आयुक्त का कार्यालय) ,अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan,Revenue Marg,Ambawadi,Ahmedabad-380015
. ☎ 26305065-079 : टेलेफैक्स 26305136 - 079 :
Email- commrappl1-cexamd@nic.in

DIN- 20220264SW0000222A54

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/281/2021 -Appeal-O/o Commr-CGST-Appl-Ahmedabad /6148

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-65/2021-22**
दिनाँक Date : **11.02.2022** जारी करने की तारीख Date of Issue : **14.02.2022**

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original Nos. **30/ADC/MLM/2020-21 dated 31.12.2020**, passed by the Additional Commissioner, CGST & C. Ex., Ahmedabad-North.

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/s. Adani Petronet (Dahej) Pvt. Ltd., Adani House, Nr. Mithakali Six Roads, Navrangpura, Ahmedabad-380009.

Respondent- The Additional Commissioner, Central GST & Central Excise, Ahmedabad-North.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :

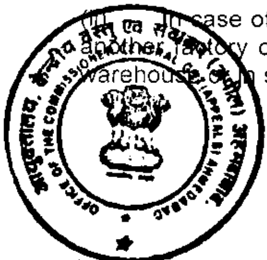
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गत:–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd **माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद** –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशो का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण **(सिस्टेट)**, के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना **अनिवार्य है। हालांकि, अधिकतम पूर्व जमा** 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER IN APPEAL

M/s. Adani Petronet (Dahej) Port Pvt. Ltd., Adani House, Near Mithakali Six Roads, Navrangpura, Ahmedabad (hereinafter referred to as '*the appellant*') have filed the present against the OIO No.30/ADC/MLM/2020-21 dated 31.12.2020 (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

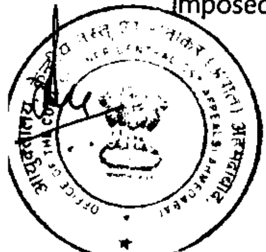
2. The facts of the case in brief are that, during the course of audit conducted by the officers of Central GST Audit, Ahmedabad and on verification of records maintained by the appellant, following observations were raised:

a) The appellant for the F.Y. 2016-17, provided 'Port Service' to M/s. Nobel Natural Resources India Pvt Ltd, located at Bhimasar and Gurugram and raised two invoices, both dated 31.03.2017 for taxable value of Rs.3,16,04,530/-. They, however, did not pay service tax amount of **Rs.47,40,680/-** on the aforesaid taxable value, claiming that the 'Terminal Handling Charges' was towards handling i.e. loading, packing and unloading of wheat which is an agricultural produce, hence not taxable under Section 66D(d)(v) of the Finance Act (F.A) ,1994.

b) During the F.Y. 2014-15, the appellant received an amount of Rs.14,06,928/- as damage charges from a shipping company towards damage of port property, which appeared to be a service of 'agreeing or tolerating an act', classifiable under Section 66E clause (e) of the F.A., 1994, on which tax liability of **Rs.1,73,897/-** was worked out.

c) During the F.Y.2013-14, the appellant received insurance amount of Rs.68,66,518/- against the capital goods (3 pneumatic fenders numbered N-1, N-5 & N-9) damaged in the accident. From the pre-receipt relating to the insurance claim, it appeared that after the disbursal of the insurance amount, the possession of damaged goods no longer remained with the appellant and shifted to the insurance company, therefore, they are liable to pay central excise duty of **Rs.8,58,315/-** on the transaction value of the damaged capital goods in terms of Rule 3(5A)(b) of the CENVAT Credit Rules (CCR),2004.

