

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271423 FAX :02838- 271425 Email: adj-mundra@gov.in</p>	
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DIN:20240571MO0000111A07

SHOW CAUSE NOTICE
ISSUED UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962.

M/s.Adani Wilmar Ltd., Fortune House, Near Navrangpura Railway Crossing, Ahmedabad 380 009, Gujarat (holder of IEC No.0899000363) (hereinafter also referred to as "the importer"/"the Noticee") presented Bills of Entry No.3125946 dated 06.05.2019, 3126142 dated 06.05.2019, 3335189 dated 22.05.2019 and 3348520 dated 22.05.2019 through their appointed Customs Broker M/s. Narendra Forwarders Pvt. Ltd, at Custom House, Mundra for clearance of imported goods declared as "SPLIT RBD PALM-STEARIN FATTY ACID IN BULK" classifying the same under Tariff item 38231900 of first schedule of the Customs Tariff Act, 1975. In respect of each Bills of Entry, the country of origin was declared as Indonesia.

2. During the course of Audit covering the period from **April 2019 to June 2019** conducted by the Customs Receipts Auditors of office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad, the following observation were made by the Audit Officers in the LAR No.18/2019-20 (Para-1).

" CTH '1511' covers Palm oil and its fractions, whether or not refined, but not chemically modified. CTH '15119030' covers Refined Bleached Deodorised Palm Stearin (RBD) & CTH 15119090' 'other' where the total duty is 67.370 percent (BCD 54%+ SWS 10% IGST 5%). CTH '38231900' covers Others Industrial monocarboxylic fatty acids: Acid oils from refining; Industrial fatty alcohols where the total duty is 56.94 percent (BCD 30%+ SWS 10% + IGST 18%). As per entry No.252 of Notification No.50/2017, BCD is Nil for items for CTH 38231900 for all goods used in manufacture of Soap and Oleo Chemicals.*

Section III and Chapter 15 of Customs tariff deals with Animal & vegetable fats and oils and other cleavage products, prepared edible fats. Section VI deals with product of chemical & allied industries. Chapter 38 of Section VI deals with

Miscellaneous Chemical Products.

Adani Wilmar Ltd is manufacturer of premium edible oils, vanaspati, packed basmati rice, pulses, soya chunks and besan. The product portfolio of Adani Wilmar spans under various brands such as – Fortune, King's, Bullet, Raag, Avsar, Pilaf, Jubilee, A-Kote, Fryola, Alpha and Aadhaar with its brand promise 'For a healthy growing India'.

Further, Govt. of India vide Finance Act, 2017 has omitted Entry 38231111 (Crude), 38231112 (RBD), 38231119 (Other) & 38231190 (Other stearic acid or stearin) and created a new item 15119030 for RBD Palm stearin to harmonise customs tariff in accordance with WCO classification decision.

During the test check of records of Dy. Commissioner of Customs, Custom House, Mundra for the period April 2019 to June 2019, it was noticed from the data analysis of the bills of entry in EDI that importer has imported/cleared (4 Bills of Entry) SPLIT RBD PALM STEARIN FATTY ACID IN BULK and classified under CTH '38231900'. Chapter 38231900 covers Others Industrial monocarboxylic fatty acids; Acid oils from refining; Industrial fatty alcohols. The imported goods were cleared with payment of IGST @ 18% and BCD was foregone as per entry No.252 of Notification No.250/2017.

It is mentionable here that GST Asstt. Commissioner vide its letter F.No. IV/15-10/CRA/AWL/2017-18 dated 29.11.2017, on request of M/s. Adani Wilmar Ltd, for import of SPLIT RBD PALM STEARIN FATTY ACID IN BULK has requested the Customs authorities to draw sample from each lot for chemical test and communicate the outcome of test to GST office. However, no such chemical test by was shown in the EDI system data". As the importer deals with edible food stuffs, in absence of chemical test, imported goods were to be classified under CTH 15119090 – where the total duty is 67.37 percent (BCD 54% + SWS 10% + IGST 5%). This has resulted short levy of duty of Rs.14,11,48,514/- as detailed in Statement A attached".

