	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/322/2026-Adjn-O/o-Pr.Commr-Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-12-2026-27
C. Passed by	:	Nitin Saini Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue	:	09.06.2026 09.06.2026
E. SCN No. & Date	:	Waiver of Show cause notice
F. Noticee(s)/Co-noticee(s)		M/s Welspun Metallics Limited

1. यहअपीलआदेश संबन्धित को निःशुल्क 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.

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.

SUBJECT- Conclusion of proceedings under Section 28(6)(i) of the Customs Act, 1962 on payment of duty, interest and penalty@15% under Section 28(5) of the Customs Act, 1962 by M/s. Welspun Metallics Limited.

BRIEF FACTS OF THE CASE-

M/s. Welspun Metallics Limited (hereinafter referred to as the "M/s. Welspun" or "Welspun" or "the importer" for the sake of brevity) are holders of IEC No. AACCW6993K and have their registered office at Welspun House, 6th floor, Kamla Mill Compound, Mumbai, Maharashtra - 400013. They are in the manufacturing and export of Steel and Iron Products viz. Pig Iron and Cast Iron. M/s.Welspun imported various Capital goods under EPCG scheme by availing duty exemption under Notification No.16/2015-Customs dated 01-04-2015.

2. Intelligence gathered by Directorate of Revenue Intelligence, Hyderabad Zonal Unit indicated that M/s. Welspun had wrongly claimed Customs Duty exemption on goods imported under Zero Duty Export Promotion Capital Goods (EPCG) Scheme, by misusing EPCG Authorisation in violation of conditions stipulated under Chapter 5 of Foreign Trade Policy 2015-2020 as amended vide Notification No.35/2015-2020 dated 29-01-2016 and Public Notice No.47/2015-2020 dated 06-12-2017.

2.1. Acting on the specific intelligence, an inquiry was initiated against the imports made by M/s Welspun under EPCG Scheme. Intelligence gathered indicated that-

i) M/s Welspun imported various capital goods under EPCG Scheme by availing Zero duty Exemption under Notification No.16/2015-cus dated 01-04-2015.

ii) Along with other capital goods, M/s Welspun also imported New Turbine Rotor Assembly and its Accessories, vide Bill of Entry No.9804227 dated 31-07-2022 through M/s. Dongfang Electric (India) Private Limited from the foreign supplier Dongfang Turbine Company Limited under EPCG Scheme at Zero rate of Customs Duty under the EPCG License No.0331011072 dated 02-02-2022.

iii) As per the information available in the internet, the primary function of a turbine rotor assembly is defined as under:

A **turbine rotor assembly** is a mechanical device that is used to extract energy from a fluid flow and convert it into useful work. It is a turbomachine with at least one moving part called a rotor assembly, which is a shaft or drum with blades attached. Moving fluid acts on the blades so that they move and impart rotational energy to the rotor. The rotor assembly consists of shaft and disk assemblies with blades. Each turbine rotor assembly includes a plurality of turbine blades extending radially outward from a rim of a rotor (or disk) of the turbine rotor assembly. The rotor of a modern steam turbine used in a power plant is an example of a turbine rotor assembly.

iv) On further analysis, it is observed that the foreign supplier Dongfang Turbine Co. Limited are engaged in the manufacturing of large power station equipment.

From the above, it appears that the goods imported by M/s Welspun are used for Power Generation.

3. **EPCG SCHEME:** The objective of the EPCG Scheme is to facilitate the import of capital goods for producing quality goods and services and enhance India's manufacturing competitiveness.

3.1. Under Chapter 5 of the Foreign Trade Policy, 2015-20, Capital Goods for pre-production, production, and post-production are allowed for import at Zero Customs duty for pre-production, production, and post-production subject to fulfilment of export obligation equivalent to 6 times of duty saved on capital goods imported under EPCG scheme, to be fulfilled in 6 years reckoned from Authorization issue date.

3.1.1. In terms of Para 5.01(g) of FTP 2015-20, Authorisation under the EPCG Scheme shall not be issued for import of any Capital Goods (including Captive plants and Power Generator Sets of any kind) for

(i) Export of electrical energy (power)
(ii) Supply of electrical energy (power) under deemed exports
(iii) Use of power (energy) in their own unit, and
(iv) Supply/export of electricity transmission services.