2.1 A Show Cause Notice (SCN) No.VI/1(b)CTA/Tech-4/SCN/APPL/2019-20 dated 15.04.2019 was, therefore, issued proposing to consider amount of Rs.14,06,928/- as consideration for the damage of port property falling under clause (e) of Section 66E the F.A., 1994 and proposing Service Tax demand of Rs.47,40,680/-, Rs.1,73,897/- & Rs.8,58,315/- alongwith interest under Section 73(1) & 75 of the F.A, 1994. Penalty under Section 78(1) in respect of above demand was also proposed. The said SCN was adjudicated vide the impugned order wherein the demand of Rs.47,40,680/- & Rs.8,58,315 was confirmed alongwith interest and the demand of Rs.1,73,897/- was dropped. Penalty equivalent to the confirmed demand under Section 78(1) was also imposed.



3. Aggrieved by the impugned order, the appellant has filed present appeal contesting the demand confirmed, on following grounds;

- They claim that they are owner and operator of Dahej Port and they have entered into an agreement with M/s. Nobel Natural Resources India Pvt Ltd (NNRIPL for brevity) to facilitate the handling operations of cargo (wheat) at the port. They provided services of loading, unloading, handling and transportation of wheat to NRIPL (as mentioned in Annexure-A to the agreement) and charged consideration as per the rate prescribed in Annexure-B to the agreement. They charged Rs.540/MT on FOT (Free on Truck) basis for handling of wheat and delivery in bags onto the trucks; Rs.540/MT on FOR (Free on Rail) basis for handling of wheat up to delivery in bags onto the rake; Rs.640/MT on FOR (Free on Rail) basis for handling of wheat and delivery in bags up to the warehouse. Thus, they claim that even if the activity of loading, unloading, packing and storage of agricultural produce is treated as composite service, they are not liable to pay service tax as it is covered under negative list. They also contended that the services renuered by them is only one service hence cannot be considered as naturally bundled service, as principle of bundled service applies when more than one service are being provided by the service provider. Further, after 01.07.2012, the service is taxable if not covered under negative list or not exempted, therefore, classifying the service as port service without giving sufficient reasoning is bad in law. In support of their argument they placed reliance on Dharampal Satyapal Ltd [2015 (320) ELT 3 (SC)]. They argued that the OIO is silent as it does not specify the composite service provided but merely specifies the nature of work rendered.

- They argued that Rule 3(5A)(b) of the CCR is not applicable to service providers. They negated the argument that the capital goods were cleared as waste & scrap because the same are still lying with them. They placed reliance placed in the case of Biopac India Corn Ltd – [2007(11) TMI 213]. They also contended that their submission stating that the compensation actually received was Rs.35,97,824/- and not Rs.68,66,518/-, was completely ignored by the adjudicating authority. Further, since Cenvat credit is available, the entire transaction will be revenue neutral, becatse this credit could be used for paying service tax. The compensation received towards damaged capital goods cannot be treated as consideration for the goods sold, therefore, the demand of Rs.8,58,315/- (@12.5% of the insurance claim) is wrong. They placed reliance on catena of decisions. Mafatlal Industries-1997 (89) ELT 247 (SC), Kay Pan Sugandh Pvt. Ltd – 2017 (352) ELT 17 (Tri-Del).

- They also contended that extended period of limitation cannot be invoked as the ST-3 returns format does not require to disclose such details, which if sought would have been provided to the department. They were under the bonafide belief that no duty is payable therefore intent to evade duty is not established. Extended period of limitation cannot be imposed merely for non-payment /short payment of taxes which involves interpretation of law and where there is no intent to evade duty/taxes.

- They argued that in terms of decision passed in the case of Bill Forge Pvt. Ltd. – 2012(26) STR 204 (Kar), interest is not applicable when there is no liability to discharge the tax.

- Also in the absence of *mensrea*, penalty under Section 78 is not imposable. They placed reliance on Apex Courts decision passed in the case of Devan Modern-2008(10)STR 511 (SC), Akbar Badruddin Jiwami-1990(47) ELT 161 (SC), to support their argument.

