	प्रधान सीमा शुल्क आयुक्त का कार्यालय, मुंद्रा आयुक्तालय सीमा शुल्क हाउस, अदानी पोर्ट और एस.ई.जेड., मुंद्रा (कच्छ), **OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,CUSTOM HOUSE: MUNDRA, KUTCHMUNDRA PORT& SPL ECONOMIC ZONE, MUNDRA-370421** **Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62**	Azadi Ka Amrit Mahotsav

A. File No.	:	GEN/ADJ/COMM/392/2023-Adjn-O/o Pr Commr-Cus-Mundra.
B. Order-in-Original No.	:	**MUN-CUSTM-000-COM-003-25-26**
C. Passed by	:	**K. Engineer,** **Principal Commissioner of Customs,** **Customs House, AP & SEZ, Mundra.**
D. Date of order and Date of issue	:	21.04.2025. 21.04.2025.
E. SCN No. & Date	:	SCN F. No. GEN/ADJ/COMM/392/2023-Adjn-O/o Pr Commr-Cus-Mundra dated 02.05.2024
F. Noticee(s) / Party / Importer	:	M/s. Adani Wilmar Ltd., Fortune House, Near Navrangpura Railway Crossing, Ahmedabad 380 009, Gujarat (IEC No.0899000363)
G. DIN	:	**20250471MO00000000F5**

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 सीए3-में 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, बहुमाली भवन, 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. उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो5000/- 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.

7. 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.

8. 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.

FACTS OF THE CASE IN BRIEF:

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 (out of 29869 BEs having AV of Rs.44305 crores audit test checked 2168 BEs), it was noticed from the data analysis of the bill 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 @ 18% amounting to **Rs.5,14,61,885/-** thus, the differential duty payable comes to **Rs.14,11,48,513/-**. Therefore, the importer appeared 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 Customs 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 seemingly 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 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. It was apparent that though the importer/noticee was in complete knowledge of the correct nature of the goods nevertheless, the importer/auditee 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 dutyi.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 by the importer, has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer intentionally abused this faith placed upon it by the law of the land. Therefore, it appeared 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. It appeared 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 appeared to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962. Further, it appeared 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 appeared to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

12. **From the foregoing discussions it appeared 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 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) was 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 M/s Adani Wilmar Ltd,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 appeared applicable.

(v). Importer was also liable for penalty under Section 114A of the Customs Act, 1962 for collusion and willful mis-statement and suppression of facts by him and active involvement in wrongful availment of Notification, for which they appeared not entitled for.

13. Therefore, **M/s. Adani Wilmar Ltd.,** Fortune House, Near Navrangpura Railway Crossing, Ahmedabad 380009, Gujarat, were called upon to show cause to **the 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) of this show cause notice, should not be re-assessed at correct rate of total duty is 67.370* percent (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 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.

WRITTEN SUBMISSIONS AND PERSONAL HEARING

14. **I observe that** *'Audi alteram partem'*, is an important principal of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to the noticee on 18.02.2025. Shri Dhruvan Mehta and Shri Samarth Bajaj, authorized representative of the importer M/s. Adani Wilmar Ltd. appeared for Personal Hearing on 18.02.2025 wherein they have submitted:

A. that it is evident from the technical note only that both the products are completely different. Refined Palm Stearin when processed and when run through the chemical process of splitting with water and high pressure and temperature, they derive Mono Carboxylic Fatty Acid which is commercially

termed as Split RBD Palm Stearin Fatty Acid. They have also submitted the test reports of third party, Geo Chem as well as load port test report.

B. that there is clear differentiation between RPS as well as Split RBD Palm Stearin fatty acid. RPS is covered under Chapter 15, there is no doubt about it, but the product which they have imported is Split RBD Palm Stearin fatty acid which is covered under chapter 38. Both the product have got completely different acid value and free fatty acid percentage which are essential for the product to be differentiated at oil or chemical level. The acid value for RPS should be maximum at 0.5 however for RBD Palm Stearin Fatty Acid, it should be between 204-214 which is also there in the test report which they have provided i.e. in both load port and Geo Chem.

C. that there was no technical analysis done by the department for this particular import. The import transaction pertains to 2019. HSN explanatory notes also states that industrial monocarboxylic fatty acid are generally manufactured by the saponification or hydrolysis of natural fats or oils, that is the exact process they take on RPS to derive split RPS that is the correct classification for split RPS. There was specific instruction basis the audit that the Assistant Commissioner of Customs should carry out verification, but there was no verification done. There were no question on the prior import before these Bills of Entry. There are people across the industry who are importing under Chapter 3823. HSN or Explanatory Notes itself justify the product differentiation. So far as oil is considered some portion of triglyceride is included, whereas split RPS which is imported is a free fatty acid. This product is imported under non-edible industrial category

15. Further, they have re-iterated the submission dated 15.07.2024 wherein, they have interalia submitted:

The imported goods are correctly classified under CTH 38231900:

15.1 It is submitted that the present issue relates to classification of Split RBD Palm Stearin Fatty Acid, also known as Monocarboxylic Fatty Acid (imported goods), which is clearly a fatty acid falling under Chapter 38. It is the case of the Department that the imported goods falls under CTH 15119090, however, it is the case of the Noticee that the imported goods falls under Chapter 38231900. It is submitted that the issue of classification of Palm Stearin vs. Fatty Acids have been in dispute since more than two decades and keeping the present issue in mind, it is imperative to delve into the history of the amendments, circulars and judgments passed on the said issue.

History of classification of Palm Stearin vs. Fatty Acids:

15.2 Chapter 15 of the CTA, as it read prior to the amendment to the Finance Act, vide Finance Act, 2017, reads as under-

HS Code	Description of goods	Unit
1511	Palm oil and its fractions, whether or not refined, but not chemically modified	
1511 10 00	Crude oil	Kg.
1511 90	- Other	Kg.
1511 90 10	Refined bleached deodorized palm oil.	Kg.

1511 90 20	Refined bleached deodorized palmolein	Kg.
1511 90 90	---other	Kg.

15.3 Chapter 38 of the CTA, as it read prior to the amendment to the Finance Act, vide Finance Act, 2017, reads as under-

HS Code	**Description of goods**	**Unit**
3823	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols	
	Industrial monocarboxylic fatty acids; acid oils from refining:	
3823 11	---Stearic acid:	
	---Palm stearin:	
3823 11 11	---Crude	Kg.
3823 11 12	---RBD	Kg.
3823 11 19	---Other	Kg.
3823 11 90	---Other stearic acid or stearin	Kg.
3823 12 00	--Oleic acid	Kg.
3823 13 00	---Tall Oil fatty acid	Kg.
3823 19 00	---Others	Kg.
3823 70	--- Industrial fatty alcohols	Kg.
.....	.....	

15.4 It is submitted that owing to the various disputes on this issue and because a doubt was raised as to whether palm stearin is classifiable under CTH 1511 or 3823 of the CTA, the Central Board of Excise and Customs ("CBEC") issued Circular No. 81/2002-Cus., dated 03.12.2002 ("Circular No. 81") bearing F. No. 528/87/2001-CUS (TU), to clarify the said issue. In the said circular, it was recorded that the matter was referred to the Central Revenues Control Laboratory ("CRCL"), and it was finally clarified as under-

"4. The matter was referred to CRCL for opinion....As regards heading 38.23 which covers industrial monocarboxylic fatty acids, the olein and stearin described thereunder are mixed fatty acids mainly palmitic, stearic, oleic acid etc., obtained by splitting of natural fats and oils by means of hydrolysis or saponification, and then by crystallisation and separation. Industrial fatty acids are used in plastics, fibres, soaps, surfactants etc. These are composed of mixtures of fatty acids and are by no means pure or even fairly pure. Hence, they are classifiable under heading 38.23...."

5. CRCL has further advised that 'palm stearine' falling under heading 15.11 is basically triglyceride (esters) of fatty acids and 'stearine' falling under heading 38.23 is basically a free fatty acid. The triglycerides of fatty acids (esters) and free fatty acids are two different organic compounds and distinguishable by chemical tests ie., by determining the ester value. While triglycerides possess the ester values, free fatty acids do not possess the same."

(Emphasis supplied)

15.5 Thus, on a bare perusal of the Circular No. 81, it is lucid that industrial grade monocarboxylic fatty acid, which is obtained by the means of hydrolysis or saponification, is to be classified under CTH 3823.

15.6 Thereafter, the said issue came up before the Hon'ble Tribunal, Bangalore in **Jocil Ltd. v. Commr. of C. Ex., Cus. & S.T., Visakhapatnam-II [2009 (244) E.L.T. 69 (Tri. Bang.)]** Wherein the Hon'ble Tribunal while placing reliance on the Circular No. 81 held that since the imported Crude Palm Stearin contains triglycerides of fatty acid and free fatty acid, the same is classified under CTH 1511 and not CTH 3823 as CTH 3823 covers goods having free fatty acid. Relevant extract of the same is reproduced hereunder:

"8.2. It can be noticed from the above chart that the ester value/ saponification value is given for all the consignments at the load port. On the perusal of free fatty acids content as has been ascertained by the Chemical Examiner and as certified at the load port, there is no much difference. This would indicate that the balance in the sample is nothing but the trighlycerides, as per the ester value/ saponification value arrived and reported.

8.3. It can be noticed from the above, that the CBEC Circular was seized with the classification of the very same product and at paragraph 5 very clearly clarified that triglycerides of fatty acids and free fatty acids are two different organic compounds and distinguishable by chemical tests i.e., by determining the ester value. After giving such a clear-cut clarification at Para 6, it has been further clarified that the goods need to be assessed keeping in view the above advice given by the CRCL. We find that the lower authorities have not sought the ester value of the samples, to arrive at correct classification. In the absence of any other contrary evidence, the evidence as is produced by the appellant before the lower authorities inform of load port chemical analysis report, we have to hold that the goods imported by the appellants in this case would fall under Chapter Heading No. 1511.90.90. We also find strong force in the contentions raised by the appellant's counsel that the issue in respect of very same assessee has been considered by this Bench in a case as reported at 2008 (225) E.L.T. 540 (Tri.-Bang.). We may reproduce the ratio of the same...