3.1.2 **Amendment in FTP 2015-20:**

DGFT vide Notification No.35/2015-2020 dated 29-01-2016 amended Para 5.01(g) of Chapter 5 of FTP 2015-20 which reads as under:

(a) Amended Para 5.01(g) of FTP 2015-2020 shall read as under:

> *(g) "Authorization under EPCG Scheme shall not be issued for import of any Capital Goods for generation/ transmission of power (including Captive plants and Power Generator Sets of any kind) for"*

(b) Amended Para 5.01(g)(iii) of FTP 2015-2020 shall read as under:

> *(iii) Supply of Power (energy) in their own unit, and"*

3.1.3 **Appendix 5F – List of Capital Goods Not Permitted for Import under EPCG Scheme**

The DGFT vide Public Notice No. 47/2015-20 dated 06-12-2017 had notified Appendix 5F, under para 5.01 of the Foreign Trade Policy 2015-20. The Appendix 5F contains a List of Capital Goods not permitted/permitted for import, subject to specific conditions under the EPCG Scheme. As per Sr. No. 12 of the said list Capital Goods (including Captive plants and Power Generator Sets of any kind) for export of electrical energy (power); Supply of electrical energy (power) under Chapter 7; Supply of power (energy) in their own unit, and Supply/ export of electricity transmission services are not permitted to import under EPCG Scheme.

Further, DGFT vide Policy Circular No.15/2015-20 dated 04-01-2019 clarified **that Sr.No.12 in the Appendix 5F of the FTP 2015-20 did not permit the import of any kind of capital goods for generation, transmission and distribution of power.**

3.2 **Definition of Capital Goods and Manufacture under FTP 2015-20 are as follows:**

Capital Goods: Capital Goods means any plant, machinery, equipment, or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernization, technological up-gradation, or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality, and pollution control.

Manufacture: Manufacture means to make, produce, fabricate, assemble, process, or bring into existence, by hand or by machine, a new product having a distinctive name, character, or use and shall include processes such as refrigeration, re-packing, polishing, labelling, Re-conditioning repair, remaking, refurbishing, testing, calibration, re-engineering.

3.3 **Captive Generating Plant is defined under Section 2(8) of Electricity Act, 2003:**

Captive generating plant: Captive Generating Plant means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;

3.4. On conjoint reading of FTP 2015-2020 and definition of Captive Generating Plant under Electricity Act, 2003 any plant, machinery, equipment, or accessories required for power generation/transmission are not allowed to be imported under EPCG even for **supply of Power (energy) in their own unit**.

3.5 It, thus, appears that the capital goods viz. New Turbine Rotor Assembly and other Accessories imported by M/s Welspun are not permitted for import under EPCG Scheme in terms of para 5.01(g) of FTP 2015-20 and Sl.No. 12 of Appendix 5F of FTP 2015-20.

4. INVESTIGATION & FINDINGS:

4.1. A letter dated 13-10-2023, was addressed to the importer with a request to submit the i) copy of the application submitted to DGFT for obtaining the said EPCG Licenses along with its enclosures in respect of the goods imported vide Bill of Entry No.9804227 dated 31-07-2022.

4.2. In response, M/s Welspun vide letter dated 07-11-2023 submitted Copies of the EPCG License applications submitted to DGFT along with enclosures.

4.3. Furthermore, the importer submitted that the imported New Turbine Rotor Assembly and its Accessories is intended for use in the coke oven plant being established. The initial plan was to utilize this assembly to drive the compressor for the air and oxygen plant complex. However, upon reassessment, they felt that the initially envisaged process would not be the most optimal; and hence decided to surrender exemption claimed and have paid the differential duty along with interest vide challan dated 09-11-2023.

4.4. Subsequently, the importer vide letter dated 08-05-2024, informed that i)they have also paid penalty under Section 28(5) of the Customs Act, 1962 vide challan dated 06-05-2024; ii) a copy of the email submitted to DGFT, for deletion of the item from the import item list of EPCG authorisation was also forwarded.

4.5. The Importer vide above cited letter dated 08-05-2024 requested not to issue Show Cause Notice and they do not want any personal hearing; requested to close the issue in its entirety in the light of the judgement of Hon'ble Supreme Court of India in the case of Commissioner of Customs, Mumbai Vs. Virgo Steels, Bomay & Anr.[Appeal (Civil)3711 of 2000].