3. Under the impugned Bills of Entry, the importer imported "SPLIT RBD PALM-STEARIN FATTY ACID IN BULK" and availed benefit of concessional rate of duty under Notification No. 50/2017, entry No.252. The imported goods were to be classified under CTH 15119090 with applicable duty 67.37% (BCD 54% + SWS 10% + IGST 5%). Thus, it appeared that in the subject Bills of Entry, the importer have wrongly availed the exemption under Sr.No.252 of Notification No.50/2017-Cus dated 30.06.2017 for imported goods i.e. "SPLIT RBD PALM-STEARIN FATTY ACID IN BULK" which is not covered

under the said notification. Therefore, it appeared that in the impugned Bills of Entry Basic Customs duty was liable to be charged at the prevailing tariff rate and total 67.37%.

Computation of Differential duty:

4. The imported goods were to be classified under CTH 15119090 with applicable duty 67.37% (BCD 54% + SWS 10% + IGST 5%) which comes to **Rs.19,26,10,398/-** for four Bills of Entry referred to above whereas the importer have not paid basic Customs duty and paid only IGST @ 18% amounting to **Rs.5,14,61,885/-** thus, the differential duty payable comes to **Rs.14,11,48,513/-**. Therefore, the importer is liable to pay Differential Customs duty of **Rs. 14,11,48,513/-** along with interest as per the calculation indicated in Annexure A attached with this notice.

5. Vide this office letter dated 22.12.2022, the importer was requested to pay up the duty as per the Audit objection along with interest. However, the importer has not made any payment and requested for speaking orders and opportunity of being heard. The Department's contention is that the importer has wrongly availed the exemption of the Notification No.50/2017 dated 30.06.2017 and the applicable Customs duty is recoverable from the importer along with applicable interest and penalty.

6. Relevant Legal provisions, in so far as they relate to the facts of the case:-

- A. Customs Notification No. 50/2017-Cus dated- 30.06.2017;
- B. The Customs Tariff.
- C. Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of Section 46 (4) is reproduced below:-

"(i) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed".

- D Section 28(4) of the Customs Act, 1962 provides that "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 willful 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".

E Section 28(AA) of Customs Act, 1962 provides interest on delayed payment of duty-

(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

F Section 114A of the Customs Act, 1962 deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below:-

114A - Penalty for short-levy or non-levy of duty in certain cases - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined: Provided that where such duty or interest, as the case may be, as determined under sub-Section (8) of Section 28, and the interest payable thereon under Section 28AA, is paid within thirty days from the date of the

communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

7. In order to sensitize the People of Trade (read Importer/Exporter) about its benefit and consequences of mis-use; Government of India has also issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self-Assessment 2011' was required as because prior to enactment of the provision of 'Self-Assessment', mis-classification or wrong-availment of duty exemption etc., in normal course of import, was not considered as mis-declaration or mis-statement. Under para-1.3 of Chapter-1 of the above manual, Importers/Exporters who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options: (a) Seek assistance from Help Desk located in each Custom Houses, or (b) Refer to information on CBEC/ICEGATE web portal (www.cbic.gov.in), or (c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or (d) An importer may seek Advance Ruling from the Authority on Advance Ruling, if qualifying conditions are satisfied. Para 3 (a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para-2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant importers. However, delinquent and **habitually non-compliant importers/ exporters** could face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

8. For details, all the above-referred Provisions, Act, Rules, Regulation, Foreign Trade Policy etc. may be viewed at www.cbic.gov.in.

9. The importer/noticee has willfully misclassified & wrongly availed Customs duty exemption benefit of Sr. No. 252 of Notification no. 50/2017-Cus dated- 30.06.2017 by wrongly classifying the imported goods under CTH No.38231900, without paying basic Customs duty, by paying total 18% at lower rate i.e. instead of correct rate of 67.37% as per classification under CTH 15119090 Customs Tariff.