4. Personal hearing in the matter was held on 20.01.2022, through virtual mode. Shri Rahul Patel, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

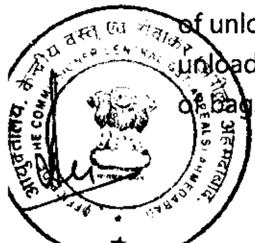
5. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as in the submissions made at the time of personal hearing and the records submitted by the appellant. The issues to be decided under the present appeal are;

a) Whether the appellant is liable to pay service tax amount of Rs.47,40,680/- on the invoices raised to M/s. NNRIPL for the services rendered during the F.Y. 2016-17 ?

b) Whether the appellant is liable to pay duty amount of Rs.8,58,315/- on the insurance amount received for the damaged capital goods during the F.Y. 2013-14, considering the same as transaction value, in terms of Rules 3(5)(A)(b) of the CCR, 2004 ?

6. On the first issue, the adjudicating authority, after examining the contract dated 01.02.2017, entered with NNRIPL, held that the nature of work rendered by the appellant is a composite service, which is neither covered under Section 66D(d) of the Finance Act, 1994 nor did it fall under any exemption, hence taxable. The appellant on the other hand are arguing that as per the agreement, they provided services to NNRIPL in respect of loading, unloading, handling and transportation of wheat, which is an agricultural produce, hence, covered under negative list. They also argued that the services rendered by them cannot be considered as naturally bundled service as principle of bundled service applies when more than one services are being provided. Further, even if the services are considered as composite service, they are specifically covered under Section 66D(d)(v), hence exempted.

6.1 The appellant have not submitted the copy of agreement, however on going through the relevant Annexure A & B of the contract, reproduced in their submission, I find that they are owner & operator of Dahej Port and are carrying out the operation of handling of cargo unloaded at Dahej Port. As per the operational terms & conditions, the scope of the work includes, Terminal Handling activities comprising of unloading of cargo from vessel, internal transportation up to storage godown after unloading, off-loading at nominated plots, bagging in PP/HOPE/Jute bags, stitching of bags, transportation up to rail siding/ or loading onto truck, transportation of bulk



cargo up to appellant's warehouse, bagging in bags at warehouse, loading on to trucks etc. The charges collected are terminal handling charges. Thus, going by the nature of service, it is clear that the appellant is not providing a single service but composite service like unloading of cargo from vessel, internal transportation up to storage, off loading at nominated ports, weighing, packing, transportation & loading of cargo in trucks or rake or warehouse etc, as per the requirements of NNRIPL.

6.2 Although the negative list based service tax regime largely obviates the need for descriptions of services, such descriptions continue to exist, if not covered under negative list, or declared services. If a service provider is providing a service wherein an element of provision of one service is combined with an element or elements of provision of any other service or services and where each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different, then in terms of sub-section (2) of Section 66F, a specific description will be preferred over a general description. If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service, which gives such bundle its essential character. I find that the services provided by the appellant is primarily a bundled service which includes unloading / loading of cargo, internal transportation up to storage, weighing, packing, warehousing, transportation & loading of cargo in trucks or rake or warehouse etc, therefore, in terms of Section 66F (3) (a) of the F.A., 1994, the essential service rendered by the appellant is handling of cargo within the port area as they are charging terminal handling charges.

6.3 On the contention, whether the services rendered by the appellant are covered under negative list or not, I have examined Section 66D of the Finance Act, 1994, which provides the negative list of services, wherein clause (d) covers services/activities relating to agriculture or agricultural produce. Further, I find that sub-clause (v) of clause (d) also covers *"Loading, unloading, packing, storage or warehousing of agricultural produce"*. The term 'agricultural produce' is also defined in clause (5) of Section 65B of the Act, which means any produce of agriculture on which either no processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. It also includes specified processes in the definition like tending, pruning, grading, sorting etc. which may be carried out at the farm or elsewhere as long as they do not alter the essential characteristics. Thus, considering the nature of services rendered by the appellant, I find that the services of loading, unloading, packing, storage or warehousing of wheat is squarely covered under negative list defined under Section 66D(d)(v), as wheat is an agricultural produce. Even prior to negative list, the service provided by a cargo handling agency in relation to agricultural produce, storage or warehousing of agricultural produce, provided within the port was exempted vide Notification No.41/2010-ST dated 28.06.2010. Thus, the intention of government was not to tax the agricultural produce as long as the services do not alter the essential characteristics of such agricultural product. Further, I find that the adjudicating authority in the impugned order has not given any reasoning to justify that the said services shall not fall under negative list.

