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|  | <p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा,<br/>सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421<br/><b>OFFICE OF THE PRINCIPAL COMMISSIONER OF<br/>CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH,<br/>GUJARAT- 370421.</b><br/><b>PHONE : 02838-271426/271423 FAX :02838-271425</b><br/><b>Email: adj-mundra@gov.in</b></p> |  |
| <b>A.</b> File No.  | GEN/ADJ/COMM/283/2026-Adjn-O/o Pr Commr-Cus-Mundra  |   |
| <b>B.</b> Order-in-Original No.   | <b>MUN-CUSTM-000-COM- 09 -2026-27</b>   |   |
| <b>C.</b> Passed by   | Nitin Saini,<br>Commissioner of Customs,<br>Customs House, AP & SEZ, Mundra.  |   |
| <b>D.</b> Date of order and<br>Date of issue:                                     | 14.05.2026<br>14.05.2026  |   |
| <b>E.</b> SCN No. & Date  | Importer requested for Waiver of SCN  |   |
| <b>F.</b> Importer  | M/s. Adani Food Products Pvt. Ltd. (IEC-<br>2499001186)   |   |
| <b>G.</b> DIN   | <b>20260571MO000022222B</b>   |   |

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र 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, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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 हो 5000/- रूपये 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/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल 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 paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ 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 जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

## **BRIEF FACTS OF THE CASE**

An intelligence developed by the officers of Directorate of Revenue Intelligence, Delhi Zonal Unit (hereinafter referred to as DRI) indicated that some importers were importing long pepper from Indonesia at undervalued prices. Enquiries conducted overseas also revealed that the contemporary price of Long Pepper in Indonesia is around USD 7 per Kgs. The overseas enquiry further strengthen the fact of undervaluation of Long Pepper from Indonesia. Data was analysed and it was seen that the majority of Imports of Long Pepper is being done at the value USD 1.7 to 2.2 per kg, which is quite low from the price declared by the Importers.

### **2. Enquiries into import of Long Pepper**

**a.** Investigation was initiated against various importers who were importing long pepper from Indonesia at USD 1-2 per Kgs. Searches were conducted on the business premises of some major importers of long pepper in India who were importing long pepper from Indonesia, by officers of Directorate of Revenue Intelligence, Delhi Zonal Unit and substantial incriminating documents like Parallel Invoices etc. were recovered from the electronic devices found at the premises of the Importers indicating the apparent wilful undervaluation by the said importers of Long pepper from Indonesia.

**b.** During further investigation, it was found out that the actual price of import of Long pepper from Indonesia was around USD 7.2 per Kgs whereas almost all the importers were declaring unit import price (CIF) of Long pepper from Indonesia at less than or equal USD 2 per Kgs. During investigation import data of various importers who were importing long pepper from Indonesia was analysed.

### **3. Enquiries in r/o M/s. Adani Food Products Pvt. Ltd. (IEC-2499001186)**

**a.** During investigation, it was gathered that one importer namely M/s. Adani Food Products Pvt. Ltd. (IEC-2499001186) had filed one bill of entry No. 4847040 dated 01.10.2025 where the said importer has declared the price of long pepper as USD 2 per Kg.

**b.** Hence, on the reasonable belief that the above said goods are undervalued, the above mentioned bill of entry i.e. 4847040 dated 01.10.2025 was put on hold and it was subsequently examined by SIIB Mundra Officers under panchnama proceedings dated 18.10.2025.

#### **4. Summons and Statement of Director of M/s. Adani Food Products Pvt. Ltd. (IEC-2499001186)**

**4.1.** Investigation was initiated against M/s. Adani Food Products Pvt. Ltd. (IEC-2499001186). Accordingly, summons dated 27.10.2025 was issued to M/s. Adani Food Products Pvt. Ltd. (IEC-2499001186). In response statement dated 10.11.2025 of Shri Paras Jitender bhai Adani, Director of M/s. Adani Food Product Private Limited was recorded before the officers of Directorate of Revenue Intelligence Delhi Zonal Unit wherein he admitted that: -

- a.** M/s. Adani Food Product Private Limited is a 60 years old company which deals only in spices. They are generally into the business of importing of spices and they were importing long pepper through brokers only.
- b.** They were importing long pepper at undervalued prices and they agreed to pay the differential duty along with applicable interest and penalty.
- c.** They had imported Long Pepper at undervalued prices. In relation to their past consignments, he admitted that they had imported 6 (Six) containers in the past and they are ready to pay applicable differential duty along with interest for those consignments of Long Pepper as well.