5. **WILFUL MIS-STATEMENT AND SUPPRESSION OF FACTS:**

5.1. The Procedure for obtaining EPCG License under Chapter 5 of Hand Book of Procedures is as follows:
An application for grant of an authorization may be made by the Registered Office or Head Office or a Branch Office or Manufacturing Unit of an eligible exporter to RA (Regional Authority) concerned in ANF-5A along with documents prescribed therein.
The RA concerned shall, on the basis of nexus certificate from an Independent Chartered Engineer (CEC) submitted by the applicant in Appendix 5A, issue EPCG authorization. Reasonable wastage, if any, anticipated at the time of installation of capital goods will also be certified by the Chartered Engineer in the nexus certificate and the same would be mentioned in the condition sheet of the EPCG authorization at the time of issue.

5.2. Application Form for Issuance of EPCG Authorization-

The DGFT has vide Public Notice No. 08/2015-20 dated 06.05.2016 notified revised ANF-5A - Application Form for Issuance of EPCG /Post Export EPCG Authorization which contained declarations as detailed below:

1. *The particulars and the statements made in this application are* ***true and correct*** *to the best of my/our knowledge and belief and* ***nothing has been concealed or held there from****.* ***If anything is found incorrect or false,*** *it will render me/us liable for any penal action or other consequences as may be prescribed in law or otherwise warranted.*

2. I/We ***undertake to abide*** *by the provisions of the Foreign Trade (Development and Regulation) Act, 1992, (as amended) the Rules and Orders framed there under, the Foreign Trade Policy, the Handbook of Procedures and the ITC (HS) Classification of Export & Import Items as amended from time to time.*

3 to 7 ----

8. In respect of goods for which nexus is not established at a later date, I/We shall, without demur, pay to the Government Customs duty saved [together with applicable interest] on such imported goods which are found having no relation with product exported or service rendered.

9 & 10 ---

In the guidelines mentioned along with above mentioned ANF-5A-Application Form for Issuance of EPCG /Post Export EPCG Authorization specified that the applicant shall upload **the documents** as per details given below:-

a. ----

b. ----

c. Certificate from a Chartered Engineer in the format given in Appendix 5A.

d. ----

e. ----

f. ----

5.3. The EPCG Authorisation issued to M/s Welspun, for import of subject goods for the purpose of using them for Coke oven plant whereas the subject goods have not been put to use for their intended purpose. Therefore the importer is liable to pay the Customs duty benefit availed by them in terms of Sl.No.8 of the Undertaking given by the Importer at the time of filing EPCG Application in ANF 5F.

5.4. M/s Welspun imported the subject goods by availing Customs duty benefit under Customs Notification No. 16/2015-Cus., dated 01.04.2015, as amended:

> The Notification No. 16/2015-Cus, dated 01.04.2015, as amended vide Notification No. 79/2017-Cus., dated 13.10.2017, exempts goods specified in the Table 1 annexed thereto from, -
>
> i) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the said Customs Tariff Act), and
>
> ii) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when specifically claimed by the importer.
>
> 2. The exemption under this notification shall be subject to the following conditions, namely:-
>
> **i. that the goods imported are covered by a valid authorisation issued under the Export Promotion Capital Goods (EPCG) Scheme in terms of Chapter 5 of the Foreign Trade Policy permitting import of goods at zero customs duty;**
>
> —

5.5. As per condition 2(i) of the aforementioned notification, Customs duty exemption is granted only when the imported goods are covered by a valid authorization issued under the Export Promotion Capital Goods (EPCG) Scheme, in accordance with Chapter 5 of the Foreign Trade Policy, 2015-20. The importer had declared that the New Turbine Rotor Assembly and its accessories were intended for use in the coke oven plant. However, since the imported goods are not being used for their declared purpose, the authorization is deemed invalid for these goods.

5.6. ***Section 28. Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. -***

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5).

