		कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, **सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421** **OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT& SPL ECONOMIC ZONE, MUNDRA-370421**
A. File No.	:	GEN/ADJ/COMM/261/2022-Adjn-O/o-Pr.Commr-Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-25-30-2026-27
C. Passed by	:	Nitin Saini Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue	:	23.09.2026 23.09.2026
E. SCN No. & Date	:	(i) CUS/APR/SCN/1016/2023-GR 3/4/6 dated 13.02.2024 (ii) C.No. VIII/6/ICD/PPG dated 21.04.2023 (iii) C.No.VIII/ICD/TKD/6AG/Gr.VI/Delhi Airport/133/2022 dated 05.07.2022 (iv) S/26-MISC-160/2022-23/Gr.VI/NS-V dated 14.07.2022 (v) S/5-17/2009 CC dated 18.02.2022 (vi) CUS/APR/PROJ/47/2022-Gr-5-6 dated 15.06.2022
F. Noticee(s)/Co-noticee(s)		M/s Delhi Airport Metro Express Pvt Ltd Reliance Centre, 2nd Floor, C-Wing, Maharaja Ranjith Singh Marg, NEW DELHI-110002

1. यहअपीलआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
   This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए-3में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है- Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

   "**केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ**, 2nd **फ्लोर, बहुमालीभवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद**-380 004"

   "Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्तअपीलकेसाथ1000/- रूपयेकाशुल्कटिकटलगाहोनाचाहिएजहाँशुल्क ,व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो -/5000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क ,व्याज ,शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क ,दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं° 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए। While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE-

1. M/s Delhi Airport Metro Express Pvt. Ltd. (DAMEPL), New Delhi (IEC No. 0508050910), was engaged as a concessionaire for the Airport Metro Express Line Project connecting New Delhi Railway Station to Dwarka Sector-21. The project was undertaken by Delhi Metro Rail Corporation (DMRC) through a consortium (Delhi Airport Metro Express Pvt. Ltd.) wherein Reliance Energy Ltd. (now Reliance Infrastructure Ltd.) held 95% equity and M/s. Construcciones Auxiliar de Ferrocarriles (CAF), Spain held 5% equity.

2. For the execution of the metro rail project, the importer registered a Project Import Contract under the Project Import Regulations, 1986 vide letter dated 25.03.2009, initially valued at Rs. 824.57 crore, which was later revised to Rs. 992.99 crore after registration of additional purchase contracts. The importer availed the benefit of Project Import concession under Sl. No. 441 of Notification No. 21/2002-Cus.

3. Under the said project, the importer procured Rolling Stock from M/s CAF, Spain for approximately Rs. 552 crore under a Rolling Stock Supply Agreement executed between the parties. Since CAF, Spain held 5% equity in the importing company, the buyer and seller appeared to be related persons in terms of Rule 2(2)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

4. Examination of the contract and transaction documents revealed that the contract price included payments towards on-site services such as testing, commissioning and training, amounting to Euro 24,41,066, which were to be provided by the supplier CAF, Spain. These services were integral to the supply of rolling stock and were stipulated in the agreement as obligations of the supplier. It appeared that such payments were conditions of sale and were related to the imported goods.

5. However, the importer had not included the value of these services while declaring the transaction value of the imported goods for customs assessment. Therefore, it appeared that the declared assessable value was not in accordance with Rule 10(1)(e) of the Customs Valuation Rules, 2007, which requires addition of payments made as a condition of sale to the price actually paid or payable for imported goods.

6. The imports of rolling stock were effected through multiple customs ports, namely Delhi Airport, ICD Patparganj, ICD Tughlakabad, Nhava Sheva, Mumbai Sea Port and Mundra Port, with the majority of the imports cleared through Mundra Port. The value of the said services was proposed to be apportioned pro-rata among the ports based on the percentage of the value of clearances.

Table–I: Port-wise Assessable Value and Duty

Sr. No.	Name of the Port	Assessable Value (Rs.)	Duty (Rs.)	% of Value of Clearances
1	Delhi Airport	10,41,10,878	2,20,16,689	1.88%
2	ICD Patparganj	67,58,184	14,15,233	0.12%
3	ICD Tughlakabad	9,64,26,720	2,01,92,747	1.75%
4	Nhava Sheva	37,21,24,079	7,79,26,609	6.73%
5	Mumbai Sea Port	3,56,75,786	74,70,876	0.64%
6	Mundra Port	491,44,03,736	102,93,12,859	88.87%
	Total	**552,94,99,382**	**115,83,65,013**	**100%**

Table–II: Apportionment of Service Charges (Euro 24,41,066)

Sr. No.	Name of the Port	Assessable Value (Rs.)	% of Value of Clearances	Service Charges Apportioned (in Euros)	Service Charges Apportioned (in Rs.)
1	Delhi Airport	10,41,10,878	1.88%	45,960	28,49,520
2	ICD Patparganj	67,58,184	0.12%	2,960	1,83,520
3	ICD Tughlakabad	9,64,26,720	1.75%	42,760	27,25,950
4	Nhava Sheva	37,21,24,079	6.73%	1,64,310	1,01,87,220
5	Mumbai Sea Port	3,56,75,786	0.64%	15,650	9,70,300
6	Mundra Port	491,44,03,736	88.87%	21,69,430	13,45,04,660
	Total	**552,94,99,382**	**100%**	**24,41,066**	

7. Accordingly, the importer was called upon to show cause, vide the following show cause notices, as mentioned in the table below, as to why the value of the said services should not be added to the transaction value of the imported goods and the provisional assessment should not be finalized with recovery of the differential duty along with applicable interest:-

Sr. No.	SCN No. & Date	Name of the Port	Assessable Value (Rs.)	Service Charges Apportioned (in Euro)	Differential Duty (Rs.)
1	CUS/APR/SCN/1016/2023-GR 3/4/6 dated 13.02.2024	Delhi Airport	10,41,10,878	45,960	5,92,032.40
2	C.No. VIII/6/ICD/PPG dated 21.04.2023	ICD Patparganj	67,58,184	2,960	38,129
3	C.No.VIII/ICD/TKD/6AG/Gr.VI/Delhi Airport/133/2022 dated 05.07.2022	ICD Tughlakabad	9,64,26,720	42,760	5,66,358.40
4	S/26-MISC-160/2022-23/Gr.VI/NS-V dated 14.07.2022	Nhava Sheva	37,21,24,079	1,64,310	21,16,554
5	S/5-17/2009 CC dated 18.02.2022	New Custom House Mumbai (Mumbai Sea Port)	3,56,75,786	15,650	2,01,594
6	CUS/APR/PROJ/47/2022-Gr-5-6 dated 15.06.2022	Mundra Port	491,44,03,736	21,69,430	2,79,45,431

8. The Central Board of Indirect Taxes and Customs (CBIC), vide Notification No. 16/2025-Customs (N.T.) dated 26.03.2025, appointed the Commissioner of Customs, Mundra Customs House (MCH), Gujarat, as the common adjudicating authority for the purpose of adjudication of the six Show Cause Notices referred to hereinabove.

9. Aggrieved by the issuance of the aforesaid Show Cause Notices dated 18.02.2022, 15.06.2022, 05.07.2022, 14.07.2022, 21.04.2023 and 13.02.2024, M/s Delhi Airport Metro Express Pvt. Ltd. filed a Writ Petition (Civil) No. 6914/2025 before the Hon'ble High Court of Delhi. The principal contentions advanced by the petitioner before the Hon'ble Court were two fold, namely:

(i) that pursuant to the amendment to Section 28(9) of the Customs Act, 1962, with effect from 29.03.2018, every Show Cause Notice is required to be adjudicated within the time limit prescribed therein; and

(ii) that the said time limit is mandatory in nature.

The Hon'ble High Court of Delhi, vide its Order dated 21.05.2025, permitted the undersigned, being the common adjudicating authority, to proceed with the adjudication of the aforesaid Show Cause Notices and directed that while final order can be passed, the said order shall not be given effect to.

PERSONAL HEARING-

10. Shri Prakash Shah, Senior Advocate and Shri Mihir Mehta, Advocate appeared on behalf of M/s. Delhi Airport Metro Express Pvt. Ltd. on 11.05.2026 and reiterated the submission dated 09.05.2026.

SUBMISSION-

11. M/s. Delhi Airport Metro Express Pvt. Ltd vide their submissions dated 09.05.2026, 25.05.2026 and 07.08.2026, interalia, submitted that-

12. Inordinate delay in issuing notice purporting to be under Section 18 of the Customs Act or under Regulation 7 of the Project Import Regulations is devoid of jurisdiction.

a) The show cause notices proposed to finalise the purported provisional assessment, after 11 to 13 years of date of import viz. filing bills of entry, is ex-facie devoid of jurisdiction or authority of law and contrary to the directions issued by the Board and law declared by the Hon'ble Apex Court and the Hon'ble High Courts.

b) It is submitted that proceedings initiated pursuant to the show cause notices seeking to finalize the purported provisional assessment of bills of entry filed by us after an inordinate delay of about 11 to 13 years are liable to be dropped on this ground alone.

c) The assessment was bound to be finalised within the time specified by the Board and the Hon'ble High Courts have held that delay in not finalising the provisional assessment is fatal and proceedings are quashed on the sole ground of delay in issuing show cause notice.

d) There is absolutely no explanation for a gross, inordinate and unreasonable delay of 11 to 13 years for purported finalisation of the allegedly provisionally assessed bills of entry much less any plausible explanation.

e) It is trite that, in the absence of any time limit prescribed under Section 18 of the Act for finalisation of assessment, the provisional assessment ought to have been finalized within a reasonable time.

f) Admittedly, 11 to 13 years cannot be considered a reasonable time under Section 18 of the Act or for any other provision under the Act.

g) The Hon'ble Apex Court in State of Punjab v. Bhatinda District Co-op. Milk P. Union Limited, 2007 (217) E.L.T. 325, has held that five years would be the reasonable period in the absence of any time prescribed in the Act.

h) Further, as per paragraph 3.1 of Chapter 7 of the CBIC Manual of Instructions, a reasonable period for finalization of provisional assessment is six months. The said CBIC Instruction is binding on the Department. The Department was bound to finalise the provisionally assessed bills of entry within a period of six months.

i) In the present case, admittedly, the bills of entry were filed by us between 2010 to 2011 and were assessed provisionally and are proposed to be finalized beyond the period of six months.

j) In any event and without prejudice, having failed to finalize the alleged provisionally assessed bills of entry within six months or, in any event, within reasonable time, the assessments are finalized or deemed to be finalized and the Respondents cannot be allowed to now take up the provisionally assessed bills of entry for finalization.

k) The Hon'ble Jharkhand High Court in case of Bihar Foundry & Castings Ltd. Vs. Union of India and Ors. 2024 (3) TMI 371, referring to the aforesaid CBIC instruction, was pleased to hold the proceedings for finalization of provisional assessments after 6 to 9 years as being vitiated by unreasonable delay and barred by limitation.

l) Further, the Hon'ble Apex Court in Union of India Vs. Asia Exporters 2024 (1) Centax 170 has held that the limitation for issuing show cause notices for recovery of drawback has to be reasonable period of 3 years notwithstanding non-mention of any limitation period in Rule 16 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The Review Petition filed by the Revenue against the aforesaid judgment has also been dismissed by the Hon'ble Apex Court as reported in 2024 (21) Centax 171 (SC).

m) Further, the maximum period for issuance of notice of short levy or non-levy provided under Section 28(4) of the Act is five years. By no means, the reasonable period, in absence of any time limit provided under Section 18, can be beyond five years.

n) In the present case, it is reiterated that proceedings for finalization of provisionally assessed bills of entry after inordinate delay of 11 to 13 years can, by no stretch of imagination, be termed as reasonable and more particularly in the absence of any explanation of such an ordinate and long delay in the show cause notices.

o) The impugned proceedings are vitiated by unreasonable and inordinate delay and can be termed as arbitrary in the legal term.

p) It is not open for the proper officer to exercise purported powers conferred upon him under Section 18 of the Act at his will and pleasure.

q) It is further submitted that any proceedings pursuant to the show cause notices, after 11 to 13 years from the date of provisionally assessed bills of entry, would cause serious prejudice to us.

r) Without prejudice, delay of more than 2 to 4 years in not adjudicating the show cause notices is contrary to law declared by the Hon'ble High Courts across India.

s) It is now well settled law that the adjudication of show cause notices beyond reasonable time renders the adjudication proceedings bad in law.