10. Whereas, it is apparent that the importer/noticee was in complete knowledge of the correct nature of the goods nevertheless, the importer claimed undue notification benefit for the said goods in order to clear the goods by wrongly availed Customs duty exemption benefit of Sr: No. 252 of Notification no. 50/2017-Cus dated 30.06.2017 by paying total duty i.e. @ 49.37% instead of correct rate of @ 67.37%. With the introduction of self-assessment under Section 17 of the Customs Act, 1962, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, it appears that the importer has willfully violated the provisions of Section 17(1) of the Act inasmuch as importer has failed to correctly self-assessed the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act.

11. Therefore, it appears that the importer wilfully claimed undue notifications benefit for the impugned goods resulting into short levy of duty. For such act/omissions, the importer also appears to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962. Further, it appears that in respect of the Bills of Entry mentioned in the **Annexure-A**, such wrong claim of notifications benefit on the part of the importer has resulted into short levy of duty of **Rs. 14,11,48,51/- (Rupees Fourteen Crores Eleven Lakhs Forty Eight Thousand Five Hundred Fourteen only)** for 04 Bills of Entries **(as detailed in Annexure A)**,which is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 (hereinafter referred to as 'the Act') along with interest as applicable under Section 28AA of the Act. By the said deliberate wrong claim of notification benefit, the importer also appear to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

12. From the foregoing discussions it appears that,

- (i). The importer has willfully mis-stated the facts & wrongly availed Customs duty exemption benefit of Sr. No. 252 of Notification no. 50/2017-Cus dated- 30.06.2017 by paying Duty at lower rate i.e. @ 18% instead of correct rate of duty @ 67.37%.
- (ii). Thus, the short levy of duty amount to **Rs.14,11,48,514/- (Rupees Fourteen Crores Eleven Lakhs Forty Eight Thousand Five Hundred Fourteen only)** for **04 Bills of Entries (as detailed in Annexure A)** filed by **the importer** is required to be recovered from the importer in terms of Section 28(4) of the Customs Act, 1962.
- (iii). Interest (rate as applicable) on the short levy of duty of **Rs.14,11,48,514/- (Rupees Fourteen Crores Eleven Lakhs Forty Eight Thousand Five Hundred Fourteen only)** worked out as short levy of customs duties for in the case of **04 Bills of Entries (as detailed in Annexure A)** is required to be recovered from the importer/noticee in terms of Section 28AA of the Customs Act, 1962.
- (iv). For willful mis-statement and suppression of facts by the importer with an intent to evade customs duty amounting to **Rs.15,45,424/- (Rupees Fifteen Lakhs Forty Five Thousand Four Hundred Twenty Four only)** extended period upto 5 years is applicable.
- (v). Importer is also liable for penalty under Section 114A of the Customs Act, 1962 for willful mis-statement and wrongful availment of Notification, for which they are not entitled for.

13. Now, therefore, M/s. Adani Wilmar Ltd., Fortune House, Near Navrangpura Railway Crossing, Ahmedabad 380009, Gujarat, are hereby called upon to show cause to the Pr. Commissioner of Customs, Custom House, Mundra, having office at PUB Building, 5B, Mundra (Kutch) Gujarat 370 421, as to why:-

- (i) The goods imported vide **04 Bills of Entry (as mentioned in Annexure A to this show cause notice)** should not be re-assessed at correct rate of total duty i.e. 67.370% (BCD 54%+ SWS 10%; IGST 5%) and consequently benefit of Sr. No. 252 of Notification

no. 50/2017-Cus dated- 30.06.2017 should not be denied to the above said goods.

