



14-03-2025

DIN: 20250371ML0000820579

SHOW CAUSE NOTICE**BRIEF FACTS OF THE CASE**

M/s Adani Wilmar Ltd., Fortune House, Nr. Navrangpura Railway Crossing, Ahmedabad (hereinafter referred to as '*the claimant*') had filed two Bills of Entry viz. 5407944 AND 5407946 both Dated 01.03.2018 for clearance of 999.96 MT and 1000 MT, respectively, of Crude Degummed Soyabean Oil (Edible Grade) falling under CTH 15071000 on which the Customs Duty is leviable by virtue of Sl. No. 57 of Notification No. 50/2017-CUS dated 30.06.2017 as amended by Notification No. 87/2017-CUS Dated 17.11.2017. The entry inward of the vessel carrying the goods was granted on dated 01.03.2018. The said bills of entry were assessed with the applicable Basic Customs Duty Payable at the rate of 30% in terms of Sl. No. 57 of Notification No. 50/2017-Cus Dated 30.06.2017 as amended by Notification No. 87/2017-Cus Dated 17.11.2017. The out of charge under Section 47 of the Customs Act, 1962 was not granted on grounds that the goods were liable to duty @ 44% vide Clause (ii) of Notification No. 29/2018-Cus Dated 01.03.2018 and therefore were reassessed. Upon reassessment of the impugned Bills of Entry the differential duty liability worked out to Rs.1,44,31,505/-. The claimant did not agree with the assessment of Bills of Entry under the amended notification, but paid the differential duty and cleared the goods.

Being aggrieved with the impugned order / assessment, the claimant preferred an appeal before the Commissioner (Appeals), Customs, Ahmedabad. Hon'able Commissioner (Appeals), Ahmedabad vide their Order-in-Appeals No. KDL-CUSTM-000-APP-070 to 071-18-19 Dated 21.01.2019, issued under F. No. S/49-28/CUS/KDL/2017-18 and S/49-29/CUS/KDL/2017-18, rejected the matter pertaining to both the appeals viz. Appeal No. 28/2017-18 and 29/2017-18 on the ground of limitation as provided under Section 128 of the Customs Act, 1962, without going into the merits of the case.

Being aggrieved with the impugned order, the claimant filed an SLP before the Hon'able High Court of Gujarat, Ahmedabad. Hon'able High Court of Gujarat, Ahmedabad vide their CAV Judgment Dated 11.11.2022, interalia, ordered that,

"these petitions are allowed quashing and setting aside the orders of re-assessment of the Bills of Entry No. 5407944, 5407946 (relevant in this case) and 5404574. The respondents are also directed to refund the differential amount of Rs.1,44,31,505/- being the duty paid by petitioner vide Bills of Entry 5407944.

5407946 (relevant in this case) and Rs.1,37,46,173/- being the duty paid vide bill of entry no. 5404574, within a period of eight weeks from the date of receipt of a copy of this order, with interest at the rate of 6% p.a. from the date of deposit till the date of payment. The order of appeal dated 21.01.2019 is also quashed and set aside, and appeal stands disposed in aforesaid terms.”

Department has not accepted the CAV Judgement Dated 11.11.2022 passed by the Hon'able High Court of Gujarat, Ahmedabad in case of SCA No. 8057 of 2019 filed by the Claimant and proposal for filing SLP before the Hon'able Supreme Court of India has been sent to Commissioner (Legal), DLA, New Delhi.

2. On receipt of favorable judgment from the Hon'able High Court of Gujarat, Ahmedabad vide CAV Judgment Dated 11.11.2022, the claimant filed refund claim in respect of Import covered under Bills of Entry No. 5407944 and 5407946 both Dated 01.03.2018 having refund of duty involvement of Rs.1,44,31,505/- vide their letter Dated NIL (received in the office on 28.12.2012).