8.4 In view of the above reasonings, we find that the impugned orders vide which the classification of the product ordered under Chapter Sub-Heading No. 3823.11.12, is liable to be set aside and we do so. We direct the lower authorities to classify the product under Chapter Sub Heading 1511.90.90 of the Customs Tariff Act, 1975 and finalize the bills of entries which were provisionally assessed. Needless to say that the consequential relief, if any, in accordance with law, will be available to appellants on finalization of the said bills of entries."

(Emphasis supplied)

15.7 The aforesaid decision of the Hon'ble Tribunal, Bangalore in Jocil (supra) was overruled by the Hon'ble Supreme Court in the case of Commr. of C. Ex., Cus & S.T., Vishakhapatnam vs. Jocil Ltd. [2011 (263) E.L.T. 9 (S.C.)] which further deciphered the entries under dispute and the Circular No. 81 and while giving a more harmonious and wider interpretation to the said entries, categorically held that "Palm Stearin" of whatever character would fall under Chapter 38 of the CTA. Relevant extract of the same is reproduced hereunder:

"13... Since the description offered in Chapter 38 certainly attempts to identify 'Palm Stearin' within its ambit, we do not find it necessary to place reliance on the explanation offered by the Respondent."

15.8 Pursuant to the same, CBEC vide Circular No. 31/2011-Cus., dated 26.07.2011 (issued vide F. No. 521/64/2010-STO(TU)) ("Circular No. 31") while following the decision of the Hon'ble Apex Court in the case of Jocil (supra), withdrew the Circular No. 81 and clarified as under:

"2. Hon'ble Supreme Court of India in Civil Appeal No. 6979-6982 of 2009 in case of C.C.E.C. & S.T., Visakhapatnam v. JOCIL India, vide Order dated 15-12-2010 (2011 (263) E.L.T. 9 (S.C.)) has held that 'Palm Stearin' is specifically mentioned

under CTH 3823 11 and is further differentiated as "Crude", "RBD" in sub-heading 3823 11 11 and 3823 11 12 respectively. The Explanatory Notes are categorical in affirming the accepted practice that Rule 3(b) of 'General Rules for the Interpretation' shall be used only if classification under Rule 3(a) fails. The Hon'ble Court has opined that the issue of the essential character of the subject matter in question may be resorted to only if identification under Rule 3(a) is impossible.

3. Accordingly, it is clarified that the goods declared as "Crude Palm Stearin shall be assessed under CTH 3823 11 11 of Customs Tariff Act, 1975. All pending cases should be finalized accordingly."

15.9 Thereafter, the First Schedule to the CTA was inter alia amended vide Section 110(b) read with the Third Schedule of the Finance Act, 2017, as under:

"In the First Schedule to the Customs Tariff Act -

(1) .....

(2) .....

(3) in Chapter 15, after tariff item 1511 90 20 and the entries relating thereto, the following tariff item and entries shall be inserted, namely:-

15119030	Refined bleached deodorized palm stearin	Kg.	100 %	90 %

(4) in Chapter 38,

(a) in heading 3823, for sub-heading 3823 11 and Tariff Items 3823 11 11 to 3823 11 90 and the entries relating thereto, the following shall be substituted, namely:-

38231100	Stearic acid	Kg	30 %	-

15.10 In the Annexure IV (Legislative Changes), Part A (Customs), Sub-part III (Amendment in the First Schedule to Customs Tariff Act, 1975) of the D.O. F. No. 334/7/2017-TRU, dated 1-2-2017 of the Joint Secretary (TRU-I), it has been mentioned as follows:

S. No.	Amendment	Clause of the Finance Bill, 2017
1	To: (i)..... (ii) Create new tariff item 1511 90 30 for Refined bleached deodorised palm stearin to harmonize Customs Tariff in accordance with WCO classification decision. (iii) Substitute tariff items 3823 11 11 to 3823 11 90 and entries relating thereto with tariff item 3823 11 00. (iv)	[109(b)]

15.11 Therefore, the relevant entries for Chapter Heading 1511 and 3823 of the First Schedule to the Customs Tariff Act, 1975 are now as under-

CTH 1511

HS Code	Description of goods	Unit

1511	Palm oil and its fractions, whether or not refined, but not chemically modified	
1511 10 00	Crude oil	Kg.
1511 90	- Other	Kg.
1511 90 10	Refined bleached deodorized palm oil.	Kg.
1511 90 20	Refined bleached deodorized palmolein	Kg.
1511 90 30	Refined bleached deodorized palm Stearin	Kg.
1511 90 90	---other	Kg.

CTH 3823

HS Code	**Description of goods**	**Unit**
3823	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols	
	Industrial monocarboxylic fatty acids; acid oils from refining:	
3823 1100	---Stearic acid:	
3823 12 00	--Oleic acid	
3823 13 00	---Tall Oil fatty acid	Kg.
3823 19 00	---Others	Kg.
3823 70	--- Industrial fatty alcohols	Kg.
.....	.....	Kg.

15.12 However, even after the aforesaid amendments, the Note 1(e) of the Chapter Notes to Chapter 15 of the CTA still reads as follows -

"NOTES:
1. This Chapter does not cover:
(e) fatty acids, prepared waxes, medicaments, paints, varnishes, soap, perfumery, cosmetic or toilet preparations, sulphonated oils or other goods of Section VI; or ..."

(Emphasis Supplied)

15.13 Thus, even though vide the 2017 amendment, RBD Palm Stearin has been added under CTH 1511 9030, the Chapter Note 1(e) of Chapter 15 has not been amended to delete Fatty Acids from the list of exclusions to Chapter 15. Accordingly, it has always been the Legislature's intent to exclude fatty acids from Chapter 15.

Classification under CTH 38231900:

15.14 Thus, keeping the aforesaid history of classification of RBD PS v. Fatty Acid in mind, it is now imperative to delve into classification of the imported goods under CTH 38231900.

15.15 In the present case, as can be clearly seen from the process of manufacture of the imported goods mentioned at Paragraph 5 hereinabove, the imported goods are obtained by a process wherein the Triglycerides of RPS undergo continuous hydrolysis and are split into Diglycerides of RPS and monocarboxylic fatty acids/Split RBD Palm Stearin Fatty Acid/imported goods. Therefore, there is no presence of Triglycerides in the imported goods and is merely a free fatty acid.

Accordingly, in view of Circular No. 81, it is submitted that the imported goods are rightly classified under CTH 38231900.

15.16 Further, it is submitted that the Harmonized System of Nomenclature ("HSN") with reference to Chapter 1511 reads as under -

15.11

15.11 - Palm oil and its fractions, whether or not refined, but not chemically modified

1511.10-Crude oil

1511.90-Other

Palm oil is a vegetable fat obtained from the pulp of the fruits of oil palms. The main source is the African oil palm (Elaeis guineensis) which is native to tropical Africa but is also grown in Central America, Malaysia and Indonesia; other examples are Elaeis melanococca (also known as noli palm) and various species of Acrocomia palms, including the Paraguayan palm (coco mbocaya), originating in South America. The oils are obtained by extraction or pressing and may be of various colours depending on their condition and whether they have been refined. They are distinguishable from palm kernel oils (heading 15.13), which are obtained from the same oil palms by having a very high palmitic and oleic acid content.

Palm oil is used in the manufacture of soap, candles, cosmetic or toilet preparations, as a lubricant, for hot-dipped tin coating, in the production of palmitic acid, etc. Refined palm oil is used as a food stuff, e.g., as a frying fat, and in the manufacture of margarine.

This heading does not cover palm kernel oil or babassu oil (heading 15.13)."

15.17 The relevant portion of Chapter 3823 of the HSN reads as under -

"38.23

38.23 Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols.

- Industrial monocarboxylic fatty acids; acid oils from refining:

3823.11Stearic acid

3823.12-Oleic acid

3823.13 -- Tall oil fatty acids

3823.19-Other

3823.70-Industrial fatty alcohols

(A) INDUSTRIAL MONOCARBOXYLIC FATTY ACIDS;

ACID OILS FROM REFINING

Industrial monocarboxylic fatty acids are generally manufactured by the saponification or hydrolysis of natural fats or oils. Separation of solid (saturated) and liquid (unsaturated) fatty acids is usually done by crystallisation either with or without solvent. The liquid part (commercially known as oleic acid or olein) consists of oleic acid and other unsaturated fatty acids (e.g., linoleic and linolenic acids) together with small amounts of saturated fatty acids. The solid part (commercially known as stearic acid or stearin) consists mainly of palmitic and stearic acids with a small proportion of unsaturated fatty acids.

This heading includes, inter alia:

(1) Commercial stearic acid (stearin) which is a white solid material with a characteristic odour. It is relatively hard and rather brittle and is usually marketed in the form of beads, flakes or powder. It is also marketed in liquid form when transported hot in isothermal tanks.

(2) Commercial oleic acid (olein) which is a colourless to brown oily liquid

with a characteristic odour.
(3) Tall oil fatty acids (TOFA) which consist primarily of oleic and linoleic acid. They are obtained by the distillation of crude tall oil and contain by weight 90% or more (calculated on the weight of the dry product) of fatty acids.
(4) Distilled fatty acids which are obtained after hydrolytic splitting of various fats and oils (e.g., coconut oil, palm oil, tallow) followed by a purification process (distillation).
(5) Fatty acid distillate, obtained from fats and oils which have been subjected to vacuum distillation in the presence of steam as part of a refining process. Fatty acid distillate is characterised by a high free fatty acid (ffa) content.
(6) Fatty acids obtained by catalytic oxidation of synthetic hydrocarbons of a high molecular weight.
(7) Acid oils from refining, with a relatively high free fatty acid content, prepared by decomposing with mineral acid the soap-stock obtained during the refining of crude oils.
The heading excludes:
(a) Oleic acid, of a purity of 85% or more (calculated on the weight of the dry product) (heading 29.16).
(b) Other fatty acids of a purity of 90% or more (calculated on the weight of the dry product) (generally heading 29.15, 29.16 or 29.18)."