5.7. M/s. Welspun, while obtaining the EPCG Authorizations, submitted declaration that the imported capital goods would be used for a coke oven plant. Whereas, the subject goods have not been used for the declared purpose, thereby rendering the authorization invalid for import of the subject goods. Thus, the importer has contravened the conditions of Notification No. 16/2015-Cus dated 01-04-2015 and suppressed the fact that the imported goods were not put to their intended use until the investigation was initiated by DRI, HZU. Therefore, the customs duties forgone by wrongly availing exemptions under the EPCG Scheme by M/s. Welspun are liable to be recovered under Section 28(4) of the Customs Act, 1962, read with Section 143(3) of the same Act, Notification No. 16/2015-Cus dated 01-04-2015, as amended, and the conditions of the EPCG Bonds/Undertaking executed by them, along with interest under Section 28AA of the Customs Act, 1962.

5.8 The Importer has also forwarded a copy of mail dated 08-12-2023 requesting DGFT Mumbai for deletion of the subject goods viz. New Turbine, rotor assembly and other accessories from the EPCG License No.0331011072 dated 02-02-2022.

6. Duty Calculation:

6.1 Abstract of the duty foregone by M/s Welspun Metallics Limited.

Table-I

SI. No	BE No. /Dated	Assessable Value	BCD@10%	SWS	IGST @18%	Total duty Payable
1	9804227 dt 31/07/2022	17,60,00,000	1,76,00,000	17,60,000	3,51,64,800	5,45,24,800

6.2 The importer vide email dated 09-11-2023 and 07-05-2024 informed this office that they have made the differential duty along with applicable interest and penalty vide TR-6 Challans respectively and enclosed the same to the mail. The details of payments made are detailed as below.

Table-II

Sl.No	Challan No. and Date	Payment made	Duty
1	CH No.1624 dated 09-11-2023	6,49,66,673	Basic Customs Duty
2			SWS
3			IGST
4			Interest
5	CH No.800 dated 06-05-2024	81,78,720	Penalty

6.3 The office of DRI, vide letter dated 17-01-2024, sent the challan copy (CH No. 1624 dated 09-11-2023) for verification to the Pr. Commissioner of Customs, Mundra. The Administrative Officer, Mundra vide letter F.No. III(20)/1753/2020-Accts dated 19-01-2024 confirmed that the amount has been deposited into the Government Treasury.

6.4 Further, a letter dated 15-05-2024 enclosing the challan copy (CH No. 800 dated 06-05-2024) was sent for verification to the Pr. Commissioner of Customs, Mundra. The Administrative Officer, Mundra vide letter F.No. III(20)/1753/2020-Accts dated 19-01-2024 confirmed that this amount has also been deposited into the Government Treasury.

6.5 Accordingly, the Directorate of Revenue Intelligence (DRI), Hyderabad Zonal Unit, vide letter dated 15.07.2024, forwarded the Investigation Report to the undersigned and proposed consideration of closure of the instant case under Section 28(6) of the Customs Act, 1962, in view of the payment of the applicable duty, interest and penalty by the importer and its request for waiver of issuance of Show Cause Notice.

7. **Waiver of Show Cause Notice:**

7.1. The Importer vide letter dated 08-05-2024 submitted that they do not want any personal hearing and requested to close the issue in its entirety without issuing any Show Cause Notice in the light of the judgement of Hon'ble Supreme Court of India in the case of Commissioner of Customs, Mumbai Vs. Virgo Steels, Bomay & Anr.[Appeal (Civil)3711 of 2000].

7.2. In the aforesaid judgment, the Hon'ble Apex Court, after a detailed examination of the doctrine of waiver vis-à-vis the mandatory requirement of notice under Section 28 of the Customs Act, 1962, held that even though the requirement of issuance of notice under Section 28 of the Customs Act, 1962 is mandatory in its operation, since such provision is one which deals with the individual rights of the person concerned and is solely for his benefit, the said person can always waive such a right. The Hon'ble Court further held that this Section casts a duty on the Officer to issue notice to the person concerned of the proposed action to be taken, and that such right of notice being personal to the person concerned, the same can be waived by that person. The relevant paras are produced below for reference:

"14. From the ratio laid down by the Privy Council and followed by this Court in the above-cited judgments, it is clear that even though a provision of law is mandatory in its operation if such provision is one which deals with the individual rights of person concerned and is for his benefit, the said person can always waive such a right.

15. Bearing in mind the above decided principle in law, if we consider the mandatory requirement of issuance of notice under Section 28 of the Act, it will be seen that that requirement is provided by the Statute solely for the benefit of the individual concerned, therefore, he can waive that right. In other words, this Section casts a duty on the Officer to issue notice to the person concerned of the proposed action to be taken. This is not in the nature of a public notice nor any person other than the person against whom the proceedings are initiated has any right for such a notice. Thus, this right of notice being personal to the person concerned, the same can be waived by that person."