Excess Duty Paid as claimed under Refund includes the amount of IGST for which the claimant had already availed Credit in their Books of Accounts amounting to Rs.6,86,087/- the same was required to be deducted from the amount claimed; accordingly the claim is considered as Rs.1,37,45,418/- (Rs.1,44,31,505 (-) Rs.6,86,087/- towards IGST, credit for the same were claimed at relevant time).

Accordingly, considering the prevailing provisions, though Department preferred an appeal before the Appellate Authority, the said refund claim is being decided by the Assistant Commissioner (Refund), Customs, Kandla vide OIO No. KDL/AC/171/BGV/REF/2022-23 Dated 20.03.2023 issued from F. No. CUS/RFD/MISC/37/2023-REF and sanctioned an amount of Rs.1,37,45,418/- alongwith Interest @ 6% PA of Rs.41,50,740/- (as per the order of the Hon'able High Court of Gujarat) total amounting to Rs.1,78,96,158/- to the Claimant.

3. In the event of the final decision of the subject matter is in favor of the department, the amount of Rs.1,37,45,418/- towards Differential Duty alongwith Interest @ 6% PA of Rs.41,50,740/- totaling to Rs.1,78,96,158/- which was refunded to M/s Adani Wilmar Ltd., Fortune House, Nr. Navrangpura Railway Crossing, Ahmedabad vide Order-in-Original No. KDL/AC/171/BGV/REF/2022-23 Dated 20.03.2023, will be recoverable from them as discussed in the preceding paras as per the provisions of Section 28 of the Customs Act, 1962, as amended from time to time as erroneous refund; further the same is also required to be recovered with applicable interest as per the Provisions of Section 28AA of the Customs Act, 1962, as amended from time to time.

4.1 Provisions for demand of erroneous refund

Section 28. [Recovery of [duties not levied or not paid or short-levied or short-paid] or erroneously refunded. -

(1) Where any [duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-

(a) the proper officer shall, within [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied ⁵[or paid] or which has been 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;

4.2 28AA Interest on delayed payment of duty –

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest, at such rate not below ten percent, and not exceeding thirty-six percent, per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of Section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

5. Therefore, M/s Adani Wilmar Ltd., Fortune House, Nr. Navrangpura Railway Crossing, Ahmedabad is now called upon to show cause to the Commissioner, Custom House, Kandla, near Balaji Mandir, Kandla – 370 210, as to why-

(i) An amount of Rs.1,37,45,418/- towards Differential Duty alongwith Interest @ 6% PA of Rs.41,50,740/- totaling to Rs.1,78,96,158/- sanctioned vide Order-in-Original No. KDL/AC/171/BGV/REF/2022-23 Dated 20.03.2023 and refunded to you, should not be recovered immediately in the event of final decision of the subject case is received in favor of department, under the provisions of Section 28(1)(a) of the Customs Act, 1962;

and

(ii) Interest at the applicable rate on the amount of Rs.1,78,96,158/- (sanctioned as refund and becoming erroneous refund), as mentioned at (i) above should not be demanded and Recovered as per provision of Section 28AA of the Customs Act, 1962 as amended from time to time.

6. The noticee is also required at the time of showing cause, to produce all the evidences upon which they intend to rely in support of their defense. They should also indicate whether they wishes to be heard in person before the case is adjudicated.

7 . If no cause shown against the action proposed to be taken or he does not appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on merits.

8. The present show cause notice is issued without prejudice to any other action that may be taken under any other provision of Customs Act, 1962 and/or rules made there under and/or under the provisions of any other law for the time being force.

M. RAMMOHAN RAO,
COMMR(MRR)-CUS-KDL, O/o Commissioner-Customs-Kandla

I/2754040/2025

14-03-2025

By Regd. Post. A.D./Speed Post/ By hand

To,
M/s Adani Wilmar Ltd.,
Fortune House,
Nr. Navrangpura Railway Crossing,
Ahmedabad

Copy to:

1. The Deputy/Assistant Commissioner (RRA), Custom House, Kandla.
2. Guard File.