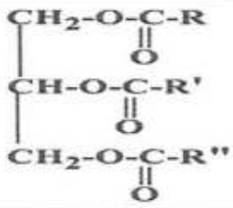
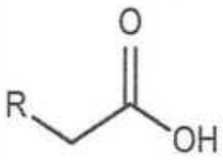
15.18 On a bare perusal of the Chapter Heading 3823, it can be seen that the same includes "Industrial Monocarboxylic Fatty Acids" and on a conjoint reading of the said chapter heading along with the manufacturing process as mentioned at Paragraph 5 hereinabove, the imported goods viz., Split RBD PS Fatty Acid is nothing but Industrial Monocarboxylic Fatty Acids. Further, since the imported goods are neither Stearic Acid (CTH 38231100), Oleic Acid (CTH 38231200) and Tall Oil Fatty Acid (CTH 38231300), the same falls under the residuary category of Others (38231900).

15.19 Further, the explanatory notes to Chapter Heading 3823 clearly stipulates that "Industrial monocarboxylic fatty acids are generally manufactured by the saponification or hydrolysis of natural fats or oils" and moreover, Sr. No. 4 of the explanatory notes includes "Distilled Fatty Acids, which are obtained after hydrolytic splitting of various fats and oils (E.g. coconut oil, palm oil, tallow) and followed by a purification process (distillation)".

15.20 On a bare perusal of the manufacturing process as mentioned at Paragraph 5 hereinabove, it is clear that the imported goods are obtained by the following process: Refined Palm Oil (fractionation) → Refined Palm Stearin → (continuous hydrolysis) → Monocarboxylic Fatty Acids/ Split RBD Palm Stearin Fatty Acid. Thus, the process for manufacture of the imported goods includes hydrolytic splitting of Refined Palm Oil.

15.21 At this juncture, it is also imperative to delve into the difference between the specifications of Refined Bleached Deodorized Palm Stearin and Monocarboxylic Fatty Acid, which is reproduced as under for the ease of reference:

Sr. No	**Aspect/Parameter**	**RBD Palm Stearin**	**Split RBD Palm Stearin Fatty Acid**

1	Molecule Name	Refined Bleached Deodorized Palm Stearin	Split Refined Bleached Deodorized Palm Stearin Fatty Acid
2	Compound	Triglyceride	Carboxylic Acid
3	Molecular Structure		
4	Max Unsap && Polymerized Triglycerides (%)	Max 1	Max 2
5	Moisture, Insoluble Impurities, Volatile Matter	Max 0.25	
6	Saponification Value	195-210	DOS (99%)=(AV/SV) X 100 Average SV: 205
7	Acid Value	Max 0.5	204-214
8	% Free Fatty Acid	Max 0.25	DOS (99%)

15.22 It is submitted that the following test reports conducted for the imported goods and the documents prove beyond doubt that the imported goods are well within the range of the specifications pertaining to Split RBD Palm Stearin Fatty Acid:

a. Test Reports dated 14.05.2019 and 03.06.2019, issued by Geochem Laboratory Pvt. Ltd ("Geochem") which is an International Independent Inspection and Testing Company.

b. Load Port Certificates dated 30.04.2019 and 09.05.2019 issued by AmSpec Agri Malaysia which is an Independent Surveyor.

c. Sales Contract No. S/93/19/001055 dated 08.03.2019 and No. S/93/19/001991 dated 17.04.2019.

15.23 It is further submitted that it is not even the case of the Department that the aforementioned test reports are false or fabricated. The said report and the certificates clearly state that the imported goods have acidic value >200% and FFA value of around 100%. Therefore, the contents of the said undisputed test reports also prove beyond doubt that the imported goods are rightly classified under CTH 38231900.

15.24 On the other hand, it is submitted that the Chapter Heading 1511 itself mentions that it only covers those palm oils which are not chemically modified. However, on a bare perusal of the manufacturing process of Split RBD Palm Stearin Fatty Acid as mentioned at Paragraph 5 hereinabove, it is lucid that the imported goods are obtained by chemically modifying the base product viz., Refined Palm Oil using fractionation and thereafter, hydrolysis which ultimately results in fatty acids which have an acidic value close to 200% and Free Fatty Acid value of 100%. Therefore, the Chapter Heading itself excludes the imported goods as they are chemically modified and are fatty acid obtained from palm oil and not palm oil per se.

15.25 Therefore, it is submitted that the heading of the Chapter 1511 itself excludes the imported goods from its purview and further, even the test reports prove that

the said products are not to be classified under CTH 15119090 and are correctly classified under CTH 38231900.

15.26 Further, on a conjoint reading of the order of the Hon'ble Supreme Court in the case of Jocil (supra) and the Circular No. 31, it is lucid that "Palm Stearin" specifically falls under CTH 3823 and in the present case as well, the imported goods are nothing but Split RBD Palm Stearin Fatty Acid. Accordingly, it is submitted that the goods have been correctly classified under CTH 3823.

15.27 It is submitted that while the Hon'ble Supreme Court in the case of Jocil (supra) has ruled that Crude Palm Stearin shall be classified under CTH 3823, it is pertinent to note that vide Circular No. 81, the CBEC has duly noted the observations of the CRCL to clarify that triglycerides (esters) of fatty acids (Palm Stearin) and free fatty acids (Monocarboxylic Fatty Acids) are two different organic compounds and are distinguishable from chemical tests and while triglycerides (esters) of fatty acids (Palm Stearin) will fall under CTH 1511, free fatty acids (Monocarboxylic Fatty Acids) will fall under CTH 3823. From the above, it is rightly concluded that even the board was of the view that not all organic compounds or every category of Palm Stearin are classifiable under the same chapter heading,

15.28 Further, as already mentioned hereinabove, even after specific additions of a new entry under CTH 1511 viz., 1511 90 30 - Refined bleached deodorised palm stearin and substitution in Chapter 3823, even if it is assumed that the Department is right in holding that anything related to Palm Stearin is covered under CTH 1511, the Chapter Notes 1(e) to Chapter 15 have still not been intentionally amended to delete "Fatty Acids" from the list of exclusions to Chapter 15. Accordingly, it is submitted that it was always the legislature's intent to exclude fatty acids from Chapter 15.

15.29 It is further submitted that the Chapter Note 1(e) also states that any goods covered under Section VI are not covered under Chapter 15. A bare reading of the CTA itself makes it clear that Section VI, which deals with Products of the Chemical or Allied Industries, covers Chapters 28 to 38. Thus, in view of the aforementioned submissions, since the imported goods fall under Chapter 38, they are automatically excluded from Chapter 15 by virtue of its Chapter Notes.

15.30 In view of the aforesaid legal and factual submission, it is clear that the imported goods are free Fatty Acid, which is specifically excluded from Chapter 15 and rightly fall under CTH 3823 and the same is also in line with the Circular No. 81. While the said circular is now withdrawn vide Circular No. 31, it was purely done in view of the decision of the Hon'ble Supreme Court in the case of Jocil (supra). Therefore, it is submitted that the Department cannot argue contrary to its stand that there are two separate products i.e., Palm Stearin which falls under CTH 1511 and Fatty Acids which fall under CTH 3823.

15.31 It is further submitted that once the Noticee has put forward the process of manufacturing the imported goods along with various test reports mentioned at Paragraph 92 hereinabove, the Department cannot dispute the same unless contradictory evidence is produced to dispute the said classification. In the present case, admittedly there were no tests conducted by the Department. In fact, a formal and specific request for testing of the imported goods was also made by the Dy. Commr. CGST, Mundra Division to the Dy. Commr. Custom House, Mundra. However, no such tests were conducted, as is also evident from Paragraph No. 2 of the present SCN under reply itself. Accordingly, it is submitted that even though the Department had complete knowledge about the present case and even after specific

requests for testing the imported goods being made, the Department did not conduct any tests of its own and therefore, the claim of the Noticee that the imported goods fall under CTH 38231900 cannot be disputed.

15.32 Thus, on a conjoint reading of (a) Chapter Heading 3823 along with sub-sub-heading 38231900, (b) Sr. No. 4 of the explanatory notes to the Chapter Heading 3823, (c) the manufacturing process mentioned at Paragraph 5 hereinabove, (d) our submissions made from Paragraphs 72 to 93Error! Reference source not found. hereinabove, (e) judgement of Jocil (supra), (f) Circular No. 31 and even the withdrawn Circular No. 81 and (g) Chapter Note 1(e) of Chapter 15, the imported goods are rightly classified under CTH 38231900 and cannot fall under CTH 15119090 as proposed by the Department.

DISCUSSION AND FINDINGS

16. I find in the Show Cause Notice that 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 (out of 29869 BEs having AV of Rs.44305 crores audit test checked 2168 BEs), it was noticed from the data analysis of the bill 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".*

16.1 I find that in the Show Cause Notice, it has been alleged that 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 of 67.37%.

16.2 Further, it has been alleged that the importer/noticee 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 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.

16.3 Further, it has been alleged that the importer/noticee was in complete knowledge of the correct nature of the goods nevertheless, the importer/auditee 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 dutyi.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 by the importer, has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer seemed to have intentionally abused this faith placed upon it by the law of the land. Therefore, it appeared 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.

16.4 Further, it has been alleged that the importer wilfully claimed undue notifications benefit for the impugned goods resulting into short levy of duty. Further, it appeared 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 appears to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

17. I have gone through the facts of the case, records and documents placed before me. Personal hearing was attended by Authorized Representatives of the Noticee on the scheduled date i.e 18.02.2025 and written submission dated 15.07.2024 was made by the Noticee.

18. After carefully considering the facts of the case, written submissions made by the Noticee and records of Personal Hearing, the issues to be decided before me are:-

i. What is the chemical composition/characteristic properties of the impugned goods i.e Split RBD Palm Stearin Fatty Acid?

ii. Whether the Noticee mis-classified the goods under CTI 3823 1900 instead of CTI 1511 9090 and wrongly availed the benefit of Sr. no. 252 of Notification No. 50/2017 dated 30.06.2017?

iii. Whether 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) be 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 ?

iv. Whether the penalty be imposed upon them under Section 114A of the Customs Act, 1962 ?