13. Costs of the services are not includible in the value of imported goods as the services of on site testing, commissioning and training to the drivers are post importation activities.

a) The Hon'ble CESTAT, in its orders in the cases reported in 2024 (387) 197- Schunk Metal and Carbon (I) Limited and (2024) 17 Centax 299- Page Industries has held that, once the declared value is accepted under

Rule 3(1)(a) of CVR, 2007, royalty under Rule 10(1)(c) cannot be added.

b) It is submitted that the contract price had been vivisected by CAF into Supply Contract Price for 8 units of Rolling Stock (Off Shore Part), Service Contract Price for 8 units of Rolling Stock (On Shore Part), Supply of Special Tools, Supply of Project Company owned Spares, Supply of Driving Simulator, Supply of Depot Equipment and amount for each supply had been indicated separately.

c) Article 1.1.48 of the Agreement defines, inter alia, "Service" as under:

"Service" shall mean all activities required to be carried out by CAF in relation to on-site testing, commissioning, training in relation to the Rolling Stock.

d) Thus, the services mentioned at Item 1.2 of Schedule 2 is the same services as defined above, which includes only onsite testing, commissioning and training and are no way related to any information relating to designs, inventions, discoveries, technical concepts, idea, etc. whether patented or not, whether protectable by IPR or not. The designs, drawings and other related information are inbuilt in the Supply Contract, on which Customs Duty had already been discharged at the time of clearance of the of the Rolling Stock. The "Supply" has been defined in para 1.1.49 in Article 1 of the Agreement read under:

"Supply" shall mean all activities required to be carried out by CAF in relation to the design, engineering, manufacture, factory test, Delivery, of the Rolling Stock and Warranty Obligations, in accordance with this contract and "Supply" shall be construed accordingly."

e) From the above definition of Supply, it clear that there is a clear-cut distinction between the "*Supply Contract Price of 8 units of Rolling Stock"* as mentioned at item no. 1.1 of the Schedule 2 and "*Service Contract price for 8 units of Rolling Stock".* As such, Service Contract mentioned in Item 1.2 of Schedule 2 is in no way connected to the supply of 8 units of Rolling Stock imported through various B/Es as mentioned in the SCNs. The first part pertains to tangible goods and non-tangible items such as, its design, engineering, manufacture, factory test, warranty and all other aspects of the Rolling Stock. These covers all the costs incurred at country of supplier and up to the port, whereas the second part was to be performed in India, through the officers of CAF and third-party vendors.

f) The Services, as mentioned at item no. 1.1 of Schedule 2 had been performed on-site in India by the personnel of CAF and other third-party vendors appointed by the supplier **on which appropriate Service Tax had been paid at appropriate rates under the heading "CONSULTING ENGINEERING" under reverse charge mechanism.**

g) Interpretative note to Rule 3 of Valuation Rules is relevant. It clearly provides that value of the imported goods shall not include charges and costs mentioned therein, provided that they are distinguished from the price actually paid for the imported goods.

h) in terms of clause (a) of interpretive note to Rule 3, charges for

construction, erection, assembly, maintenance or technical assistance undertaken after importation of the imported goods such as industrial plant, machinery or equipment cannot be added to the value of the imported goods.

i) In the present case, admittedly costs of services are separately identified in the contract.

j) In any event, the training given to the driver is otherwise not includible as it is given in India free of cost.

k) It is further submitted that para 8.8 of Article 8 of the Agreement reads as under:

"The Supply Contract price payable to CAF shall be without any withholding and in case the Project Company is required to deduct in accordance with law, from any payments to be made to CAF as part of the Supply Contract Price, the amount payable to CAF shall be grossed up by such amount such that CAF receives the entire Supply Contract Price without any withholding or deductions. The benefit of any withholding (if any) on Supply Contract Price which CAF derives in Spain shall be made available to the Project Company by CAF. The Services Contract price payable to CAF by the Project Company shall be net of any all withholding taxes and amounts deducted shall be deemed a payment to CAF and the Project Company shall issue the necessary withholding/deduction certificates to CAF in respect of such deductions."

l) From the above clauses of the Agreement, it is clear that, in the *"Supply Contract Price"* as mentioned at item no. 1.1 of Schedule 2 of the Agreement, it was binding on DAMEPL to pay entire supply contract price to CAF whereas, in case of *"Service Contract Price",* DAMEPL was to deduct all the amount towards the services paid to various vendors and third-parties from whom various services were obtained to discharge its obligation under the contract.

m) Rule 10(1) of the CVR, 2007 reads as under:

Rule 10. Cost and services. -

(1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -

(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely: -

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labour or materials;

(b) The value, apportioned as appropriate, of the following goods and services were supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely: -

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the Imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

(c) royalties and license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation. - Where the royalty, license fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

n) It is submitted that, as per explanation to Rule 10(1) of the CVR, 2007, any payment for a process whether patented or otherwise as referred in clause (c) and (e) are inclusive in the transaction value of the goods, however, in our case, as per para 1.1.49 in Article 1 of the Agreement, all activities required to be carried out by CAF in relation to the design, engineering, manufacture, factory test, delivery of the Rolling Stock and warranty obligations were already inbuilt in the contract price as mentioned in No. 1.1 of Schedule 2 of the Agreement and therefore it cannot be added again as it is already included in the "Supply Contract Price", whereas the "Service Contract Price" is for carrying out work in relation to on-site testing, commissioning, training in relation to the Rolling Stock under the supervision of DAMEPL and CAF and by other third parties in India.

o) The Hon'ble Supreme Court in case of *Collector of Customs (Preventive)* v. *Essar Gujarat Ltd.* [1996 (88) E.L.T. 609 (S.C.)] has held that the situations envisaged in one or the other sub-clauses of Rule 9 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 {Now Rule 10 of CVR, 2007} should be present in the import transaction for additions to be effected to the price adopted under Rule 4 for assessment to duty. Consequently, it would appear that legislative intent did not envisage every declared transaction value to be subject to further

adjustments merely because Rule 9 is the adjustment provision moored to Rule 4. This decision has been taken note of in ***Commissioner of Customs (Port), Kolkata* v. *J.K. Corporation Limited*** **[(2007) 9 SCC 401 = 2007 (208) E.L.T. 485 (S.C.)]** to distinguish the judgment in *Essar Gujarat* by drawing on *Tata Iron & Steel Co. Ltd.* v. *Commissioner of Central Excise, Bhubaneswar* and it was noted that:

"9 The basic principle of levy of customs duty, in view of the aforementioned provisions, is that the value of the imported goods has to be determined at the time and place of importation. The value to be determined for the imported goods would be the payment required to be made as a condition of sale. Assessment of customs duty must have a direct nexus with the value of goods which was payable at the time of importation. If any amount is to be paid after the importation of the goods is complete, inter alia, by way of transfer of licence or technical know-how for the purpose of setting up of a plant from the machinery imported or running thereof, the same would not be computed for the said purpose. Any amount paid for post-importation service or activity, would not, therefore, come within the purview of determination of assessable value of the imported goods so as to enable the authorities to levy customs duty or otherwise. The Rules have been framed for the purpose of carrying out the provisions of the Act. The wordings of Sections 14 and 14(1-A) are clear and explicit. The Rules and the Act, therefore, must be construed, having regard to the basic principles of interpretation in mind."

p) In the matter of ***COMMISSIONER OF CUS. (PORT), KOLKATA V/s STEEL AUTHORITY OF INDIA LTD.2020 (372) E.L.T. 478 (S.C.),*** the Hon'ble Supreme Court of India held that the Revenue has to make out their case and specifies that what items of post importation activities were required to be included in the value of the imported goods and provisions of Rule 9(1)(e) {now Rule 10 (1)(e)} cannot be automatically applied to every import which has surface features of a turnkey contract. Just because different components of a contract or multiple contracts give the shape of turnkey project to the imported items, without specific finding on existence of "condition" as contemplated in clause 9(1)(e), value of all these components could not be added to arrive at the assessable value. Such an exercise would go against the provisions of Interpretative Note to Rule 4, which is part of the Valuation Rules in view of the provisions of Rule 12 thereof. The Hon'ble Court observed as under:

"*24. We have already summarised the respondent's case that the disputed items on which the Customs Authorities intended to impose duty all related to post-importation activities and could not be included in the assessable value. It has been urged on behalf of the respondent that neither clause 9(1)(b)(iv), nor 9(1)(e) could be made applicable so far as the subject items are concerned. The imported items according to the respondent are the equipment and the engineering drawings etc. forming part of the contract were not necessary for production of the imported goods. It has also been urged that the customs authority had wrongly contended that the subject drawings etc. were purchased as the condition that the sale of the*

imported goods and this excluded application of clause 9(1)(e) of the 1988 Rules. In this regard interpretative note to Rule 4 was relied upon. Reference was made, in particular, to clause (a) of that Note.

25. Revenue has not made out a case that the disputed items of contract do not relate to post-importation activities. The statutory provision relied upon by the Revenue to bring the subject-items within the duty net is Rule 9(1)(e) of the 1988 Rules.

26. The expression "condition", simply put, conveys the idea that something could be done only if another thing was also done. In the given context, it would imply that import of equipment could be allowed by the other party provided the design features for post-importation activities were also obtained from the same supplier or from a firm as per the overseas supplier's direction. But there is no material before us to suggest that import of equipment was effected with simultaneous obligation of SAIL that the designs relating to post-importation activities should also be obtained from the same entity. The revenue has proceeded with the understanding that since both were obtained from the same vendor, condition of obtaining designs etc., for post-importation activities was implicit in the contract. The Revenue has sought to emphasise their case on the basis that as it was a turnkey project, importation of equipment and post-importation project implementation exercise were mutually dependant. In our opinion, reading such implied condition into the contracts would be impermissible in the absence of any other material to demonstrate subsistence of such condition. No part of the contract has been shown to us from which such conditions could be inferred. Necessity of subsistence of such conditions has been laid down in the case of Ferodo India (P) Ltd. for invoking Rule 9(1)(e). In our opinion, the provisions of Rule 9(1)(e) cannot be automatically applied to every import which has surface features of a turnkey contract. Just because different components of a contract or multiple contracts give the shape of turnkey project to the imported items, without specific finding on existence of "condition" as contemplated in clause 9(1)(e), value of all these components could not be added to arrive at the assessable value. Such an exercise would go against the provisions of Interpretative Note to Rule 4, which is part of the Valuation Rules in view of the provisions of Rule 12 thereof."

q) The ratio of the above-mentioned two judgments of Apex Court is squarely applicable in our case. The provision of Rule 10 (1) (e) of CVR, 2007 provides that all other payments for activities actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller are to be included in the import value, however the value should have direct nexus with the importation of the goods.

r) Any amount paid for post-importation service or activity, would not, therefore, come within the purview of determination of assessable value of the imported goods so as to enable the authorities to levy customs duty or otherwise.

s) The Rules have been framed for the purpose of carrying out the provisions

of the Act. The wordings of Sections 14 and 14(1-A) are clear and explicit. The Rules and the Act, therefore, must be construed, having regard to the basic principles of interpretation.

t) On going through the allegation in the show cause notices under reply it appears that the Department has not gone into the details of services included in the Service Contract price valued at € 2,441,066 and had directly taken, considering it as additional amount over and above the import value declared in the Bills of Entry, whereas in view of settled position of law declared by the Hon'ble Apex Court in the catena of above judgements it appears that the Department cannot include such post importation value to arrive at the assessable value, without specific finding on existence of "condition" as contemplated in clause 9(1)(e). Such an exercise would go against the provisions of interpretative Note to Rule 4, which is part of the Valuation Rules.

u) We would also like to cite the case of ***COMMISSIONER OF CUS. (IMPORT), MUMBAI vs HINDALCO INDUSTRIES LTD.- 2015 (320) E.L.T. 42 (S.C.)*** wherein the Hon'ble Supreme Court held that the Basic Engineering, Training and Technical Services Agreement, pertained to the services that were to be provided post import of the aforesaid goods and, on this ground, the value of these services could not have been loaded into the value of the goods at which those were imported. The Hon'ble Supreme Court held as under:

"5. On going through the order of the CESTAT, it becomes clear that the CESTAT has gone into the various provisions of the three agreements and has come to the conclusion that neither the fees paid under the Licence Agreement nor under the Basic Engineering, Training and Technical Services Agreement related to the import of the capital goods nor was it a condition of sale and on that basis it has recorded the finding that the provisions of Rule 9(1)(b)(iv) or Rule 9(1)(c) or Rule 9(1)(e) of the aforesaid Rules would apply to the facts of the case.

6. That apart, it further finds that both the Agreements, viz., Licence Agreement as well as Basic Engineering, Training and Technical Services Agreement, pertained to the services that were to be provided post import of the aforesaid goods. On this ground also, the value of these services could not have been loaded into the value of the goods at which those were imported."

v) In view of the discussion made hereinabove and the cases referred hereinabove, it is clear that the costs of post importation activities i.e., Service Contract Price, mentioned in item No. 1.1 of Schedule 2 of the Contract Price is not to be included in the value of imported goods.

w) Without prejudice and in any event, we have deposited cash security of Rs. 50,00,000.00, which needs to be refunded to us with interest thereon at the rate of 12 per cent from the date of deposit and the bank guarantees are to be returned as duly discharged as the validity thereof has expired.

x) The proceedings pursuant to Show Cause Notices are required to be dropped and proposed demand made pursuant to the show cause notices is not liable to be confirmed.

13.1 During the period April 2009 to September 2009, we have paid total service tax of Rs. 2,62,45,415 on the services received of Rs. 25,48,09,850 from our suppliers viz. CAF and MTR Corporation Ltd. and reported the same in the return filed in form ST-3 for the said period. Out of the above, Service tax of Rs. 24,91,423 is paid on the services of Rs. 2,41,88,572 received from CAF, which is under dispute in the subject show cause notice under reply. The break-up of the said amount is annexed and marked as Annexure "2". The copy of the return for the period April 2009 to September 2009 is already annexed to the reply.

13.2 Similarly, service tax of Rs. 96,96,202 is paid on the services of Rs. 9,41,37,880 received from CAF and reported in the return filed for the period October 2011 to March 2012 in the month of March 2012. Copy of the return filed in Form ST-3 for the period October 2011 to March 2012 is annexed as Annexure "3" to the present submission. The aforesaid payment totally amounts to Rs. 11,83,26,452 i.e. equivalent to €21,17,746. Due to the passage of time, we are not able to trace the record pertaining to the payment of service on the balance amount of € 3,23,320.

13.3 We reiterate the other submissions made in our reply dated 09.05.2026 and pray that the subject show cause notices under reply issued to us proposing to enhance the transaction value by € 24,41,066 are liable to be dropped and hence, be dropped.

13.4 They have provided Chartered Accountant Certificate vide their submission dated 07.08.2026 certifying that the service tax applicable on the testing and commissioning services has been duly discharged.

DISCUSSION AND FINDINGS-

14. I have carefully gone through all the Show Cause Notices and all evidences available on record. The issues to be decided before me are the following:-

(i) Whether the present proceedings are vitiated by delay, both the delay of about 11 to 13 years in issuing the Show Cause Notices after the Bills of Entry were filed, and the delay in adjudicating them thereafter, as contended by the noticee .