7.3 The aforesaid legal position, as settled by the Hon'ble Supreme Court in Virgo Steels (supra), has been further reinforced and operationalised by the Central Board of Indirect Taxes and Customs vide its Instruction F.No. 137/46/2015-Service Tax dated 18.08.2015, wherein the Board has expressly clarified that in cases involving the extended period of limitation, where an assessee pays the duty, interest and penalty equal to 15% of the duty and makes a request in writing that a written Show Cause Notice may not be issued, such a request constitutes an informed waiver of a written SCN. Crucially, the Board has also clarified that there is no bar on an assessee making payment of duty, interest and reduced penalty of 15% even before the date of receipt of a formal communication from the Department, and that such an assessee cannot be placed on a worse footing than one who pays within thirty days of receipt of the SCN. Thus, the Board's Circular not only recognises the principle of informed waiver of SCN as enunciated by the Hon'ble Supreme Court in Virgo Steels (supra), but also expressly extends its benefit to cases of pre-SCN voluntary payment made during investigation, thereby providing an additional and independent administrative sanction for treating such Pre SCN payment during the course of investigation as valid payment under Section 28(5) of the Customs Act, 1962. The relevant paras are produced below for reference:

"2.1 In a case involving the extended period of limitation, if an assessee pays the Service Tax/Central Excise duty, interest and penalty equal to 15% of the tax/duty and makes a request in writing that a written SCN may not be issued to them, then in such cases the SCN can be oral and the representation (if he desires) against it also oral. In other words, an assessee can request for an informed waiver of a written SCN.

2.3 If the grounds on which the department feels that there has been short/non-payment of tax/duty are intimated to the assessee orally with its quantification and the assessee indicates in writing that he has been informed about such grounds and he accepts the grounds and the quantification and is waiving the requirement of a written SCN, then a written SCN need not be issued.

2.5 There is no bar on an assessee making the payment of tax/duty, interest and reduced penalty of 15% even before the date of receipt of such a letter by the department. Such an assessee cannot be placed on a worse footing than one who pays tax/duty, interest and reduced penalty of 15% within 30 days of the receipt of the SCN/receipt of letter by the department."

7.4 In view of the above, I allow the request of the importer for waiver of show cause notice under Section 28(4), in the instant case, without prejudice to any action that can be taken against them in terms of Sections 135, 135A and 140 of the Customs Act, 1962.

DISCUSSION AND FINDINGS-

8. I find that M/s. Welspun Metallics Limited had imported "New Turbine Rotor Assembly and its Accessories" vide Bill of Entry No. 9804227 dated 31.07.2022 under EPCG Authorisation No. 0331011072 dated 02.02.2022 and availed exemption from payment of Customs duties under Notification No. 16/2015-Customs dated 01.04.2015 by declaring that the said capital goods were intended for use in a coke oven plant. However, investigation conducted by DRI revealed that the imported goods were not ultimately used for the declared purpose and were not eligible for the EPCG benefit in terms of Para 5.01(g) of the Foreign Trade Policy, 2015-20 read with Appendix 5F thereof. By claiming the exemption on the basis of such declaration and by not disclosing the subsequent non-utilisation of the goods for the declared purpose until the initiation of investigation, the importer rendered the EPCG authorisation inapplicable to the subject goods, resulting in non-levy and short-payment of Customs duties amounting to ₹5,45,24,800/-. The facts of the case, therefore, disclose wilful mis-statement and suppression of material facts having a direct bearing on the eligibility to exemption, thereby attracting the provisions of Section 28(4) of the Customs Act, 1962 for recovery of the duty not levied along with applicable interest and penalty.

PAYMENT MADE BY M/S. WELSPUN METALLICS LIMITED UNDER SECTION 28(5) OF THE CUSTOMS ACT, 1962-

9. M/s. Welspun Metallics Limited vide letter dated 08.05.2024 informed that they have paid the duty alongwith interest and penalty@15% in compliance with Section 28(5) of the Customs Act, 1962 and sought conclusion of proceedings under Section 28(6) of the Customs Act, 1962. The details of payment made by them are as follows:-

Sr.No.	BoE No	BoE Date	Challan No.	Challan Date	Amount (in Rs)
1	9804227	31.07.2022	1624	09.11.2023	6,49,66,673
			800	06.05.2024	81,78,720
				Total	7,31,45,393

Both the challans have been verified and found to be correct.