19. Accordingly, I proceed to examine these issues one by one.

Characteristic Properties of Split RBD Palm Stearin Fatty Acid

20. I find that authorized representative of importer during Personal Hearing dated 18.02.2025 interalia stated that:

i. it is evident from the technical note only that both the products are completely different. Refined Palm Stearin when processed and when run through the chemical process of splitting with water and high pressure and temperature, they derive Mono Carboxylic Fatty Acid which is commercially termed as Split RBD Palm Stearin Fatty Acid. They have also submitted the test reports of third party, Geo Chem as well as load port test report.

ii. that there is clear differentiation between RPS as well as Split RBD Palm Stearin fatty acid. RPS is covered under Chapter 15, there is no doubt about it, but the product which they have imported is Split RBD Palm Stearin fatty acid which is covered under chapter 38. Both the product have got completely different acid value and free fatty acid percentage which are essential for the product to be differentiated at oil or chemical level. The acid value for RPS should be maximum at 0.5 however for RBD Palm Stearin Fatty Acid, it should be between 204-214 which is also there in the test report which they have provided i.e. in both load port and Geo Chem.

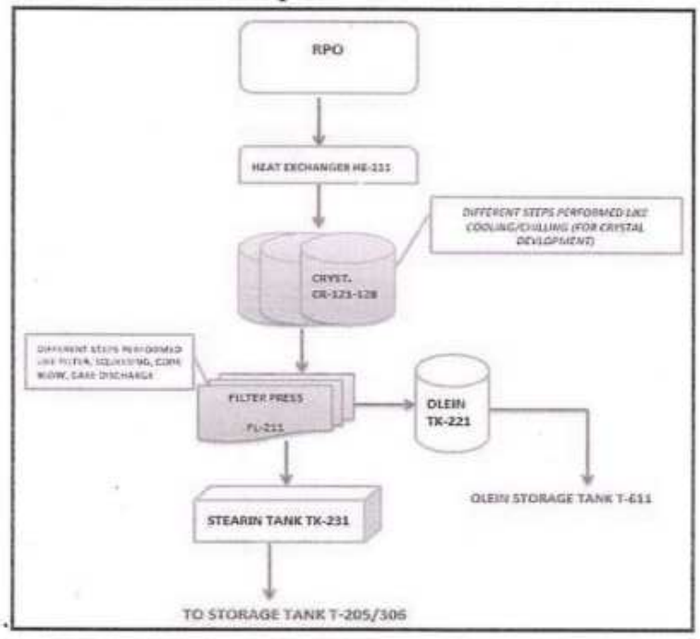
iii. that there was no technical analysis done by the department for this particular import. The import transaction pertains to 2019. HSN explanatory notes also states that industrial monocarboxylic fatty acid are generally manufactured by the saponification or hydrolysis of natural fats or oils, that is the exact process they take on RPS to derive split RPS that is the correct classification for split RPS. There was specific instruction basis the audit that

the Assistant Commissioner of Customs should carry out verification, but there was no verification done. There were no question on the prior import before these Bills of Entry. There are people across the industry who are importing under Chapter 3823. HSN or Explanatory Notes itself justify the product differentiation. So far as oil is considered some portion of triglyceride is included, whereas split RPS which is imported is a free fatty acid. This product is imported under non-edible industrial category.

20.1 In this regard, I have gone through the submissions of the Importer wherein I find the manufacturing process of the goods i.e Split RBD Palm Stearin Fatty Acid from refined Palm Stearin and the process is produced below:

Refined Palm Stearin:

Refined Palm Stearin is a product obtained by fractionation of Refined Palm Oil (RPO). RPO after crystallization undergoes fractionation under high pressure where Refined Palm Stearin (RPS) and Refined Palm Olein (RPO) get separated. In other words, the triglycerides of RPO are separated into the triglycerides of RPS and triglycerides of RP Olein. The following flow chart graphically describes the above process:-

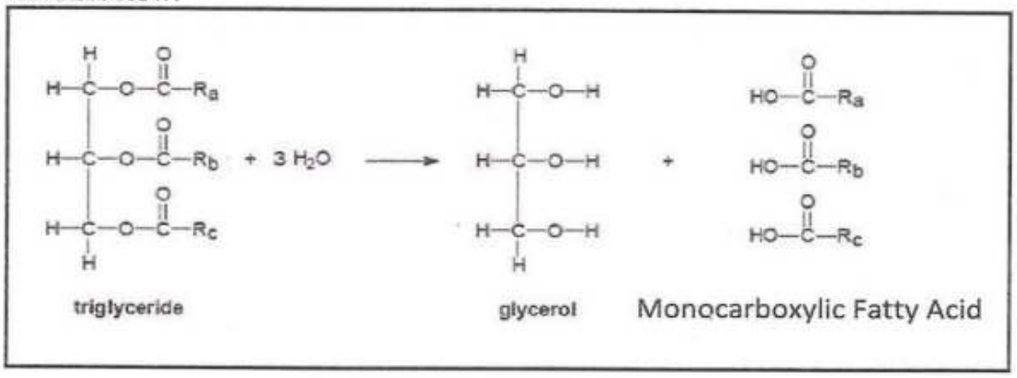


Split RBD Palm Stearin Fatty Acid (Monocarboxylic Fatty Acids):

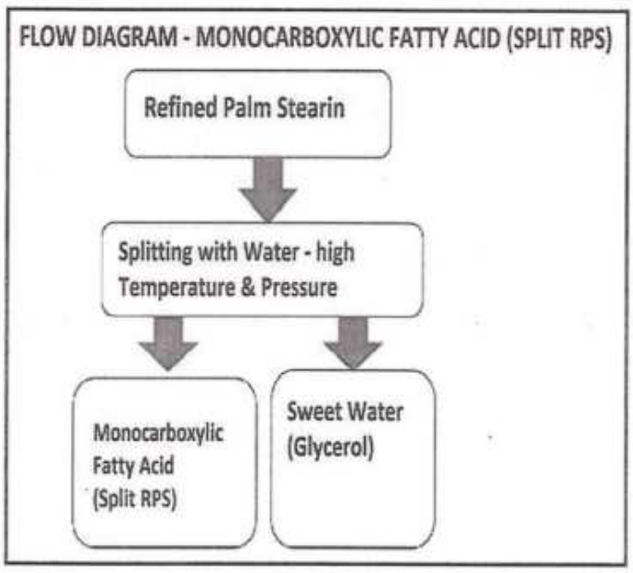
Split RBD PS Fatty Acid is obtained by a process where the triglycerides of RPS undergo continuous hydrolysis. Triglycerides of RPS are converted into diglycerides & Monocarboxylic Fatty Acid (also known as "Split RBD Palm Stearin Fatty Acid"), diglycerides of RPS are converted into monoglycerides & Monocarboxylic fatty acids and monoglycerides of RPS are converted into Glycerol & Monocarboxylic Fatty Acids. The chemical reaction for this process is given below for ease of reference:

$C_3H_5(OOCR)_3$	+	H_2O	⇌	$C_3H_5(OH)(OOCR)_2$	+	RCOOH
Tri Glycerides		Water		Di Glycerides		Monocarboxylic Fatty Acid
$C_3H_5(OH)(OOCR)_2$	+	H_2O	⇌	$C_3H_5(OH)_2(OOCR)_1$	+	RCOOH
Di Glycerides		Water		Mono Glycerides		Monocarboxylic Fatty Acid
$C_3H_5(OH)_2(OOCR)_1$	+	H_2O	⇌	$C_3H_5(OH)_3$	+	RCOOH
Mono Glycerides		Water		Glycerol		Monocarboxylic Fatty Acid

The summarized depiction of the Chemical Reaction Equation is provided hereinbelow:



Further, a flowchart of one of the processes of manufacture of Monocarboxylic Fatty Acid (Split RBD Palm Stearin Fatty Acid) is mentioned as under:



20.2 Regarding the correctness of above submission, Board Circular no. 81/2002-Customs dated 03.12.2002 has been referred and the relevant part is produced under:-

> "4. *The matter was referred to CRCL for opinion. CRCL has advised that heading 15.11 covers palm oil and its fractions. Palm oil is composed mainly of triglycerides of fatty acids such as palmitic, strearic, oleic, lauric, myristic, etc. Palm oil can be separated into low and high melting point fractions, viz., palm olein and palm stearin, by fractionation. Composition wise both fractions are mainly triglycerides of fatty acids. Therefore, stearin (palm stearin) falling under 15.11 is glyceride (ester) of fatty acids such as palmitic, stearic, oleic, lauric, myristic etc.* ***As regards heading 38.23*** *which covers industrial mono carboxylic fatty acids, the olein and stearin described thereunder are mixed fatty acids mainly palmitic, stearic, oleic acid etc., obtained by splitting of natural fats and oils by means of hydrolysis or saponification, and then by crystallisation and separation.*
> *5. CRCL has further advised that `palm stearine" falling under heading 15.11 is basically triglyceride (Esters) of fattyacids and `stearine" falling under heading 38.23 is basically a free fatty acid. "*

20.3 Further reference has been made to scientific research paper "**Fatty Acid Direct Production from Palm Kernel Oil**" by students of Department of Chemical Engineering, Universitas Sumatera Utara, Indonesia available on https://iopscience.iop.org that comes under IOP Publishing that is a society-owned

scientific publisher. This paper was made public at the 1st International Conference on Industrial and Manufacturing Engineering under IOP Publishing. Relevant portion of said paper is produced below:-

*"**Abstract**- Fatty acid is one of oleochemical products that can be obtained from palm kernel oil. The fatty acids can be produced enzymatically hydrolyzing palm oil by using lipase. **This study aims to assess the conversion of palm kernel oil into fatty acids** with activate lipase enzyme in palm kernel. Observation of this research consist of variety of duration of hydrolysis, the hydrolysis reaction temperature, and the addition of water. The highest percentage of fatty acid produced in this research is 34.645 %. This result obtained at 2 hours of hydrolysis reaction time and 40% of water addition at 35 °C, and the fatty acid produced in this study is dominated by lauric acid with a composition of 52.465%.*

...

...