(ii) Whether M/s Delhi Airport Metro Express Pvt. Ltd. (DAMEPL) and their overseas supplier M/s Construcciones Auxiliar de Ferrocarriles (CAF), Spain are "related persons" in terms of Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(iii) Whether the amounts paid/payable towards testing, commissioning and training services amounting to Euro 24,41,066, as stipulated in the Rolling Stock Supply Agreement, constitute payments made as a condition of sale of the imported goods, thereby warranting inclusion in the assessable value in terms of Rule 10(1)(e) of the Customs Valuation Rules, 2007.

(iv) Whether the declared value of the imported goods is liable to be rejected under Rule 12 of the Customs Valuation Rules, 2007, for non-inclusion of the aforesaid elements, and consequently, whether the assessable value is required to be re-determined in accordance with the provisions of the said Rules.

(v) Whether the provisional assessments finalized under Section 18 of the Customs Act, 1962 are liable to be finalized by loading the assessable value, and whether the differential duty, as worked out in the respective Show Cause Notices, is recoverable under Section 18(2) of the Customs Act, 1962 along with applicable interest under Section 18(3).

Contentions of the Noticee regarding Delay- Delay in Initiation of Proceedings and Delay in Adjudication-

15. The noticee has contended that the present proceedings are vitiated by delay on two distinct counts: firstly, that the Show Cause Notices were issued after an inordinate delay of about 11 to 13 years from the date of filing of the Bills of Entry, without jurisdiction or authority of law; and secondly, that the adjudication of the said Show Cause Notices, even after their issuance, has itself been unduly delayed. In support of the first argument, the noticee has relied upon the absence of any prescribed statutory limitation under Section 18 of the Customs Act, 1962, Paragraph 3.1 of Chapter 7 of the CBIC Manual of Instructions, and the decisions in State of Punjab v. Bhatinda District Co-op. Milk Producers Union Ltd., 2007 (217) E.L.T. 325 (S.C.), Bihar Foundry & Castings Ltd. v. Union of India, 2024 (3) TMI 371, and Union of India v. Asia Exporters, 2024 (1) Centax 170, to contend that finalisation of a provisional assessment beyond five years, and in any event beyond six months, is impermissible.

15.1 As regards the delay in initiation of proceedings, I find that Section 18 of the Customs Act, 1962 does not prescribe any period of limitation for finalisation of provisional assessment, unlike Section 28 of the Act, which expressly prescribes a period of limitation for recovery of duty. In the absence of a statutorily prescribed period, what constitutes a "reasonable period" is to be determined having regard to the nature of the case, the complexity of the issues involved, and the facts and circumstances peculiar to each matter; no uniform formula of six months or five years, as canvassed by the noticee, can be mechanically applied irrespective of the nature of the case. In the present matter, the imports pertain to Rolling Stock under a composite Rolling Stock Supply Agreement were effected through six different Customs stations spread across the country. Determination of the relationship between the parties under Rule 2(2) of the Customs Valuation Rules, 2007, and examination of the composite Agreement and its Schedules for the purpose of apportioning the Services Contract Price across the said six Customs stations, necessarily involved detailed scrutiny of complex commercial and contractual documents, coordination amongst multiple Customs formations, and verification of facts common to all the said imports. Such an exercise, being multi-jurisdictional and fact-intensive, is inherently more time-consuming than assessment of imports at a single Customs station, and the time taken therein cannot be evaluated on the same footing as an ordinary case of delay in issuance of a show cause notice

concerning a single import at a single port. I further find that the decisions relied upon by the noticee are distinguishable on facts. None of them involved imports made through multiple Customs stations, or a related-party valuation issue requiring coordination between different jurisdictions, as is the case here.

15.2 As regards delay in adjudication, I find that the Bills of Entry were filed in 2010–2011 across six Customs stations, and the Show Cause Notices were issued between 2022 and 2024 by the respective jurisdictional authorities. Given imports spread across multiple jurisdictions, Para 9.2 of CBEC Circular No. 05/2016-Cus dated 09.02.2016 required appointment of a Common Adjudicating Authority, which the Board effected vide Notification No. 16/2025-Customs dated 26.03.2025. Thereafter, this office promptly granted repeated opportunities of personal hearing — vide letters dated 26.06.2025, 31.07.2025 and 30.01.2026, for hearings on 17.07.2025, 19.08.2025 and 19.02.2026 — none of which the noticee availed. Only upon a final opportunity granted on 11.05.2026 did the noticee appear and file submissions, on 09.05.2026, 21.05.2026 and 07.08.2026. These proceedings were conducted diligently and in compliance with natural justice. Therefore, there is no delay in adjudication.

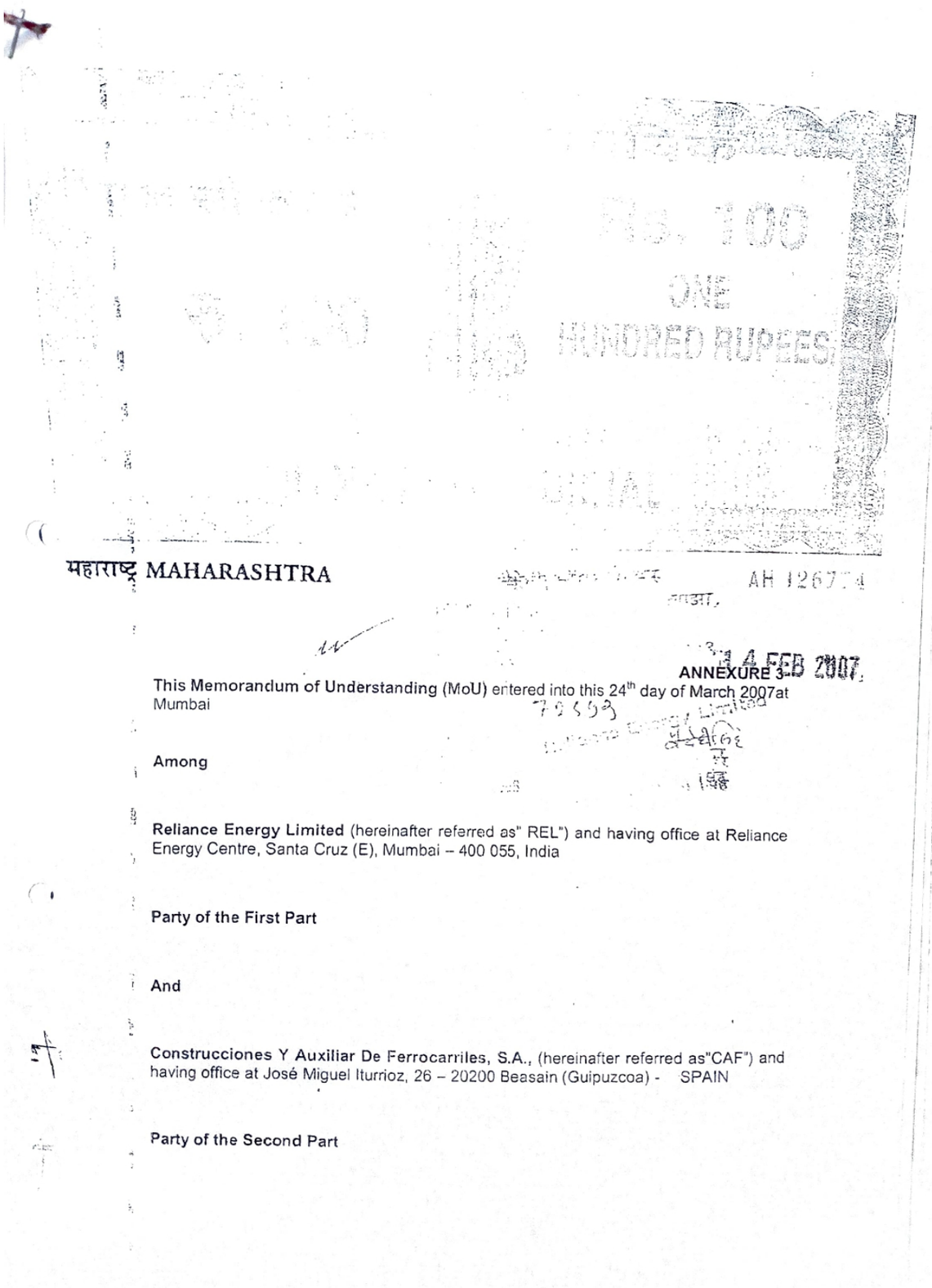
Whether M/s Delhi Airport Metro Express Pvt. Ltd. (DAMEPL) and their overseas supplier M/s Construcciones Auxiliar de Ferrocarriles (CAF), Spain are "related persons" in terms of Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

16. I note that Delhi Metro Rail Corporation (DMRC), a joint venture of the Government of India and the Government of National Capital Territory of Delhi, undertook the project for construction of the Airport Metro Express Line from New Delhi Railway Station to Dwarka Sector-21. DMRC decided to develop the project by engaging a concessionaire for financing, design, procurement, installation etc. following a process of pre-qualification: DMRC accepted the bid of Consortium named Delhi Airport Metro Express Private Limited (DAMEPL) comprising 95% holding of Reliance Energy Limited (Renamed as Reliance Infrastructure Limited) and 5% holding of Constucciones Auxilliar de Ferrocarriles (CAF), Spain.

16.1 Delhi Airport Metro Express Private limited (DAMEPL) registered Project under Project Import Regulations, 1986 for import of goods for metro rail project vide letter dated 25.03.2009 with import value at Rs.824,57,96,319/- claiming project import concession under Sr.No.441 of Notification No.21/2002. Subsequently additional purchase contracts were registered and after amendment the contract value increased to Rs.992,99,39,804/-.Delhi Airport Metro Express Private Limited (DAMEPL) imported Rolling Stocks (worth around Rs. 552 Crore) for the project from M/s Constucciones Auxilliar de Ferrocarriles (CAF), Spain.

16.2 I have carefully considered the issue whether M/s Delhi Airport Metro Express Pvt. Ltd. (DAMEPL) and their overseas supplier M/s Construcciones Auxiliar de

Ferrocarriles (CAF), Spain are related persons and the implications thereof on the declared transaction value. I find from the records, including the consortium structure and the Memorandum of Understanding dated 24.03.2007 between Reliance Energy limited and (renamed as Reliance Infrastructure Limited) and the supplier M/s Constucciones Auxilliar de Ferrocarriles (CAF), Spain, 5% of the equity capital of importer DAMPEL is held by CAF, Spain. The said MoU dated 24.03.2007 is reproduced below:-



महाराष्ट्र MAHARASHTRA

ANNEXURE 3

This Memorandum of Understanding (MoU) entered into this 24th day of March 2007at Mumbai

Among

Reliance Energy Limited (hereinafter referred as" REL") and having office at Reliance Energy Centre, Santa Cruz (E), Mumbai – 400 055, India

Party of the First Part

And

Construcciones Y Auxiliar De Ferrocarriles, S.A., (hereinafter referred as"CAF") and having office at José Miguel Iturrioz, 26 – 20200 Beasain (Guipuzcoa) - SPAIN

Party of the Second Part

The parties are individually referred to as Party and collectively as **Parties**.

WHEREAS the DMRC has invited applications from interested parties for Design, Procure, Finance, Install, Operate, Maintain and Transfer all systems of Delhi Airport Metro Rail Project on CONCESSIONING basis known as the "Project", for a specified concession period (the "Concession Period").

AND WHEREAS the Parties have had discussions for formation of a Consortium for applying for the said Project and have reached an understanding on the following points with respect to the Parties' rights and obligations towards each other and their working relationship.

IT IS HEREBY AS MUTUAL UNDERSTANDING OF THE PARTIES AGREED AND DECLARED AS FOLLOWS:

1. That the Parties will form a Special Purpose Company (SPC) with the shareholding commitments expressly stated. The said SPC shall not undertake any other business during the Concession Period, to domicile the Project prior to the start of implementation of the Project.

2. That the aggregate equity share holding of the Parties and their / his Associates, in the issued and paid up capital of the SPC shall be quoted for the equity portion of the cost of installation of all systems including rolling stock.

3. That the shareholding commitments shall be recorded in the Concession Agreement and no changes shall be allowed thereof, except in accordance with the provisions of the Concession agreement and the Bidding Document.

4. That the Parties shall carry out all responsibilities as Concessionaire in terms of the Concession agreement.

5. That the roles and the responsibilities of each Party at the stage of Application shall be as follows:

   a) REL : Lead Member

   b) CAF : Consortium member who brings in Technical eligibility criteria

6. That the minimum equity holding of each Party (in percentage term) in the SPV shall be as follows:

Name of the Party	% of equity capital
REL	95%
CAF	5%

As indicated in the bid document and the two addendums thereto, the parties hereby agree to adhere to the restrictions on equity holding as given herein under:

a) Upto COD + 2 years : No dilution by the Consortium members;

b) Upto COD+ 10 years:

Lead member – Minimum of 26%

Original members with Lead members – minimum of 51%

c) 11th years onwards after COD: No cap on any of the Consortium members

7. That the Parties shall be jointly and severally liable for the execution of the Project in accordance with the terms of the Concession agreement.

8. That the Parties affirm that they shall implement the Project in good faith and shall take all necessary steps to see the Project through expeditiously. They shall not negotiate with any other party for this Project.

9. That this MoU shall be governed in accordance with the laws of India and courts in Delhi shall have exclusive jurisdiction to adjudicate disputes arising from the terms herein.

In witness whereof the Parties affirm that the information provided is accurate and true and have caused this MoU to be duly executed on the date and year above mentioned.

Reliance Energy Limited	Construcciones Y Auxiliar De Ferrocarriles, S.A.
Debasis Mohanty Authorized Signatory (Party of the first part)	Juan José García Gabian Authorized Signatory (Party of the second part)

Witness:

1. Prasenjit Biswas
2. Luis Garcia Suarez

16.3 Rule 2(2)(iv) of the Customs Valuation (Determination of Price of Imported Goods) Rules 2007 states that "Persons shall be deemed to be related if any person directly or indirectly owns controls or holds five percent or more of the outstanding voting stock or shares of both of them". Thus, the importer, M/s Delhi Airport Metro Express Private Limited (DAMEPL) are related to its overseas suppliers CAF, Spain in terms of Rule 2(2)(iv) of Customs Valuation (Determination of Value of Imported Goods) Rules 2007.