**5. Liability and Customs duty payment details:** - The Customs Duty Liability along with interest is detailed below:-

**Table-1**

| S.No. | CUSTOM HOUSE CODE | BENUMBER | BEDATE    | QUANTIT Y | UQC | UNITPRIC E | ITEMWIS EASSVAL UE | DUTY USD | Exchange Rate | Actual AV | Actual duty                    | Differential duty | INTEREST as on 20.11.25 |             |
|-------|-------------------|----------|-----------|-----------|-----|------------|--------------------|----------|---------------|-----------|--------------------------------|-------------------|-------------------------|-------------|
| 1     | INMUN1            | 6427885  | 30-Oct-24 | 14100     | KGS | 2          | 2422540            | 960537.2 | 7             | 84.95     | 8389500                        | 3326436.75        | 2365899.55              | 375302.9697 |
| 2     | INMUN1            | 6720122  | 16-Nov-24 | 14100     | KGS | 2          | 2432521            | 964494.7 | 7             | 85.3      | 8417700                        | 3337618.05        | 2373123.35              | 359869.5272 |
| 3     | INMUN1            | 2090904  | 16-May-25 | 14000     | KGS | 2          | 2446416            | 970004   | 7.2           | 86.4      | 8708000                        | 3452722           | 2482718                 | 191815.4729 |
| 4     | INMUN1            | 3810495  | 11-Aug-25 | 14700     | KGS | 2          | 2634144            | 1044438  | 7.2           | 88.6      | 9378600                        | 3718614.9         | 2674176.7               | 110996.6493 |
| 5     | INMUN1            | 4194016  | 30-Aug-25 | 14700     | KGS | 2          | 2613333            | 1036187  | 7.2           | 87.9      | 9305100                        | 3689472.15        | 2653285.65              | 89412.09177 |
| 6     | INMUN1            | 5088368  | 14-Oct-25 | 14700     | KGS | 2          | 2666848            | 1057405  | 7.2           | 89.7      | 9493848                        | 3764310.732       | 2706905.432             | 40047       |
|       |                   |          |           |           |     |            |                    |          |               |           | 21,289,175                     | 15,256,109        | 1,167,444               |             |
|       |                   |          |           |           |     |            |                    |          |               |           | Total ( Diff. Duty + Interest) | 16,423,552        |                         |             |

**6. Differential Duty Quantification and payment: -**

As agreed by Shri Paras Jitender bhai Adani, Director of M/s. Adani Food Product Private Limited (IEC No. 2499001186) during his statement dated 10.11.2025, he paid the differential duty as detailed below: -

**Table-2**

| S.No. | CUSTOM HOUSE CODE | BENUMBER | BEDATE    | QUANTIT Y | UQC | UNITPRIC E | ITEMWIS EASSVAL UE | DUTY USD | Exchange Rate | Actual AV | Actual duty                    | Differential duty | INTEREST as on 20.11.25 | Duty plus interest paid in challan. |           |
|-------|-------------------|----------|-----------|-----------|-----|------------|--------------------|----------|---------------|-----------|--------------------------------|-------------------|-------------------------|-------------------------------------|-----------|
| 1     | INMUN1            | 6427885  | 30-Oct-24 | 14100     | KGS | 2          | 2422540            | 960537.2 | 7             | 84.95     | 8389500                        | 3326436.75        | 2365899.55              | 375302.9697                         | 2,741,205 |
| 2     | INMUN1            | 6720122  | 16-Nov-24 | 14100     | KGS | 2          | 2432521            | 964494.7 | 7             | 85.3      | 8417700                        | 3337618.05        | 2373123.35              | 359869.5272                         | 2,732,995 |
| 3     | INMUN1            | 2090904  | 16-May-25 | 14000     | KGS | 2          | 2446416            | 970004   | 7.2           | 86.4      | 8708000                        | 3452722           | 2482718                 | 191815.4729                         | 2,674,535 |
| 4     | INMUN1            | 3810495  | 11-Aug-25 | 14700     | KGS | 2          | 2634144            | 1044438  | 7.2           | 88.6      | 9378600                        | 3718614.9         | 2674176.7               | 110996.6493                         | 2,785,175 |
| 5     | INMUN1            | 4194016  | 30-Aug-25 | 14700     | KGS | 2          | 2613333            | 1036187  | 7.2           | 87.9      | 9305100                        | 3689472.15        | 2653285.65              | 89412.09177                         | 2,742,700 |
| 6     | INMUN1            | 5088368  | 14-Oct-25 | 14700     | KGS | 2          | 2666848            | 1057405  | 7.2           | 89.7      | 9493848                        | 3764310.732       | 2706905.432             | 40047                               | 2,746,960 |
|       |                   |          |           |           |     |            |                    |          |               |           | 21,289,175                     | 15,256,109        | 1,167,444               | <b>16,423,570</b>                   |           |
|       |                   |          |           |           |     |            |                    |          |               |           | Total ( Diff. Duty + Interest) |                   |                         | <b>16,423,552</b>                   |           |