*One of the oleochemical products that can be treated without going through triglycerides is the fatty acid of the oil palm fruit. **Figure 1** shows the steps of making fatty acids. During this time, the palm fruit is processed into crude palm oil (CPO) and palm kernel oil (PKO), then CPO and PKO is refined to be refined bleached deodorized palm oil (RBDPO) and refined bleached deodorized palm kernel oil (RBDPKO). **RBDPO or RBDPO is then hydrolyzed into fatty acids. This way need three steps to product fatty acid from palm fruit oil.***

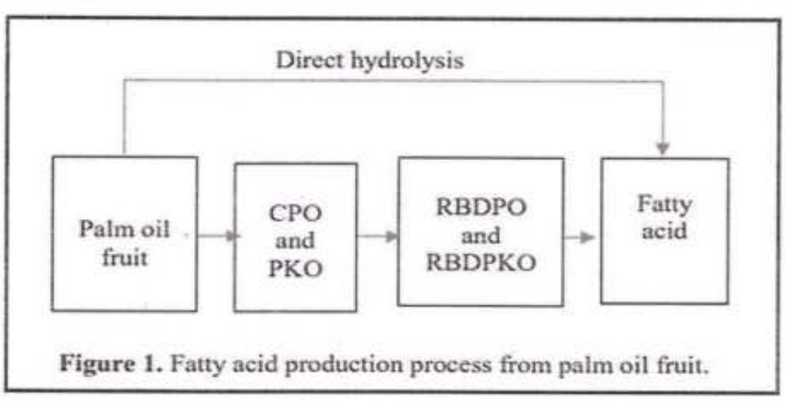


Figure 1. Fatty acid production process from palm oil fruit.

...

...

*The development of fatty acids in palm oil is influenced by lipoids contained in oil and the ability of autocatalytic hydrolysis spontaneously by lipase enzyme [6]. **Figure 2** shows the steps of triglyceride hydrolysis process by lipase enzyme to produce **free fatty acid (FFA)**.*

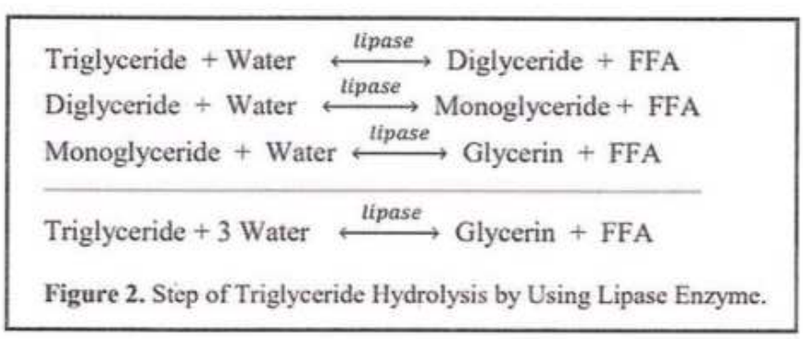


Figure 2. Step of Triglyceride Hydrolysis by Using Lipase Enzyme.

20.4 On going through the above submissions, Board Circular no. 81/2002-Customs dated 03.12.2002 and above mentioned scientific research paper from Department of Chemical Engineering, Indonesia, I find that the product under dispute are obtained by a process wherein the Triglycerides of Refined Palm Stearin (RPS) undergo continuous hydrolysis and are split into Diglycerides of RPS and monocarboxylic fatty acids/Split RBD Palm Stearin Fatty Acid. I find that the impugned goods is not Refined Palm Stearin but the monocarboxylic Fatty acid obtained by hydrolysis of Refined Palm Stearin, the impugned goods is not edible but for industrial purpose.

Whether the Noticee mis-classified the goods under CTI 3823 1900 instead of CTI 1511 9090

21. I find that Noticee vide submission dated 15.07.2024, inter-alia, stated that:-

i. the Harmonized System of Nomenclature ("HSN") with reference to Chapter 1511 reads as under -

15.11

15.11 - Palm oil and its fractions, whether or not refined, but not chemically modified

1511.10-Crude oil

1511.90-Other

ii. The relevant portion of Chapter 3823 of the HSN reads as under -

"38.23

38.23 Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols.

- Industrial monocarboxylic fatty acids; acid oils from refining:

3823.11Stearic acid

3823.12-Oleic acid

3823.13 – Tall oil fatty acids

3823.19-Other

3823.70-Industrial fatty alcohols

As per explanatory Note to CTH 3823

(A) INDUSTRIAL MONOCARBOXYLIC FATTY ACIDS;

ACID OILS FROM REFINING

Industrial monocarboxylic fatty acids are generally manufactured by the saponification or hydrolysis of natural fats or oils. Separation of solid (saturated) and liquid (unsaturated) fatty acids is usually done by crystallisation either with or without solvent. The liquid part (commercially known as oleic acid or olein) consists of oleic acid and other unsaturated fatty acids (e.g., linoleic and linolenic acids) together with small amounts of saturated fatty acids. The solid part (commercially known as stearic acid or stearin) consists mainly of palmitic and stearic acids with a small proportion of unsaturated fatty acids.

This heading includes, inter alia:

(1) Commercial stearic acid (stearin) which is a white solid material with a characteristic odour. It is relatively hard and rather brittle and is usually marketed in the form of beads, flakes or powder. It is also marketed in liquid form when transported hot in isothermal tanks.

(2) Commercial oleic acid (olein) which is a colourless to brown oily liquid with a characteristic odour.

(3) Tall oil fatty acids (TOFA) which consist primarily of oleic and linoleic acid. They are obtained by the distillation of crude tall oil and contain by weight 90% or more (calculated on the weight of the dry product) of fatty acids.

(4) Distilled fatty acids which are obtained after hydrolytic splitting of various fats and oils (e.g., coconut oil, palm oil, tallow) followed by a purification process (distillation).

(5) Fatty acid distillate, obtained from fats and oils which have been subjected to vacuum distillation in the presence of steam as part of a refining process. Fatty acid distillate is characterised by a high free fatty acid (ffa) content.

(6) Fatty acids obtained by catalytic oxidation of synthetic hydrocarbons of a high molecular weight.

(7) Acid oils from refining, with a relatively high free fatty acid content,

prepared by decomposing with mineral acid the soap-stock obtained during the refining of crude oils.

The heading excludes:

(a) Oleic acid, of a purity of 85% or more (calculated on the weight of the dry product) (heading 29.16).

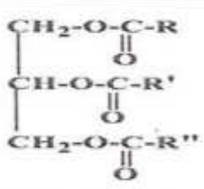
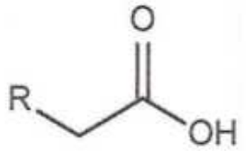
(b) Other fatty acids of a purity of 90% or more (calculated on the weight of the dry product) (generally heading 29.15, 29.16 or 29.18)."

iii. On a bare perusal of the Chapter Heading 3823, it can be seen that the same includes "Industrial Monocarboxylic Fatty Acids" and on a conjoint reading of the said chapter heading along with the manufacturing process as mentioned above hereinabove, the imported goods viz., Split RBD PS Fatty Acid is nothing but Industrial Monocarboxylic Fatty Acids. Further, since the imported goods are neither Stearic Acid (CTH 38231100), Oleic Acid (CTH 38231200) and Tall Oil Fatty Acid (CTH 38231300), the same falls under the residuary category of Others (38231900).

iv. Further, the explanatory notes to Chapter Heading 3823 clearly stipulates that "Industrial monocarboxylic fatty acids are generally manufactured by the saponification or hydrolysis of natural fats or oils" and moreover, Sr. No. 4 of the explanatory notes includes "Distilled Fatty Acids, which are obtained after hydrolytic splitting of various fats and oils (E.g. coconut oil, palm oil, tallow) and followed by a purification process (distillation)".

v. On a bare perusal of the manufacturing process as mentioned at Paragraph 5 hereinabove, it is clear that the imported goods are obtained by the following process: Refined Palm Oil (fractionation) → Refined Palm Stearin → (continuous hydrolysis) → Monocarboxylic Fatty Acids/ Split RBD Palm Stearin Fatty Acid. Thus, the process for manufacture of the imported goods includes hydrolytic splitting of Refined Palm Oil.

vi. Difference between RPS & Monocarboxylic acid

Sr. No.	Aspect/Parameter	RBD Palm Stearin	Split RBD Palm Stearin Fatty Acid
1	Molecule Name	Refined Bleached Deodorized Palm Stearin	Split Refined Bleached Deodorized Palm Stearin Fatty Acid
2	Compound	Triglyceride	Carboxylic Acid
3	Molecular Structure		
4	Max Unsap & Polymerized Triglycerides (%)	max 1	max 2
5	Moisture, Insoluble Impurities, Volatile Matter	max 0.25	
6	Saponification Value	195-210	DOS (99%) = (AV/SV) X 100 Average SV: 205
7	Acid Value	max 0.5	204-214
8	% Free Fatty Acid	max 0.25	DOS (99 %)

It is submitted that the following test reports conducted for the imported goods and the documents prove beyond doubt that the imported goods are

well within the range of the specifications pertaining to Split RBD Palm Stearin Fatty Acid:

a. Test Reports dated 14.05.2019 and 03.06.2019, issued by Geochem Laboratory Pvt. Ltd ("Geochem") which is an International Independent Inspection and Testing Company.

b. Load Port Certificates dated 30.04.2019 and 09.05.2019 issued by AmSpec Agri Malaysia which is an Independent Surveyor.

vii. It is further submitted that it is not the case of the Department that the aforementioned test reports are false or fabricated. The said report and the certificates clearly state that the imported goods have acidic value >200% and FFA value of around 100%. Therefore, the contents of the said undisputed test reports also prove beyond doubt that the imported goods are rightly classified under CTH 38231900.

viii. It is further submitted that the Chapter Note 1(e) also states that any goods covered under Section VI are not covered under Chapter 15. A bare reading of the CTA itself makes it clear that Section VI, which deals with Products of the Chemical or Allied Industries, covers Chapters 28 to 38. Thus, in view of the aforementioned submissions, since the imported goods fall under Chapter 38, they are automatically excluded from Chapter 15 by virtue of its Chapter Notes.

ix. In view of the aforesaid legal and factual submission, it is clear that the imported goods are free Fatty Acid, which is specifically excluded from Chapter 15 and rightly fall under CTH 3823 and the same is also in line with the Circular No. 81/2002-Cus., dated 03.12.2002. While the said circular is now withdrawn vide Circular No. 31/2011-Cus., dated 26.07.2011, it was purely done in view of the decision of the Hon'ble Supreme Court in the case of Jocil (supra). Therefore, it is submitted that the Department cannot argue contrary to its stand that there are two separate products i.e., Palm Stearin which falls under CTH 1511 and Fatty Acids which fall under CTH 3823.