- (ii) The differential duty worked out as short levy amounting to **Rs.14,11,48,514/- (Rupees Fourteen Crores Eleven Lakhs Forty Eight Thousand Five Hundred Fourteen only) for 04 Bills of Entries (as detailed in Annexure A)** should not be demanded and recovered from importer under Section 28(4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.
- (iii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

14. The importer further required to produce at the time of show cause, all the evidences upon which they intend to rely in support of their defense. They are further called upon to inform in writing to the Pr Commissioner of Customs, Custom House, Mundra as to whether they desire to be heard in person before the case is adjudicated. If no cause is shown within 30 days from the date of receipt of this notice or if they fail to appear for personal hearing when the case is posted for hearing the case will be decided ex-parte on the basis of evidences available on record.

15. This Show Cause Notice is being issued as per the scrutiny of records conducted so far. Hence, the department reserves its rights under the provisions of Customs Act, 1962 to conduct further Audit / Scrutiny of the records and issue subsequent or separate show cause notice(s), if any.

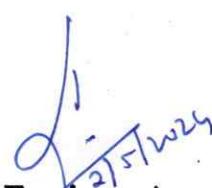
16. The present Show Cause Notice is issued without prejudice to any other action that may be taken under any other provision of the Customs Act, 1962 and/or rules made there under and/or under the provisions of any other law for the time being in force in India. The department is also free to issue addendum to this Show Cause Notice if any further fact/ documents come to notice.

17. The noticee have an option to make an application under Section 127(B) of the Customs Act, 1962 prior to adjudication of this notice, to the Settlement Commission to have the case settled, in such form and in such manner, as specified in the Rules.

18. The documents relied upon as per list are enclosed herewith as **Annexure-R.**

19. The importer/noticee is further informed that they have the right to opt for closure of these proceedings under Section 28(6) of Customs Act, 1962. If they so decide, then in terms of Section 28(5) of the Customs Act, 1962, they may pay the duty demanded in this Show Cause Notice in full or in part, as may be accepted by them, and the interest payable thereon under Section 28AA and penalty equal to fifteen percent of the duty specified in this notice or the duty so accepted by them, within 30 days of the receipt of the notice and inform the concerned Adjudicating and/or of such payment in writing.

Encl: Annexure-A & R.


(K. Engineer)
Pr. Commissioner of Customs,
Custom House, Mundra.

F.No.GEN/ADJ/COMM/392/2023-Adjn

Date: 02.05.2024

DIN: **20240571MO0000111A07**

To, (The Noticee),

M/s. Adani Wilmar Ltd.,
Fortune House, Near Navrangpura Railway Crossing,
Ahmedabad 380009.

Copy to:

- 1) M/s.Narendra Forwarders (P) Ltd, Customs Broker at Custom House, Mundra.
- 2) Notice Board.
- 3) Guard File.

ANNEXURE-A

Sr No	BE No.	Date	Description	Assessable Value /Rs.	Duty levied/ Rs.	Duty leviable/ Rs.	Short levy of duty/Rs.
1	312594 6	06.05.2019	Split RBD Palm Stearin Fatty Acid in Bulk	135543745. 30	24397874. 20	91315821.17	66917946.97
2	312614 2	06.05.2019	Split RBD Palm Stearin Fatty Acid in bulk	8163590.70	1469446.3 0	5499811.05	4030364.75
3	333518 9	22.05.2019	Split RBD Palm Stearin Fatty Acid in bulk	134531588. 40	24215685. 90	90633931.10	66418245.20
4	334852 0	22.05.2019	Split RBD Palm Stearin Fatty Acid in bulk	7660434.98	1378878.3 0	5160835.04	3781956.74
Total				28589935 9.4	51461884 .7	192610398 .4	141148513 .7

ANNEXURE-R
RELIED UPON DOCUMENTS

Sr. No.	Description of Documents	Remarks
01	Bills of Entry No.3125946 dated 06.05.2019, 3126142 dated 06.05.2019, 3335189 dated 22.05.2019 and 3348520 dated 22.05.2019	Available with the importer
02	Copy of LAR No 18/2019-20 (Para-1)	Attached with this notice