16.4 It is further relevant to note that the noticee itself, in Writ Petition (Civil) No. 6914/2025 filed before the Hon'ble High Court of Delhi, has stated in the brief facts of the petition that 5% of the shareholding of the importer company was held by CAF, Spain. Thus, the factum of such shareholding and the resulting relationship between the importer and the overseas supplier stands admitted by the noticee itself and has not been disputed before the Hon'ble High Court. Therefore, the existence of relationship between the parties remains an admitted and undisputed position on record.

Whether the amounts paid/payable towards testing, commissioning and training services amounting to Euro 24,41,066, as stipulated in the Rolling Stock Supply Agreement dated 30.06.2008, constitute payments made as a condition of sale of the imported goods, thereby warranting inclusion in the assessable value in terms of Rule 10(1)(e) of the Customs Valuation Rules, 2007.

17. Rule 3(1) of CVR, 2007 says "Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10". Thus, while accepting of the declared value of imports as transaction value, it is to be examined as to whether any amount is required to be added to the price actually paid or payable for the imported goods under Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

18. As per rule, 3(3)(b) of CVR 2007, in a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) The transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) The deductive value for identical goods or similar goods;

(iii) The computed value for identical goods or similar goods;

19. Rule 10(1)(e) of CVR, 2007 says that '(e) *all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.*"

Explanation of Rule 10(1) of the CVR, 2007 says that where the royalty, license fee or any other payment for a process, whether patented or otherwise, is includible referred to in Clauses (c) & (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

20. A plain reading of Rule 10(1)(e) of the Customs Valuation Rules, 2007 indicates that for inclusion of any payment in the assessable value, two essential conditions are required to be satisfied, namely: (i) such payment must be made as a condition of sale of the imported goods; and (ii) such payment must be made to the seller, or to a third party for satisfying an obligation of the seller. Therefore, unless the payment is intrinsically connected with the sale transaction and simultaneously represents discharge of an obligation attributable to the seller, the same would not fall within the ambit of Rule 10(1)(e).

Current Legal Position of Rule 10 of the Customs Valuation Rules, 2007 vis-à-vis Judicial Pronouncements:-

21. In the case of M/s Coal India Ltd. v. Commissioner of Customs (Port), Kolkata, (2025) 30 Centax 128 (S.C.) Coal India Limited, the importer had procured goods from a foreign supplier through its Indian agent, to whom an amount equivalent to 8% to 10% of the FOB value of the imported goods was paid as agency commission. It was found that such payment to the Indian agent was not deductible from the FOB price payable to the overseas supplier and was intrinsically linked with the import transaction. The Tribunal held that the payment made by the importer to the Indian agent had direct nexus with the imported goods and constituted a condition of sale, thereby rendering the same includible in the assessable value under Rule 9(1)(e) of the Customs Valuation Rules, 1988. The Hon'ble Supreme Court upheld the said finding and observed that the services rendered by the Indian agent were not post-importation activities but were directly relatable to the import of goods by way of product support services, and accordingly confirmed inclusion of such charges in the assessable value under Section 14 of the Customs Act, 1962 read with Rule 9(1)(e) of the said Rules.

22. In Commissioner of Customs (Port), Chennai v. Toyota Kirloskar Motor Pvt. Ltd., 2007 (5) TMI 20 - Supreme Court, the Hon'ble Supreme Court examined whether royalty, technical know-how fees and technical assistance charges paid under collaboration agreements were liable to be added to the value of imported capital goods under Rule 9(1)(c) of the Customs Valuation Rules, 1988. *The Apex Court held that for any such payment to be includible in assessable value, it must have a direct nexus with the imported goods and must be payable as a condition of their sale.* Where the payments relate to post-importation activities such as manufacture in India, plant construction, engineering support, training, local production assistance, or services rendered only upon request of the importer, the same cannot be added to the transaction value. The Hon'ble Court accordingly upheld exclusion of such charges, reiterating that only those payments intrinsically connected with importation and sale of the imported goods are includible for customs valuation purposes.

23. Both the aforesaid judgments, namely Commissioner of Customs (Port), Chennai v. Toyota Kirloskar Motor Pvt. Ltd. and Coal India Ltd. v. Commissioner of Customs (Port), Kolkata Coal India Limited, consistently affirm the settled legal position that for any payment to be added to the assessable value under the Customs Valuation Rules, such payment must bear a direct nexus with the imported goods and must constitute a condition of sale, whereas payments relating to independent or post-importation activities lacking such nexus are not includible in the transaction value.

Examination of importer's case in terms of legal position discussed above-

24. In view of the statutory framework discussed hereinabove, particularly the principles governing transaction value, condition of sale, and payments made towards discharge of obligations of the seller under the Customs Valuation Rules, 2007, as also the ratio laid down in the aforesaid judicial pronouncements, it becomes necessary to

examine the factual matrix and contractual terms governing the present transaction. For this purpose, the Rolling Stock Supply Agreement dated 30.06.2008 alongwith its Schedules (1-20) assumes central relevance, as the true nature of the impugned payments must be discerned from the manner in which the importer and the foreign supplier themselves have structured the transaction, allocated their respective obligations, and treated the supply of goods and associated services as part of the overall contractual arrangement. The Agreement, therefore, provides the most reliable basis to determine whether the supply of Rolling Stock and the related services were contemplated by the parties as separate engagements or as interlinked and integral components of a unified commercial bargain.

Nature of the Contract and Composite Price Structure-

25. Upon careful examination of the Rolling Stock Supply Agreement dated 30.06.2008 entered into between M/s Delhi Airport Metro Express Private Limited (DAMEPL) and M/s Construcciones Auxiliar de Ferrocarriles, Spain (CAF), I find that the contract was not confined merely to the offshore manufacture and physical supply of Rolling Stock units, but was structured as a comprehensive turnkey arrangement (A turnkey contract is typically a contract under which supplier is employed to plan, design and build a project and do any other necessary development to make it functional or 'ready to use' at an agreed price and by a fixed date) encompassing both supply obligations and associated service obligations necessary for contractual completion of the project.

25.1 Article 3 dealing with the Scope of Contract provides that CAF shall supply the Rolling Stock on Delivered Duty Unpaid (DDU) basis at site and execute the works, including providing the documents, in accordance with the terms of the contract. Relevant clause of the Article 3 of the agreement is reproduced below:-

ARTICLE 3
SCOPE OF CONTRACT

3.1 Works

3.1.1 CAF shall Supply the Rolling Stock to the Project Company on the basis of DDU Site and execute the Works, including providing the Documents, in accordance with and subject to the terms and conditions contained in this Contract.

The use of the expression "works" in Article 3 of the Agreement is of critical importance. It demonstrates that CAF's responsibilities were not confined to the mere dispatch of rolling stock, but extended to all activities necessary to render the supply contractually deliverable and acceptable to the Project Company, in accordance with and subject to the terms and conditions contained in the contract. It clearly infers that the testing, commissioning and training obligations of CAF fell squarely within the scope of "works" under Article 3, and were not activities subsequent to the sale, but formed part of the very obligation of supply itself. The service component was, therefore,

intrinsically linked to the supply of the Rolling Stock from the outset of the contractual arrangement.

25.2 Further, Schedule 2 of the Agreement, captioned "Contract Price", sets out the total price architecture of the transaction and demonstrates that the consideration agreed between the parties was conceived as a single composite commercial arrangement. Schedule 2 of the said agreement is reproduced below for ease of reference:-

SCHEDULE 2 – CONTRACT PRICE

All prices bellow should be indexed independently as per article 8 and specifically 8.1.3 of this Contract. The Contract Price for the Supply Agreement is according to the following chart:

Item	Description	Schedule where is described	Amount	Total Amount
1	**Units (Total Eight Units)**	Sch. 1		**80,830,000 €**
1.1	Supply Contract price for Item 1 (Off Shore Part)	Sch. 1	78,388,934 €	
1.2	Services Contract price for Item 1 (On Shore Part)	Sch. 1	2,441,066 €	
2	**Supply of Special Tools**	Sch. 3		**2,347,200 €**
3	**Supply of Project Company Owned Spares**	Sch. 4		**3,129,000 €**
4	**Supply of Driving Simulator**	Sch. 5		**2,080,000 €**
5	**Supply of Depot Equipment**	Sch. 19		**4,236,750 €**
	Total Contract Price Amount			**92,622,950 €**

The Total amount of the Contract Price is **92,622,950.00 € (Ninety Two Million Six Hundred and Twenty Two Thousand and Nine Hundred and Fifty Euros)**

Besides to the contract Price the following items are options to be added to the contract price:

Item	Description	Schedule where is described	Amount
O1	Passenger information system LCDs for (Total Eight Units)	Sch. 1 Annexure1	753 000,00 €
O2	Difference between Wheel Lathe Equipment from 1800 to 2500	Sch. 19	373 000,00 €
O3	Difference between Tram lifting jacks and Body stands&Lowered bogies table (baja bogies) and the Under floor lifting Equipment	Sch. 19	1 302 950,00 €

The Project Company shall communicate to CAF to acquire Item O1 no later than 20th May 2008. The Project Company shall communicate to CAF to acquire Item O2 and O3 no later than Eight weeks from Agreement Signature.

DELHI AIRPORT METRO EXPRESS (P) LTD. NEW DELHI

CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A. CAF

214

25.3 Schedule 2 of the Agreement shows that Item No. 1, relating to the total eight units of Rolling Stock, carries a combined price of €80,830,000. This amount is bifurcated into Supply Contract Price (Offshore Part) of €78,388,934 and Services Contract Price (Onshore Part) of €2,441,066. The bifurcation establishes that the services of testing, commissioning, and training were not optional or ancillary, but formed an integral and intrinsically linked component of the overall price of the eight units. Further, the inclusion of the Services Contract Price within the total contract price of €92,622,950 demonstrates that these services were undertaken in accordance with and subject to the terms and conditions contained in the contract, and therefore cannot be segregated from the supply of rolling stock for customs valuation purposes. The argument of the noticee that the Agreement specifically bifurcates the "Supply Contract Price" and "Service Contract Price" under Schedule 2 and, therefore, the services component *stands clearly severed* from the import value of the Rolling Stock is not tenable. The composite pricing of Schedule 2 placing both the Supply Contract Price and the Services Contract Price within a single Item No. 1 for the eight Rolling Stock units, and further subsuming both within the overall Contract Price of €92,622,950 — leaves no room for treating the testing, commissioning and training services as a distinct or severable transaction. Since DAMEPL was contractually bound to pay the entire composite price, inclusive of the Services Contract Price, in order to receive the eight Rolling Stock units, payment of the Services Contract Price was a pre-condition to the supply itself being complete. The service component, therefore, was not merely linked to the supply as a matter of commercial convenience, but constituted a payment made as a condition of sale of the imported goods within the meaning of Rule 10(1)(e) of the Customs Valuation Rules, 2007.

25.4 It is further observed that the bifurcation of Item No. 1 into "Off Shore Part" and "On Shore Part" is the parties' own contractual description of different components of supply of rolling stock. Such geographical classification, however, does not alter the composite character of the agreed consideration, since both components remain payable to the supplier under the same contract. Rule 2(1) of CVR 2007 operates on the total payment from buyer to seller. DAMEPL pays CAF €80,830,000 for the Eight Units — of which €78,388,934 is for offshore manufacturing and €2,441,066 is for onshore services. Both sums flow from the same buyer, to the same seller, under the same contract, as consideration for the same goods. The total payment of €80,830,000 is the price paid for the Units; the Services component is a part of that price, not a payment for something external to the Units. This confirms that the value of the services formed part of the price actually paid or payable for the Rolling Stock under Rule 2(1) of the CVR, 2007 in the first instance, independent of and in addition to its inclusion under Rule 10(1)(e) as a condition of sale.

25.5 It is further noted that Schedule 2, in terms of Clause 8.2 of the Agreement, specifies that the Contract Price is quoted exclusive of VAT, customs duties, and other indirect taxes. This stipulation is intended only to clarify the fiscal elements kept outside

the stated Contract Price for taxation purposes. It does not affect the scope of the consideration agreed between the parties. The Services Contract Price of €24,41,066 is expressly included within Item No. 1 and contributes to the total Contract Price of €92,622,950. Accordingly, the Contract Price represents the complete contractual consideration payable under the Agreement, exclusive only of the specified tax elements. Relevant clause of the Schedule 2 is reproduced below:-

The letter of credit should be enlarged to cover the increase of the contract price on the Options acquired according to the procedure established in the present agreement.

- The Contract price has been quoted under DDU Site conditions (Incoterm 2000).
- The price detail of split between on shore (item 1.1) and off shore part (item 1.2) of the Units has been defined in Schedule7.
- The Contract price above excludes VAT, Custom duties and all Indirect Taxes as per clause 8.2 Of Supply Agreement.
- Safety Case implications , Homologations and/or Certifications if any to be done and obtained in India and/or abroad before any Institutions for the above equipments and under the Specifications will be obtained and paid by the Project Company without any implications and/or modifications for CAF on the Schedule 6
- Above Prices does not includes any warranty for equipments (ATP/ATO) and TETRA to be provided by the Project Company's subcontractors –not yet defined - as only under that subcontractors responsibility without any implication in case of failure for RAMS as per Schedule 20 .
- In case of any delay on CAF's contractual commitments in relation to the unfulfilling of the Project Company's equipments (ATP/ATO) and TETRA and/or subcontractors assistance or of any other Party and/or third party, if required in written by CAF, such delay shall automatically extend the Contractual Delivery Programme as per Schedules 6 without any kind of Liquated Damages as per Article 14 or any other remedies and/or liabilities for the same, including but not limited to cost implications ,if any , that shall be borned by Project Company
- All Payment to be remitted as per Lump Sum amounts described above for Schedule 3 (Special Tools) , Schedule 4 (Project Company Owned Spares), Schedule 5 (Drivers Simulator) & Schedule 19 (Depot Equipment) shall de done as bellow :
  - 15% As Advance Payment
  - 25% At Design approval of equipments - invoice for such amount is due subject to indexation.
  - 40 % At FOB position of equipments – invoice for such amount is due subject to indexation.
  - 15% Once delivered on site– invoice for such amount due subject to indexation.
  - 5% Once installed – invoice for such amount due subject to indexation.