x. It is further submitted that once the Noticee has put forward the process of manufacturing the imported goods along with various test reports mentioned at Paragraph 92 hereinabove, the Department cannot dispute the same unless contradictory evidence is produced to dispute the said classification. In the present case, admittedly there were no tests conducted by the Department. In fact, a formal and specific request for testing of the imported goods was also made by the Dy. Commr. CGST, Mundra Division to the Dy. Commr. Custom House, Mundra. However, no such tests were conducted, as is also evident from Paragraph No. 2 of the present SCN under reply itself. Accordingly, it is submitted that even though the Department had complete knowledge about the present case and even after specific requests for testing the imported goods being made, the Department did not conduct any tests of its own and therefore, the claim of the Noticee that the imported goods fall under CTH 38231900 cannot be disputed.

xi. Thus, on a conjoint reading of (a) Chapter Heading 3823 along with sub-sub-heading 38231900, (b) Sr. No. 4 of the explanatory notes to the Chapter Heading 3823, (c) the manufacturing process mentioned at Paragraph 5 hereinabove, (d) our submissions made from Paragraphs 72 to 93 hereinabove, (e) judgement of Jocil (supra), (f) Circular No. 31/2011-Cus., dated 26.07.2011 and even the withdrawn Circular No. 81/2002-Cus., dated

03.12.2002 and (g) Chapter Note 1(e) of Chapter 15, the imported goods are rightly classified under CTH 38231900 and cannot fall under CTH 15119090 as proposed by the Department.

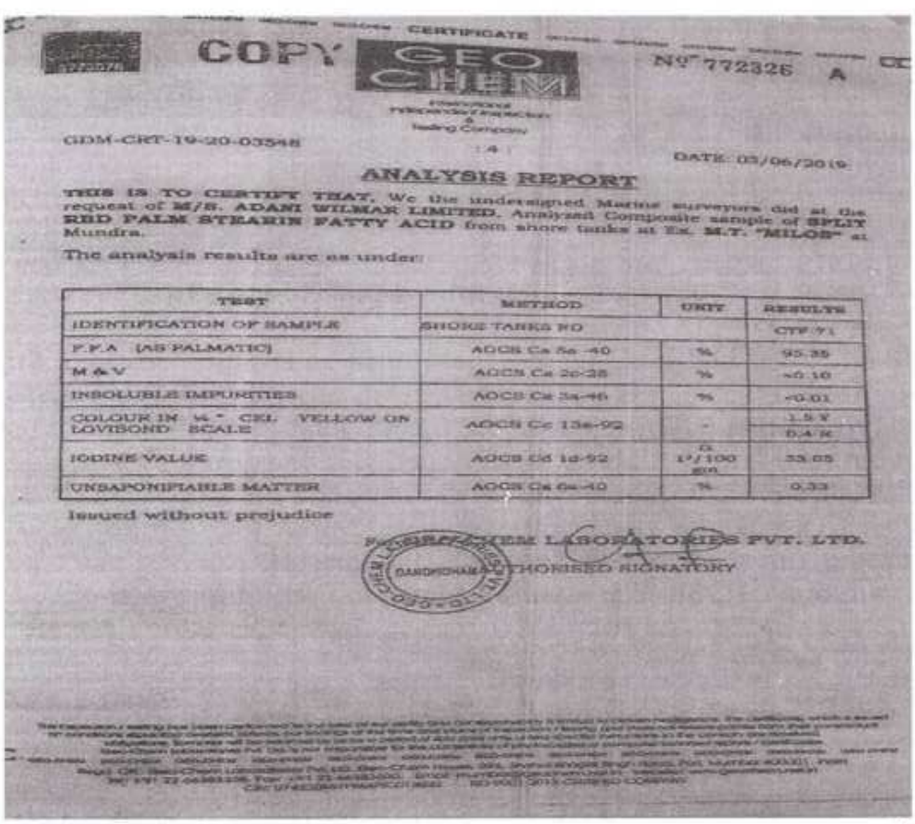
21.1 In view of above submissions, I find that Split RBD Palm Stearin Fatty Acid is a monocarboxylic Fatty Acid (as discussed above) and is manufactured from Refined Palm stearin through Hydrolysis process. As per explanatory notes to CTH 3823, it is mentioned that "*Industrial monocarboxylic fatty acids are generally manufactured by the saponification or hydrolysis of natural fats or oils.*" Further, Note no. 1(e) to Chapter 15 clearly mentioned that Chapter 15 does not cover "*fatty acids, prepared waxes, medicaments, paints, varnishes, soap, perfumery, cosmetic or toilet preparations, sulphonated oils or other goods of Section VI*" (Section VI includes Chapter 28 to 38 of Indian Tariff Act, 1975)

21.2 I further find that it is clearly mentioned at Para 5 of Circular No. 81/2002 dated 03.12.2002 that Palm Stearin and Palm Stearin Fatty Acid are two different organic compounds. The Para 5 of said Circular is produced below for reference.

> "5. *CRCL has further advised that `palm stearine" falling under heading 15.11 is basically triglyceride (Esters) of fatty acids and `stearine" falling under heading 38.23 is basically a free fatty acid. The triglycerides of fatty acids (Esters) and free fatty acids are two different organic compounds*"

21.3 Further, I find that the Palm Stearin and Split RBD Palm Stearin Fatty acid are different from each other in terms of various chemical properties as mentioned in Para 21(vi) above. Two most important characteristic properties to identify the product are **Free Fatty Acid (%) and Acid Value.**

21.4 I find that the Noticee has submitted the difference between Palm Stearin and Palm Stearin Fatty Acid on the basis of various parameters including the above mentioned two important parameters i.e Free Fatty Acid (%) and Acid Value and the same are produced above at para 21 (vi). Noticee submitted that the analysis reports of third party i.e Geo Chem and load port analysis report of AmSpec Agri justifies the FFA% of around 99% and Acid Value range between 204-215 as per above mentioned table at Para 21 (vi). The said analysis reports are produced below wherein **FFA% is around 95%** and **Acid Value is around 210** and fits the criteria for Palm Stearin Fatty Acid :-



COPY

CERTIFICATE

GEO CHEM

No. 772326 A

GDM-CRT-19-20-03548

DATE: 05/06/2019

ANALYSIS REPORT

THIS IS TO CERTIFY THAT, We the undersigned Marine surveyors did at the request of **M/S. ADANI WILMAR LIMITED,** Analyzed Composite sample of **SPLIT RBD PALM STEARIN FATTY ACID** from shore tanks at Ex. **M.T. "MILOS"** at Mundra.

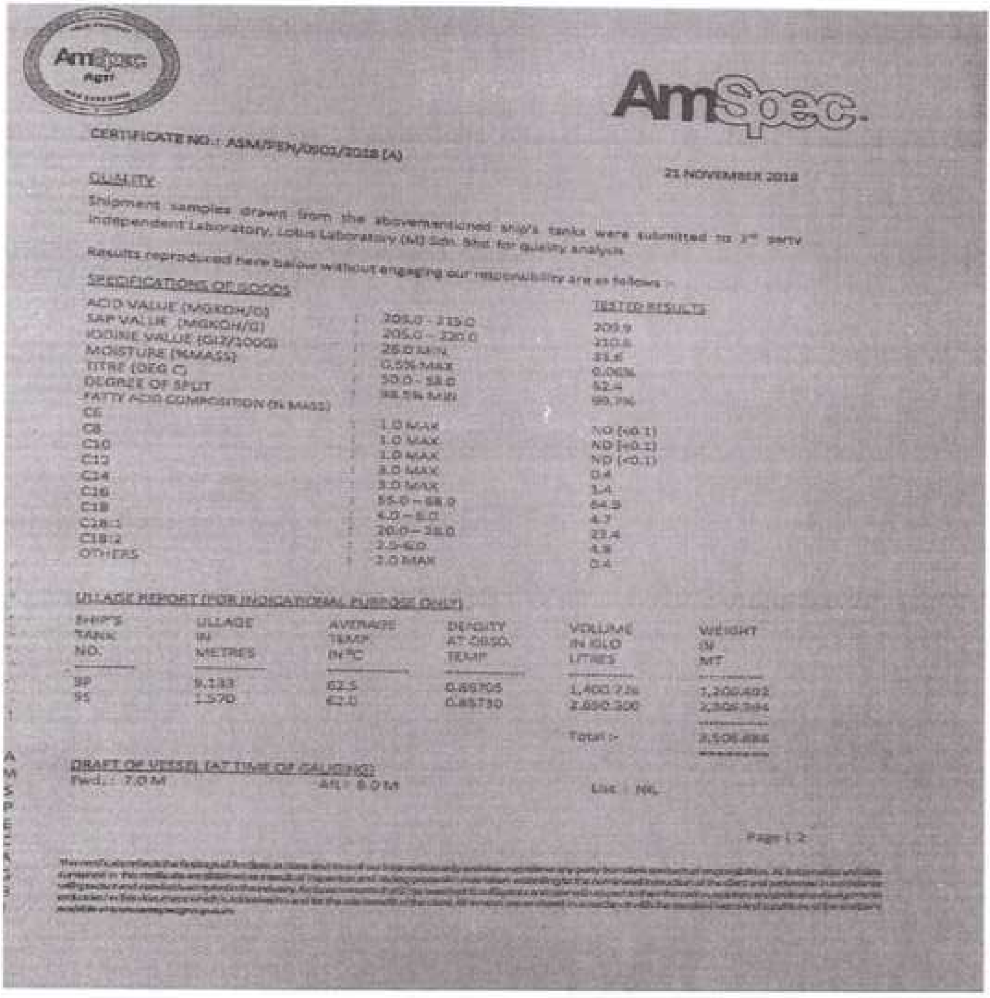
The analysis results are as under:

TEST	METHOD	UNIT	RESULTS
IDENTIFICATION OF SAMPLE	SHORE TANKS RD		CTF 71
F.F.A (AS PALMATIC)	AOCS Ca 5a -40	%	95.35
M & V	AOCS Ca 2e-38	%	204.10
INSOLUBLE IMPURITIES	AOCS Ca 3a-46	%	<0.01
COLOUR IN ¼" CEL. YELLOW ON LOVIBOND SCALE	AOCS Cc 13e-92	-	1.5 Y 0.4 R
IODINE VALUE	AOCS Cd 1d-92	G I²/100 gm	53.05
UNSAPONIFIABLE MATTER	AOCS Ca 6a-40	%	0.33

Issued without prejudice

GEO CHEM LABORATORIES PVT. LTD.

