugned Order	Name of the High Court	Remarks
	NOs. 5733-5734 OF 2023		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 learned

senior 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,—

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(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.

.....J.  
[B.V. NAGARATHNA]

.....J.  
[R. MAHADEVAN]

**NEW DELHI**  
**AUGUST 28, 2025**

ITEM NO.105

COURT NO.3  
S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

SECTION III

Civil Appeal No(s). 4489/2023

UNION OF INDIA THROUGH SECRETARY & ORS.

Appellant(s)

VERSUS

M/S ADANI POWER LTD.

Respondent(s)

[ AS ITEM NO. 105 ]

WITH

C.A. No. 4494/2023 (III)

C.A. No. 4398/2023 (III)

C.A. No. 4485/2023 (III)

C.A. No. 4487/2023 (III)

IA No. 171165/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

C.A. No. 4486/2023 (III)

C.A. Nos. 5703-5706/2023 (XII-A)

FOR CONDONATION OF DELAY IN FILING ON IA 1/2011

FOR ADDITION / DELETION / MODIFICATION PARTIES ON IA 95158/2023

C.A. Nos. 5733-5734/2023 (IV-A)

C.A. Nos. 6754-6770/2023 (XII)

FOR CONDONATION OF DELAY IN FILING ON IA 1/2013

FOR CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS ON IA 18/2013

C.A. Nos. 6866-6874/2023 (XII)

C.A. No. 5696/2023 (XII-A)

C.A. No. 5708/2023 (III)

FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 94826/2023

FOR APPLICATION FOR SUBSTITUTION ON IA 202455/2023

IA No. 202455/2023 - APPLICATION FOR SUBSTITUTION

IA No. 94826/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

Date : 28-08-2025 These appeals were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA



HON'BLE MR. JUSTICE R. MAHADEVAN

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.  
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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. Niranjana, J.V., Adv.  
Mr. M Laxmi Mahendrar, 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.

UPON hearing the counsel the Court made the following  
O R D E R

Learned counsel for the respondent in C.A. No.5708 of 2023 submitted that in order to cure the defects in the application filed for substitution, the complete name and address of the entity to be substituted is being provided (by way of memo). Taking note of the same, the defects are overruled.

The application for substitution is allowed.

The respondent/entity shall be shown as -

“Embassy Pune Techzone Pvt. Ltd.  
Embassy TechZone, PL03A,  
Rajiv Gandhi Infotech Park,  
Phase II, Hinjewadi, Pune,  
Maharashtra – 411 057”

The Civil Appeals are dismissed in terms of the signed order.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA)  
ASTT. REGISTRAR-cum-PS

(Signed order is placed on the file)

(DIVYA BABBAR)  
COURT MASTER (NSH)