DELHI AIRPORT METRO EXPRESS (P) LTD. * NEW DELHI

CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES S.A. CAF

25.6 The noticee has contended that Article 8.8 of the Agreement provides distinct tax treatment for the "Supply Contract Price" and "Service Contract Price", inasmuch as the Supply Contract Price was payable to CAF without withholding, whereas taxes were

deductible in respect of the Service Contract Price. On the basis of such differential withholding tax provisions, the noticee has argued that the services component constituted an independent and severable arrangement distinct from the offshore supply transaction and, therefore, cannot form part of the assessable value of the imported goods. I have carefully considered the aforesaid contention of the noticee. However, I find that the reliance placed upon the withholding tax provisions contained in Article 8.8 of the Agreement, reproduced below, is wholly misconceived and legally untenable in the context of customs valuation under Section 14 of the Customs Act, 1962 read with Rule 10 of the Customs Valuation Rules, 2007.

> *"The Supply Contract price payable to CAF shall be without any withholding and in case the Project Company is required to deduct in accordance with law, from any payments to be made to CAF as part of the Supply Contract Price, the amount payable to CAF shall be grossed up by such amount such that CAF receives the entire Supply Contract Price without any withholding or deductions. The benefit of any withholding (if any) on Supply Contract Price which CAF derives in Spain shall be made available to the Project Company by CAF. The Services Contract price payable to CAF by the Project Company shall be net of any all withholding taxes and amounts deducted shall be deemed a payment to CAF and the Project Company shall issue the necessary withholding/ deduction certificates to CAF in respect of such deductions."*

It is pertinent to note that withholding tax provisions in cross-border contracts are generally incorporated to ensure compliance with taxation requirements applicable to payments made to non-resident entities (including companies) under the Income Tax Act, particularly in respect of payments towards fees for technical services, consultancy services, engineering services, professional services, royalty, commission, interest or other taxable service-related remittances arising in India. Such withholding clauses are standard fiscal safeguards to ensure compliance with statutory deduction obligations at source in relation to remittances made outside India. The existence of such withholding provisions does not, by itself, determine the customs valuation treatment of the underlying payments nor does it establish that the concerned payments are legally severable from the principal supply contract. In the present case, the distinction drawn in Article 8.8 between "Supply Contract Price" and "Service Contract Price" merely reflects the parties' understanding regarding possible tax withholding implications under income tax laws in relation to offshore supplies and on-site services respectively. The same cannot be construed to mean that the services obligations stood independently divorced from the supply of the Rolling Stock.

Continuing Payment Obligation after Transfer of Title and its Relevance to the Price Paid or Payable-

26. Article 9 of the Rolling Stock Supply Agreement assumes significance inasmuch as it governs transfer of title and the continuing payment obligations of the buyer. Article 9 of the agreement is reproduced below:-

ARTICLE 9
DELIVERY AND ACCEPTANCE:

9.1 Delivery:

9.1.1 CAF shall subject to and in accordance with the terms and conditions of this Contract deliver the Rolling Stock in accordance with the Rolling Stock Supply Programme as per Schedule 6 of this Contract.

9.1.2 CAF agrees that title to all Rolling Stock shall pass to the Project Company from CAF on high seas and that Deliveries will be made to the Project Company as per DDU Site Incoterms, and shall include unloading at Site. The Project Company shall therefore be the importer of the Supplies into India. It is clarified for the avoidance of doubt that even after transfer of title to the Rolling Stock under this Article 9.1.2, the Project Company shall continue to pay CAF in accordance with Schedule 2 and Schedule 7.

9.1.3 The Project Company agrees that it shall pay all requisite customs duty and ensure customs clearance of each shipment of Supplies under this Contract, within seven (7) Business Days of such shipment arriving at the port of import, India. In order to facilitate the same, CAF agrees that it shall provide to the Project Company at least 10 days prior to the arrival of a shipment in India, all documents required for customs clearance as may have been requested by the Project Company in writing at least 60 days prior to the dispatch of a shipment from the port of loading. In the event of any delay in customs clearance procedures, beyond seven (7) Business Days from the date of arrival of each shipment at the port of import, India, CAF shall be entitled to extension of the Programme (if it is not able to mitigate such delay) set out in Schedules 6, as well as costs implications, if any. Additionally, in the event of any delay in the Delivery of Rolling Stock to the Site on account of a delay by the Project Company in paying the requisite customs or other import duties or a delay in the clearance of the Rolling Stock at the port of import, India, then CAF shall not be liable to pay any liquidated damages to the Project Company (for a period equivalent to the period of delay in customs clearance), and the remainder of the Programme to the extent affect by such delay in customs clearance shall stand automatically extended by a period equal to the delay by the Project Company in obtaining customs clearance. Further in the event that CAF is liable to pay any costs, or bear any additional expenses on account of a delay by the Project Company is obtaining customs clearance of the Rolling Stock at the port of import, India, CAF shall be entitled to be re-imbursed for any such costs against invoices raised on the Project Company.

The Project Company shall have the right to undertake physical inspection of the Units upon their Delivery at Site to check for any physical damage. If such physical damage is attributable to the default of CAF, then CAF shall repair such part of the Works at its cost but the same shall not be a Permitted Delay. If such physical damage is attributable to the default of the Project Company, then CAF shall repair such part of the Works at the cost of the Project Company and if the same results in delay of the execution of the Works then such delay shall be a Permitted Delay.

9.1.4 Notwithstanding the foregoing, and notwithstanding the transfer of title as per Article 9.1.2 above from CAF to the Project Company on high seas, all insurance policies (including the marine cargo and transit insurance) maintained by CAF pursuant to Article 18 hereinbelow, shall name CAF as beneficiary under the policies against any physical damage to the Rolling stock, whether partial or whole and/or any value decrease of the Rolling Stock.

Article 9.1.2 of the Rolling Stock Supply Agreement assumes considerable relevance, as it expressly provides that even after transfer of title to the Rolling Stock, the Project Company shall continue to make payments to CAF in accordance with Schedule 2 and Schedule 7 of the Agreement. Thus, while title in the goods may have passed upon the agreed event of transfer, the contractual payment obligations of DAMEPL did not stand concluded at that stage. On the contrary, the parties themselves recognized that components of the agreed consideration, including amounts forming part of Schedule 2 and milestone-linked payments under Schedule 7, remained payable thereafter. Since Schedule 2 includes the Services Contract Price of €2,441,066, the

said amount cannot be regarded as separate from the import transaction merely because its payment continued beyond the stage of transfer of title. The contractual arrangement, therefore, clearly demonstrates that the total consideration for the Rolling Stock was structured to include payments already made as well as payments remaining to be made after transfer of title. Such deferred or continuing payment obligations squarely fall within the scope of the expression "price actually paid or payable" under the Customs Valuation Rules, 2007, which in turn establish that the said service was a condition of sale of the imported goods within the meaning of Rule 10(1)(e) of the Customs Valuation Rules, 2007.

Provisional Acceptance, Mandatory Testing Requirements and Contractual Completion of Supply

27. The Provisional Acceptance Certificate (PAC) occupies a position of central importance in the contractual framework of the Rolling Stock Supply Agreement. Article 9.2.1 provides that the PAC is to be issued by the Independent Certifier only upon fulfilment of the stipulated conditions, which include successful completion of the Acceptance Tests in accordance with Schedule 10 and confirmation that the Rolling Stock conforms to the technical specifications necessary for safe passenger service. Article 9.2.1 of the agreement is reproduced below:-

9.2 Acceptance of the Deliveries

9.2.1 Provisional Acceptance:

I) CAF shall tender for provisional acceptance (**"Provisional Acceptance"**), each Unit of Rolling Stock at the Site and the Independent Certifier shall issue the provisional acceptance certificate (in accordance with the form set out in Schedule 13) (**"Provisional Acceptance Certificate"**) provided that the Delivered Unit, in the opinion of the Independent Certifier satisfies the following requirements:

(a) all manuals set out in Schedule 11, as are in relation to the Delivered Rolling Stock have been delivered to the Project Company along with the Rolling Stock;

(b) the Unit completes the Acceptance Tests in accordance with the testing requirements set out in Schedule 10;

(c) such Delivered Rolling Stock conforms with the Specifications; and

(d) each Rolling Stock confirms to such technical specifications as would make it capable to be employed safely for passenger service

II) Where the conditions specified in Articles 9.2.1 (I) (a) to (d) above have been fulfilled, even though there are certain minor defects or works outstanding and are required to be completed by CAF with respect to any Unit (**"Punch List Items"**), which do not, in the opinion of the Independent Certifier, affect the safe operational use of the Unit, the Independent Certifier shall issue the Provisional Acceptance Certificate for each Unit,

III) If in the opinion of the Independent Certifier, any of the conditions specified in Articles 9.2.1 (I) (a) to (d) above has not been satisfied, the Independent Certifier shall issue within three Business Days of the day, the detailed reports in respect of test results of such Unit are delivered by CAF to the Independent Certifier an initial written statement (hereinafter referred to as the "**Initial Statement**") setting out the specific reasons why it believes that the conditions specified in the referred Articles has not been satisfied. Further, the Independent Certifier shall issue within seven (7) Business Days of detailed reports in respect of test results of such Unit are delivered by CAF to the Independent Certifier , a detailed written statement (hereinafter called as the "**Detailed Statement**") to CAF setting out the detailed reasons for rejection of

27.1 It is, therefore, evident that mere shipment, delivery at site, or transfer of title did not by itself amount to complete discharge of the supplier's obligations under the Agreement. Formal acceptance of each unit was contingent upon satisfactory testing, operational readiness and compliance with contractual specifications. The additional requirement that the Rolling Stock must conform to such technical specifications as would render it capable of being safely employed for passenger service further establishes that contractual acceptance was dependent upon functional readiness, safety compliance and successful operational validation, and not merely upon physical delivery of the goods.

27.2 The significance of the PAC is further reinforced by the consequences attached to it under the Agreement. In terms of Article 12.1 of the agreement, reproduced below, the Warranty Period commences from the date of PAC; progression towards Final Acceptance follows thereafter; and release or reduction of contractual guarantees is linked to subsequent operational milestones.

ARTICLE 12
WARRANTY

12.1 CAF's warranties under Article 12.4 and 12.6 in relation to each Unit shall commence on the date of Provisional Acceptance Certificate of each Unit and shall continue through the period ending 27 months from the date of the Provisional Acceptance Certificate or 24 months from COD, whichever is earlier (the "**Warranty Period**"), and in relation to items set forth in Schedule 21 shall commence on COD and end at the expiry of the respective periods set forth in Schedule 21 (the "**Latent Defects Period**"). In case any part of any Unit is replaced or repaired during the aforesaid Warranty Period, CAF's Warranty Obligations in relation to such replaced or repaired part shall continue for a period of 24 months from the date of its repair or replacement.

12.2 The Project Company shall give CAF written notice in relation to the Warranty Obligation, which occurs during the Warranty Period within 15 (fifteen) days of the time when the Project Company knows about the defect in the Works. In case of claim of the Warranty Obligation during the Warranty Period, CAF shall be obligated to effect at its own cost and expense, in the shortest practicable time and subject to access to Site, such corrective action, repairs, rebuilding and / or replacements as are necessary to remedy the defect. In case of any defect or deficiency in the Works arising after COD/ date of the Provisional Acceptance Certificate which has not resulted from a failure by CAF to perform its obligations under this Contract, CAF shall at the request of the Project Company and subject to mutually agreed terms, correct such defect or deficiency.

12.3 CAF shall acknowledge the warranty claim when it receives the following written information from the Project Company:

(i) serial number of the Rolling Stock, number of specific vehicle and if possible the type and description of the deficient component; and

(i) the date and on a best efforts basis a full description of the fault and the likely cause; and

(ii) date when the Unit was commissioned into operation.

12.4 CAF's warranty obligations under this Contract covers only the repair or replacement of faulty or defective components, and parts that have been damaged due to Faults (the "**Warranty Obligations**"), but excludes, in any event, consequential losses and/or indirect damages. The Parties hereby agree that the obligations specifically set out in this Contract are the only obligations and warranties of CAF and CAF makes no other warranties, whether oral or written. The Parties further agree that all implied warranties are excluded.

12.5 Notwithstanding anything contained in this Contract, the Parties agree that CAF's Warranty Obligations do not cover the repair or replacement of components and parts that have been damaged due to: (i) Non-Faults; or (ii) damages that are resulting from a failure by the Project Company to give CAF reasonable opportunity to diagnose and/or rectify any defect in the Rolling Stock after Project Company knowing about the same.

These provisions clearly indicate that the PAC marks the stage at which the supplied Rolling Stock is contractually recognized as fit for intended passenger operations and accepted under the Agreement. Until such stage is reached, the contractual performance of the supplier remains incomplete.

27.3 Further, Schedule 10 assumes considerable relevance, as it prescribes the Acceptance Tests required prior to Provisional Acceptance as mentioned in clause (d) of Article 9.2.1(I) reproduced above. While certain factory tests were to be undertaken prior to dispatch, Schedule 10 also envisages dynamic and on-site tests such as braking and acceleration tests, running tests on curves, dynamic behaviour, noise level tests, air-conditioning performance, multiple operation tests and other functional electrical tests. By their very nature, such tests could only be undertaken after arrival of the Rolling Stock at site and in operational conditions. These activities correspond directly with the contractual definition of services relating to on-site testing and commissioning.