AUTHORISED SIGNATORY



AmSpec

CERTIFICATE NO.: ASM/PSN/0002/2018 (A)

QUALITY: 21 NOVEMBER 2018

Shipment samples drawn from the abovementioned ship's tanks were submitted to 3rd party independent Laboratory, Lotus Laboratory (M) Sdn. Bhd. for quality analysis.

Results reproduced here below without engaging our responsibility are as follows :-

SPECIFICATIONS OF GOODS

		TESTED RESULTS
ACID VALUE (MGKOH/G)	: 205.0 – 215.0	209.9
SAP VALUE (MGKOH/G)	: 205.0 – 220.0	210.6
IODINE VALUE (G12/100G)	: 26.0 MIN	31.6
MOISTURE (%MASS)	: 0.5% MAX	0.06%
TITRE (DEG C)	: 50.0 – 58.0	52.4
DEGREE OF SPLIT	: 98.5% MIN	99.7%
FATTY ACID COMPOSITION (% MASS)		
C6	: 1.0 MAX	ND (<0.1)
C8	: 1.0 MAX	ND (<0.1)
C10	: 1.0 MAX	ND (<0.1)
C12	: 3.0 MAX	0.4
C14	: 3.0 MAX	3.4
C16	: 55.0 – 68.0	64.9
C18	: 4.0 – 6.0	4.7
C18:1	: 20.0 – 38.0	23.4
C18:2	: 2.5-6.0	4.8
OTHERS	: 2.0 MAX	0.4

ULLAGE REPORT (FOR INDICATIONAL PURPOSE ONLY)

SHIP'S TANK NO.	ULLAGE IN METRES	AVERAGE TEMP IN °C	DENSITY AT OBSD. TEMP	VOLUME IN KILO LITRES	WEIGHT IN MT
3P	9.133	62.5	0.85705	1,400.726	1,200.492
3S	1.570	62.0	0.85730	2,690.300	2,306.194
				Total :-	3,506.686

DRAFT OF VESSEL (AT TIME OF GAUGING)

Fwd.: 7.0 M Aft.: 8.0 M List : NIL

Page 1 2

21.5 Before deducing a conclusion on Noticee's submission, the above mentioned FFA% and Acid Value range submitted by Noticee at Para 21 (vi) above need to be verified. These important parameters are being verified with the help of subject material available online on website of reliable manufacturers and suppliers and also being cross verified with the help of research paper and government bodies.

21.6 Regarding the Acidic Value and Free Fatty Acid (%) values to determine whether the goods are Palm stearin or Palm Stearin Fatty Acid, reference has been made to the **BIS standard IS 12067:2023** on Palm Fatty Acids issued by the Bureau of Indian Standards. The relevant table (Table 1) at page 4 of the standard indicating the **Acidic Value** factor for palm fatty acids as mentioned below:

Table 1 Requirements for Palm Fatty Acids
(*Clause* 4.3)

Sl No.	Characteristic	Requirement For			Method of Test, Ref to
		Grade 1	Grade 2	Grade 3	
(1)	(2)	(3)	(4)	(5)	(6)
i)	Moisture, percent by mass, *Max*	0.2	1.0	0.3	6 of IS 548 (Part 1/Sec 2)
ii)	Saponification value	202 - 215	202 - 215	200 - 215	16 of IS 548 (Part 1/Sec 2)
iii)	Acid value shall not differ from saponification value by more than	4	12	4	8 of IS 548 (Part 1/Sec 2)

Before going into the conclusion from the above table, it is important to understand the terminology used in the table above. Accordingly, reference was made to subject material available on online forums, wherein, I find that the **saponification value** provides information about the total amount of fatty acids (free and bound) in a sample, while the **acid value** focuses specifically on the free fatty acids. Therefore, as mentioned in table above, Acid Value shall not differ from saponification value by more than 4/12/4 i.e **Acid Value range is around 200-215 as evident from table above**.

21.7 Further, reference has been made to the website of North Emerald, Malaysia i.e https://northemerald.com.my/products/distilled-palm-fatty-acid, selling Palm Stearin Fatty Acid, has specifically mentioned as to how the Distilled Palm Fatty Acid derives (Image-1) and Acid Value of 204-212 under Product Specification (image-2) and the same are produced below:-

Image-1

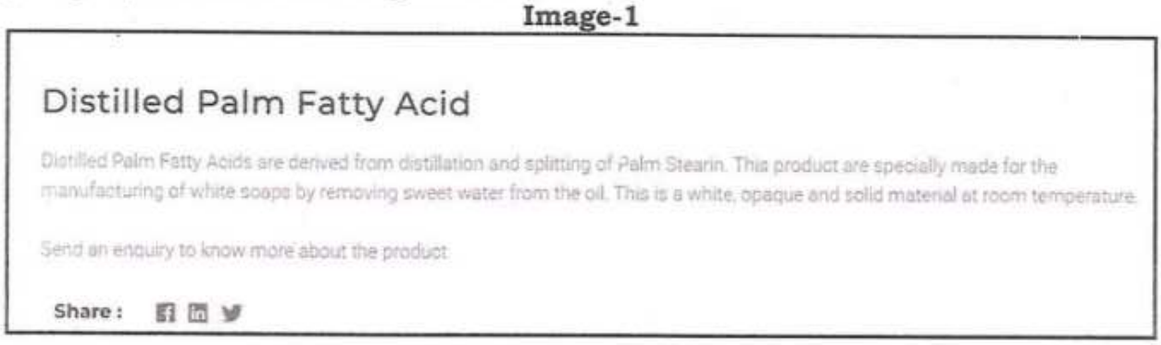
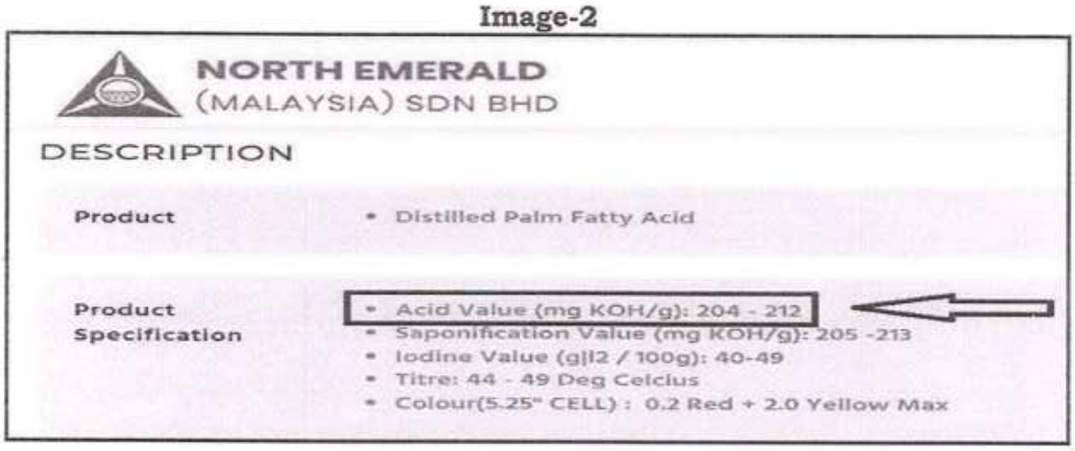
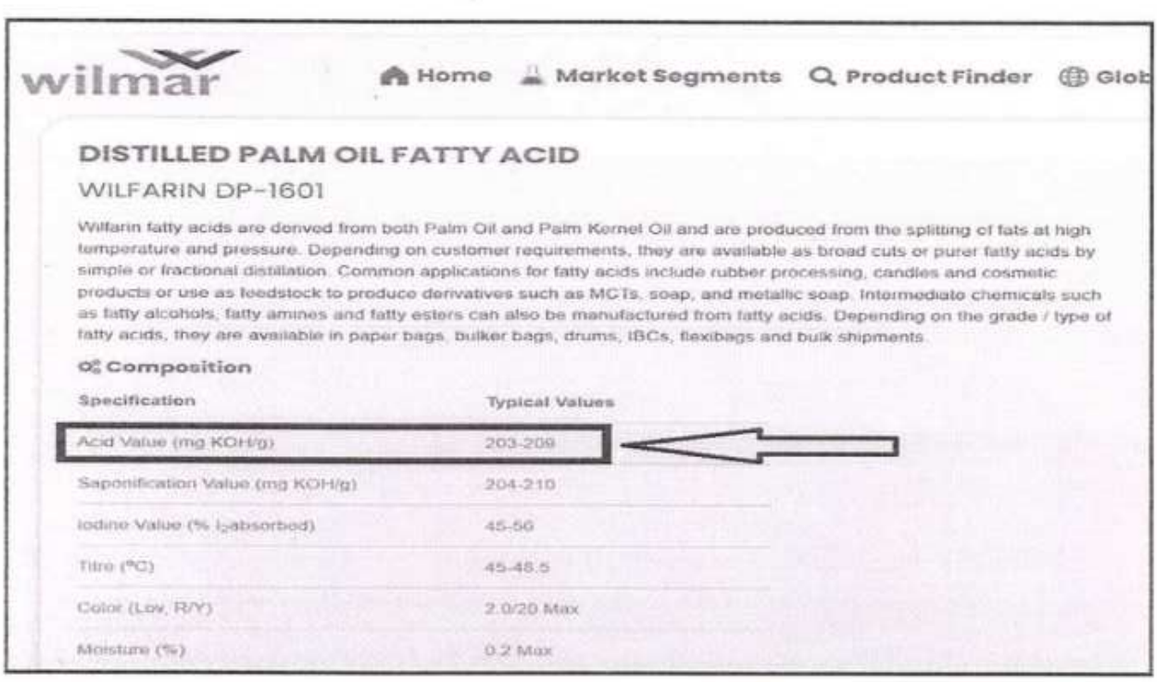


Image-2



21.8 Further, reference has been made to the website of Wilmar-international https://www.wilmar-international.com/oleochemicals/products/home-care/distilled-palm-oil-fatty-acid, wherein, Palm oil fatty acid has been mentioned with Acid Value of range of 203 to 209 mgKOH/g. The relevant portion is produced below:-



21.9 From above, I find that the Acid Value of Palm Fatty Acid/Palm Stearin Fatty Acid is in range of 200-215 mg KOH/g and the value submitted by the Noticee regarding Acid Value in table at Para 21(vi) above is correct. The Acid Value mentioned in analysis report i.e 210 mg KOH/g suggested that the impugned goods are Palm Stearin Fatty Acid.