DETERMINATION OF DUTY, INTEREST AND PENALTY UNDER SECTION 28(6) OF THE CUSTOMS ACT, 1962-

10. As mandated under Section 28(6) of the Customs Act, 1962, the proper officer is required to determine the duty payable under Section 28(4) together with the interest leviable under Section 28AA. Upon such determination, the proper officer is required to ascertain whether the duty, interest and penalty at 15% have been discharged in full. Where the entire liability stands paid, the proceedings are deemed to be concluded in terms of Section 28(6)(i) of the Customs Act, 1962. Accordingly, I proceed to determine the duty payable under section 28(4), interest payable under section 28AA and penalty@15% of the said duty and whether such amount has been paid by the importer under section 28(5) of the customs act, 1962.

11. I find that the customs duty foregone and recoverable in the instant case, consequent upon the wrongful availment of exemption under Notification No. 16/2015-Customs dated 01.04.2015, is as detailed in the table below:-

SI. No	BE No. /Dated	Assessable Value	BCD@10%	SWS	IGST @18%	Total duty Payable
1	9804227 dt 31.07.2022	17,60,00,000	1,76,00,000	17,60,000	3,51,64,800	5,45,24,800

Thus, the amount of duty payable under Section 28(4) is determined as Rs. 5,45,24,800/-. Accordingly, the amount of interest is calculated and determined as given below:-

SI. No	BE No. /Dated	Assessable Value	Total duty Payable	Date of payment	No. of days for interest calculation	Interest (in Rs.) = (Duty*15%*466)/ 365
1	9804227 dt 31.07.2022	17,60,00,000	5,45,24,800	09.11.2023	466	1,04,41,872

11.1 Further, the amount of penalty @15% of the duty is calculated as given below:-

SI. No	BE No. /Dated	Assessable Value	Total duty Payable	Penalty @15%= (Duty*15%)
1	9804227 dt 31.07.2022	17,60,00,000	5,45,24,800	81,78,720

11.2 The detailed computation of duty, interest, and penalty is furnished in the table below for ease of reference:-

Details of payment	Amount (in Rs.)
Duty payable	5,45,24,800
Interest	1,04,41,872
Penalty@15%	81,78,720
Total Amount payable under Section 28(5) of the Customs Act, 1962	7,31,45,392

12. Thus, the total amount payable towards duty, applicable interest, and penalty @15% has been determined at Rs. 7,31,45,392/-, which has been duly paid by M/s. Welspun Metallics Limited under the provisions of Section 28(5) of the Customs Act, 1962, as discussed in Para 9 above. Inasmuch as the importer has voluntarily discharged the entire liability comprising duty, interest, and reduced penalty, the proceedings initiated against M/s. Welspun Metallics Limited are liable to be concluded in terms of Section 28(6)(i) of the Customs Act, 1962.

13. In view of the above, I hereby pass the following order:-

ORDER

In terms of Section 28(6)(i) of the Customs Act, 1962, the proceedings in respect of M/s. Welspun Metallics Limited relating to Bill of Entry No. 9804227 dated 31.07.2022 are deemed to be conclusive as to the matters stated therein, without prejudice to the provisions of Sections 135, 135A and 140 of the Customs Act, 1962.

Digitally signed by
Nitin Saini
Date: 09-06-2026
16:46:01

(Nitin Saini)
Commissioner of Customs
Customs House, Mundra

F.No. GEN/ADJ/COMM/322/2026-Adjn-O/o-Pr Commr-Cus-Mundra

To,

M/s. Welspun Metallics Limited,
Welspun House, 6th floor, Kamla Mill Compound,
Mumbai, Maharashtra - 400013

Email- companysecretary_wml@welspun.com, WML_EXIM@welspun.com

Copy To-

(i) The Additional Director, DRI HZU, Hyderabad
(ii) The Office of Chief Commissioner, Gujarat Customs Zone for the purpose of Review
(iii) The Deputy Commissioner/Assistant Commissioner (TRC/EDI), Customs House, Mundra