27.4 It is also relevant that under Article 14.2(i), liquidated damages for delayed delivery were contractually linked to the Scheduled Delivery Date, yet the overall contractual scheme indicates that mere physical arrival of the Rolling Stock did not amount to complete delivery unless the units attained Provisional Acceptance. The PAC, therefore, represents the stage at which each unit was formally accepted as conforming to the contractual specifications and fit for passenger service, whereupon the supplier's primary delivery obligations stood substantially discharged in commercial terms.

77

ARTICLE 14
DELAY LIQUIDATED DAMAGES

14.1 The Parties agree that in the event that CAF is delayed in the compliance of the Works obligations within the specific periods set out in the Rolling Stock Supply Programme for reasons attributable to CAF, CAF shall be subject, upon written demand by the Project Company to pay liquidated damages for delay for each week of delay or part thereof, which shall be payable immediately and shall be calculated as out in Article 14.2 hereinbelow, subject to the overall limit of liability described in Article 15 hereinbelow.

14.2 Liquidated Damages:

(i) Subject to Article 14.1 and subject to any Permitted Delays, if with respect to any Unit, Driving Simulator or Depot Equipment, Delivery, has not occurred or on before the Scheduled Delivery Date of such Unit, Driving Simulator or Depot Equipment (as may be amended as a result of a Permitted Delay or in accordance with the Variation Procedure), liquidated damages shall be payable by CAF to the Project Company, from the Schedule Delivery Date of such Unit, Driving Simulator or Depot Equipment until the date of Delivery of that Unit, Driving Simulator or Depot Equipment at the following rate:

*Rate of 4/1000 x Each unit (of Unit, Driving Simulator or Depot Equipment, as the case may be) price defined in Schedule 2 per week of delay.

Provided however, no liquidated damages shall be payable for a delay of up to one (1) month, in the Delivery of the first and second Units.

(ii) The Parties agree that no liquidated damages shall be payable if the dynamic tests have not been successfully completed by the scheduled date of completion of such dynamic tests under Rolling Stock Supply Programme.

(iii) the aggregate amount of all liquidated damages payable by CAF pursuant to this Article 14.2 (for the avoidance of doubt being the aggregate of the liquidated damages paid to the Project Company) shall not exceed, in respect of all the Units collectively, 10% (ten per cent) of the Contract Price.

(iv) Amounts payable by CAF under this Article 14.2 shall be invoiced by the Project Company monthly and paid by CAF within 20 (twenty) Business Days of receipt by CAF of such invoice.

(v) In no event shall the Project Company be entitled to set off any liquidated damages payments due from CAF, under this Article 14 against any sums due and payable to CAF in respect of the Contract Price.

(vi) Not Used

(vii) The Project Company expressly recognises herein that the payment of the liquidated damages by CAF to the Project Company shall be the sole and exclusive remedy of the Project Company against CAF (without prejudice to right of termination in accordance with Article 20) and shall be made in full and final satisfaction of all CAF's financial liability to the Project Company for delay in the Delivery of the Units under this Contract. The Parties further agree that the liquidated damages are a genuine pre-estimate of losses that would be suffered by the Project Company on account of a delay in Delivery by CAF and are not by way of penalty.

27.5 Accordingly, the contractual sequence emerging from the Agreement is clear: on-site testing and commissioning had to be carried out, followed by successful completion of the Acceptance Tests, culminating in issuance of the PAC, which in turn triggered commencement of warranty and movement towards final acceptance of the Rolling Stock. The services covered under the Services Contract Price were, therefore, inseparable obligations for achieving contractual acceptance and completion of supply of the imported Rolling Stock. Thus, the aforesaid clause makes it abundantly clear that payment of the Services Contract Price was a condition of sale of the imported goods within the meaning of Rule 10(1)(e) of the Customs Valuation Rules, 2007.

Integration of Services within the Project Milestones and Commercial Operations Timeline-

28. Schedule 6 of the Rolling Stock Supply Agreement, reproduced below, which sets out the Supply Programme and Key Milestone Dates, further demonstrates that the services component was embedded within the overall execution schedule of the contract and was not a separate post-supply arrangement.

SCHEDULE 6 – Supply Program Key Milestone Dates

1. Delivery, Installation and Commissioning of Simulator	29th December 2009
2. Delivery of 1st Train at Site	29th January 2010
3. Static + Dynamic Testing of 1st Train	30th March 2010
4. Delivery of 2nd Train at Site	30th March 2010
5. Delivery of 3rd and 4th Trains	30th April 2010
6. Integration Testing of 1st Train with other systems	30th May 2010
7. Delivery if 5th and 6th Trains	30th May 2010
8. Delivery of 7th and 8th Trains	30th June 2010
9. Completion of Integration Tests of all train sets	30th July 2010

A developed Program with Gantt charts will be discussed separately during the Project program definition.

DELHI AIRPORT METRO EXPRESS (P) LTD. NEW DELHI

CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES

The sequence of milestones includes not only delivery of train sets at site, but also static testing, dynamic testing, and integration testing of the trains with other systems, culminating in the Commercial Operations Date (COD). Thus, the contractual programme treats service-related activities and delivery milestones as interdependent stages of a single implementation schedule.

28.1 It is particularly significant that completion of integration tests of all train sets coincides with the operational milestone leading to commencement of commercial passenger service. This clearly indicates that the imported Rolling Stock could not attain its intended commercial utility merely upon arrival or transfer of title, but only after completion of the testing, commissioning and integration activities stipulated under the Agreement.

28.2 The inclusion of such activities within the same milestone schedule as supply obligations strongly supports the conclusion that the parties themselves treated these services as integral to fulfilment of the contract. They were not collateral or optional activities undertaken after completion of sale, but formed an essential part of the contractual process through which the imported Rolling Stock became ready for commercial use in accordance with agreed specifications.

28.3 The testing and commissioning services were thus tied to the very milestones that marked completion of supply under the Agreement. The payment made for these services was, accordingly, a payment made as a condition of sale of the imported Rolling Stock within the meaning of Rule 10(1)(e) of the Customs Valuation Rules, 2007.

Common Letter of Credit Mechanism Covering Supply as well as Service Milestones-

29. The payment infrastructure under the Rolling Stock Supply Agreement provides further material evidence that the services component was treated as an integral part of the overall transaction and not as an independent arrangement. Article 8.3.1(iv), reproduced below, required DAMEPL to establish an irrevocable, extendable and at-sight Letter of Credit for an amount equivalent to 85% of the Contract Price, valid until all payment obligations of the Project Company to CAF stood discharged in accordance with Schedule 7. Significantly, the Contract Price forming the basis of such Letter of Credit was the total contractual consideration, which included the Services Contract Price reflected in Schedule 2.

(iv) The Project Company shall establish an irrevocable, extendable, at sight Letter Of Credit for an amount equal to 85% (eighty five per cent)of the Contract Price, in the form to be agreed between the Parties, in favour of CAF no later than 30 (thirty) days of the Advance Payment The said letter of credit shall be opened on an international first class banking institution bank and (or confirmed by an international first class bank located in Madrid) and valid till all payment obligations of the Project Company to CAF are discharged as per Schedule 7.

All cost related to the opening and maintaining of the Letter of Credit shall be borne by the Project Company. In the event CAF requires the Letter of Credit should be confirmed by a Spanish banking entity, the cost for such confirmation shall be borne by CAF. In the event that fifteen (15) working days before the maturity of this Letter of Credit, this Contract remains in force and there are still amounts payables by the Project Company to CAF under Schedule 7, such maturity shall be extended by the Project Company, at its own cost, for a reasonable term so as to cover the remainder of the payments under Schedule 7. In case the validity of this Letter of Credit was not duly extended, CAF will have the right (with prior written notice to the Project Company) to invoke the entire amount under the referred Letter of Credit two (2) Business Days prior to expiry of such Letter of Credit . The Letter of Credit shall acknowledge this right of CAF.

(v) To request a payment through the Letter of Credit issued or confirmed by the agreed bank in Madrid, CAF will have to submit to such bank the following documents (and only the following documents):

1. (i) The signed copy of the invoice submitted to the Independent Certifier, with a copy to the Project Company; and
   (ii) The copy of the certificate approving the invoice amount from the Independent Certifier certifying the invoice submitted to the Independent Certifier;

   or

2. a copy of the invoice submitted to the Independent Certifier, together with a copy of the receipt for the airmail through which the invoice was dispatched to the Independent Certifier, evidencing that more than (30) days have passed since the dispatch of the invoice to the Independent Certifier;

Upon receipt by the bank of the above documents, the bank shall make the invoiced payment to CAF.

(vi) Should this initial amount of the Letter of Credit not be enough to cover the actual amount payable to CAF as per Schedule 7 due to indexation the Project Company agrees to extend the Letter of Credit amount as necessary.

(vii) The Letter of Credit shall permit partial payments, in favour of the CAF for the part of the Contract Price under this Contract.

(viii) The Project Company agrees that it shall ensure that at all points in time, the Letter of Credit covers all remaining payments under Schedule 7 to be made pursuant to this Contract (including after indexation). In the event that the Letter of Credit does not cover at least 2 future invoices to be made pursuant to the Contract, CAF shall have

29.1 Schedule 7, which sets out the milestone-based payment programme, further shows that the same Letter of Credit was to be utilized not only for offshore manufacturing and delivery milestones, but also for specified on-shore milestones. The Schedule identifies milestones relating to on-site testing of rolling stock, commissioning and other activities to be undertaken at site. These milestones correspond to the services obligations contemplated under the Agreement. Thus, payments relating to such on-site obligations were secured and discharged through the very same financial instrument that governed payments for manufacture and supply of the Rolling Stock units.

29.2 The Agreement does not envisage any separate Letter of Credit or distinct payment mechanism exclusively for the services component. On the contrary, the same irrevocable payment instrument established in favour of CAF covered obligations arising from both offshore supply and on-site performance. Thus, the services were intrinsically linked to the supply of Rolling Stock, which means that the payment of the Services Contract Price was a payment made as a condition of sale of the imported Rolling Stock within the meaning of Rule 10(1)(e) of the Customs Valuation Rules, 2007.

Advance Payment Structured Against the Composite Works Obligation

30. The provisions relating to advance payment also indicate that the Agreement treated supply and services as components of a unified contractual undertaking. Article 5.1.1(ii), reproduced below, stipulates that commencement of the contractual works by CAF was linked to receipt of the agreed advance payment. The term "Works", as emerging from the Agreement, encompasses both supply obligations and service obligations.

ARTICLE 5
COMMENCEMENT

5.1 Commencement of obligations

5.1.1 The Parties agree that CAF shall be required to commence the Works and begin performance under this Contract upon the occurrence of the later of the following:

(i) Receipt of a written notice from the Project Company instructing CAF to commence the Works (the "**Notice to Proceed**" or "**NTP**"); and

(ii) Subject to the provisions of Article 5.1.2 below, the receipt of advance payment of 13,893,442.50 **Euros (** thirteen million eight hundred and ninety three thousand four hundred and forty two Euros and fifty cents) Euros by transfer from the Project Company to CAF's Account as the advance payment towards the Works ("**Advance Payment**")

30.1 Further, as per Article 1.1.11, reproduced below, the Contract Price is defined as consideration payable for supply as well as services.

1.1.11 "**Contract Price**" shall means the lump sum price of the Contract as set out in Schedule 2 payable to CAF for the Supply and Services, subject to such indexation or additions or deductions as made under the provisions of the Contract;

30.2 Thus, the advance payment, calculated as a percentage of the total Contract Price, operated as the financial trigger for commencement of the entire scope of contractual performance and was not confined solely to offshore manufacture or dispatch of goods. Significantly, the Agreement does not provide any separate mechanism whereby the buyer could make advance payment only towards the supply portion while excluding the services component. This clearly indicates that the advance payment was intended to support execution of the composite works obligation as a whole. This means that the services were intrinsically linked to the supply of the Rolling Stock, and payment of the Services Contract Price was, accordingly, a payment made as a condition of sale of the imported Rolling Stock within the meaning of Rule 10(1)(e) of the Customs Valuation Rules, 2007.

Performance Guarantee Referable to the Total Contract Price

31. The requirement of furnishing a Performance Guarantee under the Agreement further reinforces the integrated character of the transaction. Article 7.3.1, reproduced below, required CAF to furnish a Performance Guarantee equivalent to a specified percentage of the Contract Price.

7.3 Performance Guarantee

7.3.1 CAF shall provide the Performance Guarantee equivalent to 10% (ten per cent) percent of the Contract Price within 5 (five) Business Days of the date hereof, such Performance Guarantee to be effective on the Effective Date.

7.3.2 It is agreed that 50% (fifty per cent) percent of the aforesaid Performance Guarantee shall be cancellable upon the achievement of COD (in no event later than 31st October, 2010) and that the remaining 50% (fifty per cent) percent of the Performance Guarantee shall be cancelled at the end of the Warranty Period relating to the last Unit in the form set forth in Schedule 11 to this Contract.

The Performance Guarantee being computed on the total Contract Price, and not on the value of the goods alone, shows that CAF's obligation to perform the services was treated on the same footing as its obligation to supply the Rolling Stock. Had the services been a separate, independent arrangement, there would have been no reason to secure them through the very guarantee furnished for the supply contract. This reinforces the conclusion that the services were intrinsically linked to the supply of the Rolling Stock, and payment of the Services Contract Price was, accordingly, a payment made as a condition of sale of the imported Rolling Stock within the meaning of Rule 10(1)(e) of the Customs Valuation Rules, 2007.

Services Not Severable Except Through Formal Change Order

32. The Agreement also demonstrates that the services component was not optional or capable of unilateral exclusion by the buyer. Article 3.2.1, reproduced below, provides that any proposed modification of the programme involving reduction in the scope of supply or services was subject to acceptance by CAF, and that no such modified programme would bind the parties unless a formal Change Order was duly executed.

ARTICLE 3
SCOPE OF CONTRACT

3.1 Works

3.1.1 CAF shall Supply the Rolling Stock to the Project Company on the basis of DDU Site and execute the Works, including providing the Documents, in accordance with and subject to the terms and conditions contained in this Contract.