21.10 Further, regarding the value of **Free Fatty Acid**, standard formula is used and **FFA % value are derived from Acid Value**. The formula is to be used to calculate the FFA % with the help of Acid Values.

21.11 Reference has been made to the scientific research paper **"Physiochemical Properties of Palm Olein"** by students of Faculty of Engineering Technology, University College TATI (UC TATI), Malaysia on https://iopscience.iop.org that comes under IOP Publishing. This paper was made public at the International Conference on Chemical Innovation (ICCI 2021) under IOP Publishing. Relevant formulas of Acid Value and Free Fatty Acid mentioned in the said paper is produced below:-

2.2 Physiochemical properties

2.2.1 Free fatty acids (FFAs%) and Acid value

The oil was tested for acidity using the American Oil Chemists' Society (AOCS) method Ca 5a–40 (1989) [1]. Firstly, 5 g of the oil sample was placed in a dried conical flask. Approximately 50mL of pre-neutralized isopropanol was then added to the sample. Afterward, 500mL of 1% phenolphthalein indicator was then added to the mixture. The flask was subsequently positioned on a hot plate and heated until a temperature of around 40 °C was attained. The mixture was then titrated with sodium hydroxide solution (0.1 N) until a pink color emerged for at least 30 seconds. The FFAs% and acid value were determined using the underlying equations.

FFAs% as palmitic acid =

$$\frac{((mL\ of\ titrant) \times (N)\ of\ titrant) \times (25.6)}{weight\ of\ samples\ in\ grams}\left(\frac{mg\ NaOH}{g\ sample}\right)$$

where, 25.6 is the formula for FFAs determination and equivalence factor for palmitic acid; the dominant fatty acid in palm oil.

$$AV = FFAs\ \% \times 2.19$$

where. AV= acid value; 2.19 is the conversion factor for palmitic acid.

21.12 Further, reference has also been made to FSSAI revised guidelines "Revised method for determination of ACID VALUE in OILS AND FATS" (**CLAUSE 11 OF FSSAI MANUAL** OF METHODS OF ANALYSIS OF FOODS – OILS & FATS), wherein, Acid Value calculation formula was given and the same is produced below:-

11.7 Calculation:

$$\text{Acid value} = \frac{56.1\ V \times N}{W}$$

Where,

V = Volume in mL of standard potassium hydroxide or sodium hydroxide used

N = Normality of the potassium hydroxide solution or Sodium hydroxide solution; and

W = Weight in gm of the sample

Acid Value formula mentioned in research paper can be derived from the Acid Value formula in FSSAI guidelines and the same can be seen below:-

$AV = \frac{V * N * 25.6}{W} * 2.19$ (Formula from FSSAI guidelines can be written by changing 56.1 = 25.6 * 2.19)

$FFA\ \% = \frac{V * N * 25.6}{W}$ (Formula of FFA% from Research paper mentioned above)

From above, it is clear that:-

AV = FFA% * 2.19 AV formula in research paper

AV formula mentioned is research paper is in line with the AV formula mentioned in research paper.

From above, I find that the Acid Value formula in relation to Free Fatty Acid (FFA%) is **AV = FFA% * 2.19 or FFA% = AV / 2.19** (Acid value divided by 2.19). Now, the above mentioned formula **FFA% = AV/2.19** can be used to verify the submission of Noticee regarding Free Fatty Acid %.

Noticee submitted analysis reports wherein FFA% is around 95% and also submitted that the FFA% for Palm Stearin is 0.25 max and for Palm Stearin Fatty Acid is around 99%. Now, it is accepted fact that Acid Value of impugned goods is 210 mg KOH/g (discussed above). On inserting Acid Value of 210 mg KOH/g in above mentioned formula i.e FFA% = AV/2.19, **FFA% comes out to be 95.89%** and that is in line with the analysis report as well as the value of FFA% for Palm Stearin Fatty Acid mentioned in Table at Para 21 (vi) above.

21.13 From the above discussion and references to various online sources as well as research papers and Government documents, I find that the values of FFA% and Acid Value submitted by the Noticee in Table at Para 21(vi) above are correct. Further, FFA% and Acid Value of impugned goods mentioned in analysis report of third party Geochem and Load Port AmSpec Agri (Para 21.4) clarified that the impugned goods are Palm Stearin Fatty Acid.

In view of above discussion, I conclude the findings as follows:

22. It is mentioned in the Show Cause Notice 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"*

22.1. I find that the reasons in the Show Cause Notice for allegation of mis-classification are 1. Importer deals with edible food stuffs and 2. Absence of chemical test of impugned goods at the time of import.

22.2 I have gone through the website of Adani Wilmar Ltd and find that the Company deals in three type of segments i.e Edible Oil, Food & FMCG and Industrial essentials. Further, I find that even if test was not conducted by the Customs authorities, importer g0t the imported goods tested at load port through firm i.e AmSpec Agri as well as after importation through third party i.e GeoChem.

23. I find that in the Show Cause Notice, there is no documentary or textual evidence adduced in support of the proposed classification under CTH 1511 and without any corroborative findings/ documents in support of rejection of classification declared by the Importer appeared to be not tenable. In such scenario, I find that the only way to decide the case based on documentary evidences supplied by the Noticee and the reference and sources available online.

24. Now, as per **1.** available analysis report of AmSpec Agri at load port as well as analysis report of sample tested by independent third party GeoChem, **2.** the fact that importer is also dealing in industrial essentials, **3.** references to online sources as well as research papers and Government documents, as discussed above, made regarding Acid Value range and Free Fatty Acid % and the AV-FFA% formula, **4.** Explanatory notes to CTH 3823 and **5.** Note no. 1(e) to Chapter 15 , I find that the goods i.e Split RBD Palm-Stearin Fatty Acid In Bulk imported by M/s Adani Wilmar Ltd is a monocarboxylic Fatty Acid (as discussed above) and is manufactured from Refined Palm stearin through Hydrolysis process and it is clear and evident that the

impugned goods having Acid Value in range of 200-215 and Free fatty acid content around 95% fits the impugned goods under the category of Palm Stearin Fatty Acid. Therefore, I find that the impugned goods i.e Split RBD Palm Stearin Fatty Acid is appropriately and more specifically classifiable under CTH 3823 and not under CTH 1511 and is processed chemical form (non-edible) fit for Industrial applications.

25. In the instant case, the show cause notice has failed to bring out anything on records in material form which could prove that impugned goods are correctly classifiable under CTH 1511 instead of CTH 3823. Therefore, I find that the allegations in the Show Cause Notice are not substantiated. In this regard, I place reliance on following judgements:

- Hon'ble Supreme Court in case of **Union of India v. Garware Nylons Ltd.** [1996 (87) E.L.T. 12 (S.C.) has held that

  "the conclusion reached by the High Court is fully in accord with the decisions of this Court and the same is justified in law. The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail."

- Hon'ble Madras High Court in case of **Raymond Limited vs. Union of India** (Writ Petition No. 26693 of 2022) has held that

  "this Court merely observes that any show cause notice whether u/S.73 or otherwise can withstand the test judicial scrutiny only when the same contains enough and adequate material which motivated the notice issuing Authority to take a prima facie view against the noticee. If the contents of impugned show cause notice are lacking in material particulars or are vague in regard to any of the entries contained therein then such show caused notice becomes vulnerable to judicial review"

26. Noticee has made the correct declaration in the Bills of Entry by declaring the imported goods "SPLIT RBD PALM-STEARIN FATTY ACID IN BULK" under CTH 3823 and correctly availed benefit of concessional rate of duty under Notification No. 50/2017, entry No.252. Therefore, I find that there is no point of mis-statement on side of Noticee in terms of classification of the goods and I find that there is no demand for differential duty arises under section 28(4) of the Customs Act, 1962 as well as interest under Section 28AA of the Customs Act, 1962.

27. Further, as the goods are correctly classifiable under CTH 3823 and Notification benefit vide Sr. no. 252 of Notification No. 50/2017 dated 30.06.2017 has been correctly availed, importer has not mis-declared any aspect related to genuiness/correctness of declaration. Accordingly, I find that penalty cannot be imposed. In this regard, I rely upon the Judgement ***of P & B Pharmaceuticals (P) Ltd. vs. Collector of Central Excise 2003 (153) E.L.T. 14 (SC)*** wherein it was held that in the absence of any liability for confiscation, penalty shall not be imposed on the assessee.

28. **In view of above discussions and findings supra, I pass the following order.**

Order

28.1 I hold that the goods imported vide **04 Bills of Entry** (as mentioned in Annexure A) to the show cause notice, are correctly assessed and consequently benefit of Sr. No. 252 of Notification no. 50/2017-Cus dated- 30.06.2017 is correctly availed by M/s Adani Wilmar Ltd..

28.2 I drop the proposal of demand of 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) 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.

28.3 I refrain from imposing any Penalty on M/s Adani Wilmar Ltd. under Section 114A of the Customs Act, 1962.

29. The O-i-O is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or any other law for the time being in force.

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

DIN:- 20250471MO000000000F5
F.No. GEN/ADJ/COMM/392/2023-Adjn-O/o Pr Commr-Cus-Mundra,

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. The Assistant/Deputy Commissioner, Group-II, Custom House, Mundra
3. The Assistant/Deputy Commissioner (EDI) Custom House, Mundra.
4. The Assistant/Deputy Commissioner (RRA), office of the Chief Commissioner of Customs, Ahmedabad.
5. Notice Board.
6. Guard File.