Therefore, on the basis of above discussion, I, find that the service tax demand of Rs.47,40,680/- is not sustainable on merits.

7. As regards, the second issue, it is observed that the duty amount of Rs.8,58,315/- was confirmed by the adjudicating authority on the argument that after receiving the insurance amount of Rs.68,66,518/-, the property of damaged capital goods shifted to the Insurance Company, hence in terms of the provisions of Rule 3(5A)(b) of the CCR, 2004, the appellant is liable to pay amount equal to the duty leviable on such transaction value. Further, he also finds that the appellant themselves have admitted the receipt of Rs.68,66,518/- and since the details provided by them was not matching with their claimed amount, the argument that they actually received only Rs.35,97,824/- was not acceptable. The appellant on the other hand have strongly contended that the provisions of Rule 3(5A)(b) of the CCR is not applicable to a service provider and the provisions are also not applicable to them as the capital goods are still lying with them as were not cleared as waste & scrap.

7.1 I have examined Rule 3(5A)(b) of the CCR, 2004, which provides that, *"If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value".* Thus, the above provision is applicable, only if the capital goods are cleared as waste and scrap and duty is leviable on the transaction value of such scrap. In the SCN, I however, find that the duty has been demanded on the insurance amount Rs.68,66,518/- alleged to have been received by the appellant in F.Y. 2013-14 and not on the clearance value of capital goods cleared as waste/scrap. Similarly, appellant's claim that they have actually received only Rs.35,97,824/- also appear to be correct. I find that in the final Surveyors Report dated 16.04.2013 of Dhiraj Offshore Surveyors and Adjuster Pvt. Ltd., three Pneumatic Fenders N1, N5 & N9 were shown as damaged and the total claim of Rs.68,66,518/- was subsequently reduced to Rs.35,97,824/- after deducting the Salvage and Policy deductible. The fact that only Rs.35,97,824/- was received is also evident from the receipt given to National Insurance Company.

7.2 Further, to examine, whether the appellant has removed the capital goods or not, I find that the adjudicating authority, merely on the argument that the ownership of the said damaged capital goods shifts to Insurance Company, took the insurance claim amount as transaction value for confirming the demand. In terms of Rule 3(5A)(b) of the CCR, 2004, the duty is to be demanded on the transaction value i.e. the value on which the capital goods are cleared as waste or scrap. I find that the SCN does not allege that the appellant cleared the goods as waste or scrap, nor is there any findings justifying such clearances. I, therefore, find that the liability to pay duty arises only when the disputed capital goods are actually cleared by the appellant. Since the damaged capital goods are no longer of any use to the appellant and although the ownership of such damaged capital goods shifts to the insurance company after disbursal of the insurance amount, does not mean that the goods were actually cleared as waste & scrap by the appellant. Consequently, I find that the demand of Rs.8,58,315/- confirmed in terms of Rule 3(5A)(b) of the CCR, 2004, on the above assumptions is not sustainable on merits.

8. When the entire demand is not legally sustainable, question of demanding interest and imposing penalty does not arise.

9. In view of the above discussions, I set-aside the impugned order and allow the appeal filed by the appellant.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

(अखिलेश कुमार)
आयुक्त(अपील्स)

Date: 02.2022

Attested

(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Adani Petronet (Dahej) Port Pvt. Ltd., - **Appellant**
Adani House, Near Mithakali Six Roads,
Navrangpura,
Ahmedabad

The Additional Commissioner - **Respondent**
CGST, Ahmedabad North
Ahmedabad

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North. (For uploading the OIA)
4. Guard File.