3.2 Modification of Supply Programme

3.2.1 In the event that either of the Parties is of the opinion that the Program needs to be modified for any reason (except on account of non-performance of obligations by the requesting Party), such Party shall have the right to propose the Program modification to the other Party. In the event that the Party proposing the modification to the Program is CAF, the Project Company shall have the right to accept or reject such proposed modification, provided however, that a modification that is proposed on account of a change in applicable Law of India or Spain, shall not be rejected by the Project Company. In the event that the Party proposing the modification to the Program is the Project Company, CAF shall accept such modification to the Program, subject to such modification not:

(i) being technically unfeasible; or

(ii) being in violation of Laws of India or Spain.

Provided further, that in the event that the Project Company proposes a modification of the Program by reducing the scope of the Supply or Services obligations, CAF shall have the right to accept or reject such modification, at its sole discretion.

In the event the Parties agree that the Program modification be carried out, the Parties shall modify the Rolling Stock Supply Programme and the Contract Price by way of executing a Change Order. The Parties further agree that CAF shall not be required to act in accordance with the modified Program, until the Change Order is duly executed by both Parties.

This contractual safeguard shows that the services obligations were part of the agreed scope of the contract and could not be dropped by DAMEPL on its own while keeping only the supply portion. Any change required CAF's consent and a formal amendment to the programme and price. This makes it clear that the services were intrinsically linked to the supply of the Rolling Stock and were not a detachable add-on independent of the sale. Payment of the Services Contract Price was, accordingly, a payment made as a condition of sale of the imported Rolling Stock within the meaning of Rule 10(1)(e) of the Customs Valuation Rules, 2007.

33. I rely upon the decision of Hon'ble Supreme Court of India in the matter of COLLECTOR OF CUSTOMS (PREV.), AHMEDABAD Versus ESSAR GUJARAT LTD.1996 (88) E.L.T. 609 (S.C.) the Hon'ble Supreme Court held that where imported plant could not be rendered functional without additional payments towards licence and technical know-how necessary for making the plant operational, such payments formed part of the value of the imported plant. The Hon'ble Court observed that the plant would be of no value if it could not be made functional and that the buyer intended to acquire the plant in working condition. Para 17 of the judgement is reproduced below:-

"17. The entire purpose of Section 14 is to find out the value of the goods which are being imported. The EGL in this case was purchasing a Midrex Reduction Plant in order to produce sponge iron. In order to produce sponge iron, it was essential to have technical knowhow from Midrex. It was also essential to have an operating licence from them. Without these, the plant would be of no value. That is why the pre-condition of a process licence of Midrex was placed in the agreement with TIL. It will not be proper to view that agreement with TIL in isolation in this case. The plant would be of no value if it could not be made functional. EGL wanted to buy the plant in working condition. This could only be achieved by paying not only the price of the plant, but also the fees for the licence and the technical know-how for making the plant operational. Therefore, the value of the plant will comprise of not only the price paid for the plant but also the price payable for the operation licence and the technical know-how. Rule 9 should be construed bearing this in mind."

Applying this principle to the facts of the present case, the imported Rolling Stock could not be put to its intended use, namely, commencement of revenue passenger service, until it had successfully undergone testing, commissioning and operational validation and was formally accorded Provisional Acceptance.

34. I also rely upon the decision of Hon'ble Supreme Court in the matter of Ansaldo STS Transportation Systems India Pvt. Ltd. v. Commissioner - 2016 (339) E.L.T. A205 (S.C.) wherein the Apex court while affirming the decision of 2016 (339) ELT 436 (Tri.-Chennai), held that where imported railway signalling equipment formed part of a composite arrangement involving design, manufacture, supply, installation, testing and commissioning, the technical know-how fee and royalty payable to the overseas related entity were directly connected with the imports and constituted payments forming part of the condition of sale. The relevant excerpt of the decision is reproduced below:-

"Tribunal also held that agreement with overseas supplier clearly indicates that entire know-how fee and royalty is directly related to import of parts and components of Railway Signalling Equipment, specially a component named Microlock II. Scope of work for Railways also indicating that every activity of design, manufacture, supply, installation, testing and commissioning of said equipment has been undertaken by appellants making these payments a part of condition for executing contract with Railways. A single import package has been vivisected in such a way so as to allow flow back of money to holding company abroad. Loading of value with entire agreed upon amount of Technical know-how fee and Royalty was upheld.

It was also held that appellant being a multinational company knowing legal requirements, has failed to disclose facts before importation of parts and components of Railway Signalling Equipment from a related person during entire period of import from 1999 onwards. It was only when SVB investigations began in 2002 that facts of related person came to notice of department. Accordingly, re-determination of assessable value for period 1999 to 2001 on basis of transfer price list of 2002, was upheld."

The said principle is relevant in the present matter where onsite testing, commissioning and acceptance obligations were inseparably linked with supply of the imported Rolling Stock.

35. I find that the reliance placed by the noticee upon the judgment in Commissioner of Customs (Port), Kolkata v. Steel Authority of India Ltd. (2020(372) E.L.T. 478 (S.C.), is misplaced and distinguishable on facts. In the said case, the Hon'ble Supreme Court observed that the Revenue had failed to establish existence of any contractual condition mandating procurement of post-importation services from the same supplier as a condition of import of the equipments and the activities involved therein were found to be independent post-importation project implementation activities. However, in the present case, the Agreement itself clearly establishes that testing, commissioning, operational validation and acceptance testing by CAF were mandatory contractual obligations intrinsically linked to completion, acceptance and commercial deployment of the imported Rolling Stock. The Service Contract obligations were directly connected with issuance of PAC, operational readiness and fulfilment of the supplier's contractual obligations and therefore constituted payments made as a condition of sale within the meaning of Rule 10(1)(e) of the Customs Valuation Rules, 2007.

36. The noticee has argued that Interpretative note to Rule 3 of Valuation Rules provides that value of the imported goods shall not include charges and costs mentioned therein, provided that they are distinguished from the price actually paid for the imported goods. They have stated that in terms of clause (a) of interpretive note to Rule 3, charges for construction, erection, assembly, maintenance or technical assistance undertaken after importation of the imported goods such as industrial plant, machinery or equipment cannot be added to the value of the imported goods. I have carefully considered the aforesaid contention of the noticee. The Interpretative Note to Rule 3 of the Customs Valuation Rules, 2007 provides that the value of imported goods shall not include certain charges or costs, including charges for construction, erection, assembly, maintenance or technical assistance undertaken after importation, provided that such

charges are distinguished from the price actually paid or payable for the imported goods. However, in the instant case, I find that the Service Contract Price cannot be treated as an independent or segregable post-importation charge distinguished from the price paid for the imported Rolling Stock. On the contrary, the contractual documents clearly establish that the payments made towards testing, commissioning and related services were intrinsically linked with the import, contractual completion, acceptance and commercial deployment of the Rolling Stock itself. The imported rolling stocks could not attain contractual acceptance or operational readiness without successful completion of such obligations by CAF. Therefore, the said payments formed an integral part of the overall consideration payable for the imported goods and do not fall within the exclusion contemplated under the Interpretative Note to Rule 3 of the Customs Valuation Rules, 2007.

Noticee's Claim of Prior Payment of Service Tax on the Services, Verification Thereof, and Its Effect on Includibility in Assessable Value-

37. They have further contended that the Services, as mentioned at item no. 1.1 of Schedule 2, had been performed on-site in India by the personnel of CAF and other third-party vendors appointed by the supplier, on which appropriate Service Tax had been paid at appropriate rates under the heading "CONSULTING ENGINEERING" under reverse charge mechanism, and in support thereof, the noticee relied upon copies of ST-3 Returns for the periods April 2009 to September 2009 and October 2011 to March 2012 and certificate furnished by Chartered Account in this regard.

37.1 In order to verify the aforesaid claim, this office vide letter dated 21.07.2026 requested the Assistant/Deputy Commissioner, CGST Delhi South Commissionerate, Range-67, Vasant Kunj, New Delhi, being the jurisdictional authority in the matter as per the current GST registration of the noticee, to verify the authenticity of the ST-3 Returns furnished by the noticee and to inform whether any discrepancy was noticed therein or any proceedings were pending in respect thereof.

37.2 In response, the Vasant Kunj Division, CGST Delhi South Commissionerate, vide email dated 28.07.2026, informed this office that the said ST-3 returns for the periods under reference were not available on the AIO portal — only the returns from July 2012-13 to June 2017-18 being available thereon — and that the said Division was, therefore, unable to verify the returns furnished by the noticee.

37.3 Since the authenticity of the ST-3 Returns could not be verified through the jurisdictional CGST authority, this office vide email dated 31.07.2026 called upon the noticee to furnish documentary evidence establishing actual payment of Service Tax on the services in question. In response, the noticee vide reply dated 07.08.2026 furnished copies of Service Tax payment challans along with a Certificate issued by a Chartered Accountant.

37.4 The Service Tax payment challans so furnished by the noticee were thereafter forwarded by this office vide letter dated 12.08.2026 to the Deputy Commissioner, CGST, Dwarka Division, CGST Delhi South Commissionerate, New Delhi, being the jurisdictional authority at the relevant time, i.e., the period of filing of the said Service Tax returns, with a request to verify the said challans from the records available with that office and to confirm the actual payment/credit of the Service Tax amounts claimed by the noticee.

37.5 In response, the Deputy Commissioner, Dwarka Division, CGST Delhi South Commissionerate, vide letter C. No. DL-S/GST/DWK/R-83/Misc./154/2025-26 dated 18.08.2026, has informed this office as under:-

उप आयुक्त कार्यालय, केंद्रीय माल एवं सेवाकर, द्वारका मण्डल
OFFICE OF THE DEPUTY COMMISSIONER, CENTRAL GOODS & SERVICE TAX, DWARKA DIVISION
दिल्ली दक्षिण आयुक्तालय/ DELHI SOUTH COMMISSIONERATE
द्वितीय तल, 1, रिटेल बिजनेस सेंटर, नांगल राया, नई दिल्ली-110046
2nd FLOOR, 1, RETAIL BUSINESS CENTRE, NANGAL RAYA, NEW DELHI - 110046

C.No. DL-S/GST/DWK/R-83/Misc./154/2025-26 | 604-606 Date: - 18/08/2026

To,
The Assistant Commissioner,
Office of the Principal Commissioner of Customs,
Custom House, Mundra, Kutch, Gujarat – 370421.

Subject: Verification of payment of Service Tax by M/s DAMEPL – reg.

Reference: Your letter F. No. GEN/ADJ/COMM/261/2022-Adjn-O/o Pr. Commr-Cus-Mundra.

Sir/Madam,

Please refer to your above-referred letter on the subject cited above, wherein this office has been requested to verify the Service Tax payment challans furnished by M/s DAMEPL and to provide confirmation regarding the actual payment/credit of the Service Tax amounts.

2. In this regard, the matter has been examined with reference to the records available with this office. It is observed that the Service Tax returns pertaining to the periods **April 2009 to September 2009** and **October 2011 to March 2012** are not available on the AIO portal, as also mentioned in your communication.
3. Further, the records available with this office have been examined for the purpose of verification of the Service Tax payment particulars/challans furnished by M/s DAMEPL. However, **no corresponding record relating to the said Service Tax payments, challans, returns or credit of the Service Tax amounts is available with this office** for the periods under reference.
4. In view of the non-availability of the relevant records, this office is **not in a position to verify the Service Tax payment challans/documents furnished by M/s DAMEPL or to confirm the actual payment/credit of the Service Tax amounts** from the records available at this end.
5. It may therefore be informed that **no record pertaining to the Service Tax payment in respect of M/s DAMEPL for the periods under reference is available with this office**, and accordingly, no verification report confirming the actual payment/credit of the said amounts can be furnished by this office.
6. The above position is conveyed for information and further necessary action at your end.

Yours faithfully,

O/C

18/08/2026
Deputy Commissioner
Division Dwarka
CGST Delhi South Commissionerate

Copy to: -

1. The Additional Commissioner, Vasant Kunj Division, CGST Delhi South Commissionerate, EIL Annexe Building, Bhikaji Cama Place, New Delhi-110066.
2. The Additional Commissioner, Dwarka Division, CGST Delhi South Commissionerate, EIL Annexe Building, Bhikaji Cama Place, New Delhi-110066

37.6 In view of the foregoing, it is evident that the claim of the noticee regarding discharge of Service Tax on the services in question could not be verified or confirmed either through the jurisdictional CGST authority at Vasant Kunj, in respect of the ST-3

Returns relied upon by the noticee, or through the Dwarka Division, in respect of the Service Tax payment challans subsequently furnished by the noticee. Despite verification having been specifically sought at two stages — first in respect of the returns, and thereafter in respect of the payment challans and CA Certificate furnished by the noticee — no independent confirmation has been received from the jurisdictional GST authorities (erstwhile Service Tax authorities). The claim of the noticee regarding actual payment of Service Tax on the impugned services accordingly remains unsubstantiated and cannot be admitted as established evidence.

37.7 Without prejudice to the aforesaid finding that the claimed payment of Service Tax could not be verified, I find that even otherwise, payment of Service Tax under the Finance Act, 1994 does not ipso facto exclude inclusion of such payments under the Customs Valuation Rules, 2007. Levy of customs duty and levy of service tax operate in distinct statutory fields and are governed by different charging provisions and valuation mechanisms, and the Customs Valuation Rules, 2007 do not provide for any exclusion, exemption or set-off on the ground that service tax has been separately discharged on the same consideration. This position finds direct support in the decision of the Hon'ble CESTAT, Mumbai in *M/s Hydro Building Systems Pvt. Ltd. v. Commissioner of Customs (Import), Mumbai*, 2015 (3) TMI 199 – CESTAT Mumbai, wherein an identical contention — that since the appellant had already paid service tax on expenditure incurred towards technical assistance, management service fee and allied charges remitted to its overseas principal, no customs duty could be levied thereon — was raised and rejected. Para 7 of the said decision is reproduced verbatim:-

7. As would be seen from the above order, Commissioner (Appeals) has not remanded the matter back to the original authority but has set aside the order of the original authority as not proper. In view of this position, the contention of the appellants also holds no water. As far as the appellants' submission on merits are concerned, we find that the original authority has not discussed implications of various expenditure incurred by the appellants in relation to technical assistance and management service fee, IT Infrastructure fee, Brand Sharing cost, Business Promotion Expenses and Training Expenses as also certain other remittance made to their principals. The original authority must discuss each of these expenses and come to his finding whether any of these expenses have affected invoice value of the goods being imported after going through various agreements relating to such remittance as also examining various agreements relating to such remittance as also examining various invoices against which the payments have been made. The last contention of the appellants is that they are paying service tax on some of these activities and therefore, no customs duty can be charged. We are unable to agree with this contention. Revenue is not trying to charge customs duty on the expenditure incurred by the appellants but is required to examine whether such expenditure would form part of the assessable value of the goods imported. Service Tax Law and Customs Law are different. We, therefore, reject this contention of the appellants.

37.8 The fact that certain activities may also attract service tax liability does not determine whether the corresponding payments are includible in customs transaction

value under Rule 10(1)(e). The determinative test under Rule 10(1)(e) is whether such payments were made as a condition of sale of the imported goods and whether they had a direct nexus with contractual supply obligations. As discussed hereinabove, the contractual structure clearly establishes such nexus in the present case, and the services component was embedded within Item No. 1 of Schedule 2, forming part of the composite consideration for the eight rolling stock units. The Service Tax claimed to have been paid by the noticee, even if assumed to have been made, does not alter the legal character of the consideration under the Customs Valuation Rules, 2007, nor does it absolve the importer from inclusion of such payments in the assessable value.

38. In view of the foregoing discussion and findings recorded above, and upon a careful examination of the Rolling Stock Supply Agreement dated 30.06.2008 along with the relevant schedules and contractual provisions, I find that the so-called Services Contract Price of Euro 24,41,066 was not an independent or optional payment unrelated to the import of Rolling Stock, but formed an integral and inseparable component of the composite Contract Price agreed between M/s Delhi Airport Metro Express Private Limited (DAMEPL) and M/s CAF, Spain. I, therefore, hold that the said amount represented consideration payable by the buyer to the seller in relation to the imported goods and formed part of the price actually paid or payable under Section 14 of the Customs Act, 1962 readwith Rule 10(1)(e) of Customs Valuation Rules, 2007. Accordingly, the declared transaction value is liable to be re-determined by inclusion of the said amount in the assessable value of the subject imports, in accordance with law.

Apportionment of Service Charges across Multiple Ports for Inclusion in Assessable Value-

39. I find that the services in question, valued at Euro 24,41,066, form part of a composite contract and are relatable to the entire quantity of rolling stock imported under the project through different ports. Accordingly, the value of the said services is liable to be apportioned proportionately across all imports and the corresponding share attributable to the imports under the present proceedings is required to be added to the assessable value. The imports of rolling stock were effected through multiple customs ports, namely Delhi Airport, ICD Patparganj, ICD Tughlakabad, Nhava Sheva, Mumbai Sea Port and Mundra Port, with the majority of the imports cleared through Mundra Port. The value of the said services is required to be apportioned pro-rata among the ports based on the percentage of the value of clearances.

Table–I: Port-wise Assessable Value and Duty-

Sr. No.	Name of the Port	Assessable Value (Rs.)	Duty (Rs.)	% of Value of Clearances
1	Delhi Airport	10,41,10,878	2,20,16,689	1.88%
2	ICD Patparganj	67,58,184	14,15,233	0.12%

Sr. No.	Name of the Port	Assessable Value (Rs.)	Duty (Rs.)	% of Value of Clearances
3	ICD Tughlakabad	9,64,26,720	2,01,92,747	1.75%
4	Nhava Sheva	37,21,24,079	7,79,26,609	6.73%
5	Mumbai Sea Port	3,56,75,786	74,70,876	0.64%
6	Mundra Port	491,44,03,736	102,93,12,859	88.87%
	Total	**552,94,99,382**	**115,83,35,013**	**100%**

Table–II: Apportionment of Service Charges (Euro 24,41,066)

Sr. No.	Name of the Port	Assessable Value (Rs.)	% of Value of Clearances	Service Charges Apportioned (in Euros)	Service Charges Apportioned (in Rs.)
1	Delhi Airport	10,41,10,878	1.88%	45,960	28,49,520
2	ICD Patparganj	67,58,184	0.12%	2,960	1,83,520
3	ICD Tughlakabad	9,64,26,720	1.75%	42,760	27,25,950
4	Nhava Sheva	37,21,24,079	6.73%	1,64,310	1,01,87,220
5	Mumbai Sea Port	3,56,75,786	0.64%	15,650	9,70,300
6	Mundra Port	491,44,03,736	88.87%	21,69,430	13,45,04,660
	Total	**552,94,99,382**	**100%**		

40. In view of the foregoing findings, I hold that the assessable value of the imported goods is liable to be enhanced by including the proportionate value of testing, commissioning and training services amounting to Euro 24,41,066, apportioned appropriately to the imports under the respective Bills of Entry. Accordingly, the provisional assessments in respect of the said Bills of Entry are required to be finalized under Section 18(2) of the Customs Act, 1962 by loading the assessable value to the aforesaid extent and by incorporating the differential duty arising therefrom, as detailed hereunder:-

Sr. No.	Name of the Port	Assessable Value (Rs.)	Service Charges Apportioned (in Euro)	Differential Duty (Rs.)
1	Delhi Airport	10,41,10,878	45,960	5,92,032.40
2	ICD Patparganj	67,58,184	2,960	38,129
3	ICD Tughlakabad	9,64,26,720	42,760	5,66,358.40
4	Nhava Sheva	37,21,24,079	1,64,310	21,16,554
5	New Custom House Mumbai (Mumbai Sea Port)	3,56,75,786	15,650	2,01,594
6	Mundra Port	491,44,03,736	21,69,430	2,79,45,431

41. In view of the above discussion and findings, I hereby pass the following order:-

ORDER-

A. ORDER IN RESPECT OF SCN F.NO. CUS/APR/SCN/1016/2023-GR 3/4/6 DATED 13.02.2024 ISSUED BY ADDITIONAL COMMISSIONER OF CUSTOMS, ACC-IMPORT COMMISSIONERATE, NEW CUSTOM HOUSE, NEW DELHI:-

(i) I order to add the amount paid for online testing, Commissioning and training, in relation to Rolling stock, in transaction value to arrive at the assessable value in terms of Rule 10(1)(e) of Customs Valuation Rules, 2007.

(ii) I order to load the value of the imported goods mentioned in the import invoice with Rs. 28,49,520/- (Euro 45,960/-), being the proportionate value of services attributable to the Bill of Entry pertaining to ACC (Import) commissionerate— out of the total Services Contract Price of Euro 24,41,066/- apportioned across all six ports— paid as a condition of sale of the imported goods, to arrive at the correct transaction value.

(iii) I order to finalise the provisional assessment after loading the value as mentioned in (ii) above and order to recover the differential duty of Rs. 5,92,032.40/- under Section 18(2) of the Customs Act, 1962.

B. ORDER IN RESPECT OF SCN C.NO. VIII/6/ICD/PPG DATED 21.04.2023 ISSUED BY ASSISTANT COMMISSIONER OF CUSTOMS, ICD-PATPARGANJ DELHI:-

(i) I order to add the amount paid for online testing, Commissioning and training, in relation to Rolling stock, in transaction value to arrive at the assessable value in terms of Rule 10(1)(e) of Customs Valuation Rules, 2007.

(ii) I order to load the value of the imported goods mentioned in import invoice with Rs. 1,83,520/- (Euro 2960) i.e. proportionate value of services, paid as a condition of sale, to arrive at correct transaction value.

(iii) I order to finalise the provisional assessment after loading the value as mentioned in (ii) above and order to recover the differential duty of Rs. 38,129/- under Section 18(2) of the Customs Act, 1962.

C. ORDER IN RESPECT OF SCN C.NO. VIII/ICD/TKD/6AG/GR.VI/DELHI AIRPORT/133/2022 DATED 05.07.2022 ISSUED BY ASSISTANT COMMISSIONER, ICD-IMPORT, TKD, NEW DELHI:-

(i) I order to add the amount paid for online testing, Commissioning and training, in relation to Rolling stock, in transaction value to arrive at the assessable value in terms of Rule 10(1)(e) of Customs Valuation Rules, 2007.

(ii) I order to load the value of the imported goods mentioned in import invoice with Rs. 27,25,950/- (Euro 42760) i.e. proportionate value of services, paid as a condition of sale, to arrive at correct transaction value.

(iii) I order to finalise the provisionally assessed Bill of Entry No. 885604 dated 16.03.2010 after loading the value as mentioned in (ii) above and order to recover the differential duty of Rs. 5,66,358.4/- under Section 18(2) of the Customs Act, 1962 along with interest at the applicable rate under Section 18(3) of the Customs Act, 1962.

D. ORDER IN RESPECT OF SCN F.No. S/26-MISC-160/2022-23/GR.VI/NS-V DATED 14.07.2022 ISSUED BY JOINT COMMISSIONER, NS-V, JNCH:-

(i) I order to add the amount paid for online testing, Commissioning and training, in relation to Rolling stock, in transaction value to arrive at the assessable value in terms of Rule 10(1)(e) of Customs Valuation Rules, 2007.

(ii) I order to load the value of the imported goods mentioned in import invoice with Rs. 1,01,87,220/- (Euro 1,64,310) i.e. proportionate value of services, paid as a condition of sale, to arrive at correct transaction value.

(iii) I order to finalise the provisional assessment after loading the value as mentioned in (ii) above and order to recover the differential duty of Rs. 21,16,554/- under Section 18(2) of the Customs Act, 1962.

E. ORDER IN RESPECT OF SCN S/5-17/2009 CC DATED 18.02.2022 ISSUED BY ASSISTANT COMMISSIONER OF CUSTOMS (IMPORT-I), CONTRACT CELL, NEW CUSTOM HOUSE MUMBAI:-

(i) I order to add the amount paid for online testing, Commissioning and training, in relation to Rolling stock, in transaction value to arrive at the assessable value in terms of Rule 10(1)(e) of Customs Valuation Rules, 2007.

(ii) I order to load the value of the imported goods mentioned in import invoice with Rs. 9,70,300/- (Euro 15,650) i.e. proportionate value of services, paid as a condition of sale, to arrive at correct transaction value.

(iii) I order to finalise the provisional assessment after loading the value as mentioned in (ii) above and order to recover the differential duty of Rs. 2,01,594/- under Section 18(2) of the Customs Act, 1962.

F. ORDER IN RESPECT OF SCN CUS/APR/PROJ/47/2022-GR-5-6 DATED 15.06.2022 ISSUED BY COMMISSIONER OF CUSTOMS, MUNDRA CUSTOM HOUSE, MUNDRA-

(i) I reject the value of the imported goods mentioned in the invoice in terms of Rule 12 of the Customs Valuation Rules, 2007.

(ii) I order to add the amount paid for online testing, Commissioning and training, in relation to Rolling stock, in transaction value to arrive at the assessable value in terms of Rule 10(1)(e) of Customs Valuation Rules, 2007.

(iii) I order to load the value of the imported goods mentioned in import invoice with Rs. 13,45,04,660/- (Euro 21,69,430) i.e. proportionate value of services, paid as a condition of sale, to arrive at correct transaction value.

(iv) I order to finalise the provisional assessment after loading the value as mentioned in (iii) above and order to recover the differential duty of Rs. 2,79,45,431/- under Section 18(2) of the Customs Act, 1962.

42. This order is issued in compliance with the directions of the Hon'ble High Court of Delhi vide Order dated 21.05.2025. Further, in terms of the said directions, the present order shall not be given effect to, and any consequential recovery proceedings shall remain subject to the final outcome of Writ Petition (Civil) No. 6914/2025 pending before the Hon'ble High Court of Delhi.

43. This order is issued without prejudice to any other action that may be initiated against the importer under this act or any other law for the time being in force.

Digitally signed by
Nitin Saini
Date: 23-09-2026
17:28:47

(Nitin Saini)
Commissioner

F.No. GEN/ADJ/COMM/261/2022-Adjn

To,

M/s Delhi Airport Metro Express Pvt Ltd
Reliance Centre, 2nd Floor, C-Wing,
Maharaja Ranjith Singh Marg,
NEW DELHI-110002

Copy to-

(i) The Chief Commissioner, Gujarat Customs Zone, Ahmedabad for the purpose of Review.

(ii) The Additional Commissioner Of Customs, ACC-Import Commissionerate, New Custom House, Near IGI Airport, New Delhi-110037

(iii) The Assistant Commissioner of Customs, ICD-Patparganj Delhi

(iv) The Assistant Commissioner (Import), ICD-Tughlakabad TKD, NEW DELHI

(v) The Commissioner of Customs (Imports-I), Contract Cell, 9th Floor, Annexe Building, New Custom House, Ballard Estate, Mumbai-400001.
Email- contractcell.nchmum@gov.in
(vi) The Joint Commissioner of Customs, 7th Floor, Jawaharlal Nehru Custom House, Nhava Sheva, Taluka-Uran, Dist- Raigad, Navi Mumbai, Maharashtra-400707.
(vii) The Assistant/Deputy Commissioner (EDI), Custom House Mundra for necessary action.
(viii) The Assistant/Deputy Commissioner (TRC), Custom House Mundra for recovery of proceedings subject to the outcome of WP (C) No. 6914/2025 pending before the Hon'ble High Court of Delhi.
(ix) The Deputy Commissioner (DGoV), MUMBAI (HQRS), New Customs House, Annexe Building, 7th Floor, Ballard Estate, Mumbai-400001. Email- Directorate.valuation@dov.gov.in.
(x) The Assistant/Deputy Commissioner (Legal), Custom House Mundra for placing this order before the Hon'ble Court.