**Table-3**

| Live B/E no. and Date | Desc. Of goods | Net Wt. (In Kgs) | Decl. unit price (USD) | Decl. Duty (in Rs.) | Unit price as per DRI (USD) | Re-determined Assessable Value (In Rs.) | Re-determined Duty (In Rs.) | Differential Duty (In Rs.) |
|-----------------------|----------------|------------------|------------------------|---------------------|-----------------------------|---|-----------------------------|----------------------------|
| 4847040 dt. 01.10.25  | Long pepper    | 14040            | 2                      | 1000360             | 7.2                         | 9082713                                 | 3601295                     | 2600935                    |

The total differential duty arising from the previous Bills of Entry (i.e Rs. 1,52,56,109/-) and from the live Bill of Entry (i.e Rs. 26,00,935/-) worked out to Rs. **1,78,57,044/-**. The 15% penalty on the said differential duty amounted to Rs. 26,78,557/- was paid by the importer in respect of the previous Bills of Entry referred above, as well as for the live Bill of Entry No. 4847040 dated 01.10.2025, which was reassessed at value of USD 7.2/kg. The payment details are as below:

**Table-4**

| Sl. No. | BE No. and Date.          | Challan No. and date         | Amount Paid in (INR) |
|---------|---------------------------|------------------------------|----------------------|
| 1       | 6427885 dated:- 30-Oct-24 | 9808945568 dated 18-Nov-2025 | 27,41,205/-          |

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|   |  |                                |               |
|---|--|--------------------------------|---------------|
| 2   | 6720122 dated:- 16-Nov-24  | 2122293263 dated 18-Nov-2025   | 27,32,995/-   |
| 3   | 2090904 dated:- 16-May-25  | 1607523723 dated:- 18-Nov-2025 | 26,74,535/-   |
| 4   | 3810495 dated:- 11-Aug-25  | 7900263571 dated:- 18-Nov-2025 | 27,85,175/-   |
| 5   | 4194016 dated:- 30-Aug-25  | 1973900885 dated:- 18-Nov-2025 | 27,42,700/-   |
| 6   | 5088368 dated:- 14-Oct-25  | 1758980184 dated:- 20-Nov-2025 | 27,46,960/-   |
| 7   | Penalty paid (@15%) on differential duty amount of Rs. 1,78,57,044/- for seven Bills of Entry [ Previous 6(six) BEs and live BE No. 4847040 dated:- 01.10.2025 ] | 1001949295 dated:- 01-Dec-2025 | 26,72,551/-   |
|   |  | 1775049438 dt. 03.03.2026      | 6,250/-       |
| <b>Total</b> (Differential duty paid along with interest and penalty for seven Bills of Entry.) |  |                                | 2,18,00,985/- |

The total differential duty arising from the previous Bills of Entry and for the live Bill of Entry No. 4847040 dated: - 01.10.2025 (on re-assessment at USD 7.2/kg) worked out to Rs. 1,78,57,044/-. The 15% penalty on the said differential duty amounted to Rs. 26,78,557/- was paid by the importer in respect of the previous Bills of Entry referred above, as well as for the live Bill of Entry No. 4847040 dated 01.10.2025, (which was reassessed at value of USD 7.2/kg).

**7. Request of importer for closure under section 28(6) of the Customs Act, 1962.**

**7.1.** Vide letter dated 09.03.2026 M/s. Adani Food Products Pvt. Ltd. informed that they have paid the differential duty, applicable interest and 15% penalty, and requested for the closure of the case under Section 28(6) of the Customs Act, 1962, without the issuance of a Show Cause Notice.

**8.** Further, the issue of waiver of issuance of Show Cause Notice has already been settled by the Hon'ble Supreme Court in the case of Commissioner of Customs vs. Virgo Steel [2002 (141) E.L.T. 598 (S.C.)], wherein it was held that-

*“If we consider the mandatory requirement of issuance of notice under Section 28 of the Act, it will be seen that the requirement is provided by the Statue solely for the benefit of the individual concerned, therefore, he can waive that right. In other words, this*

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*section casts a duty on the Officer to issue notice to the person concerned of the proposed action to be taken. This is not in the nature of a public notice nor any person other than the person against whom the proceedings are initiated has any right for such a notice. Thus, this right of notice being personal to the person concerned, the same can be waived by that person”.*

**8.1** Accordingly, the request of importer for closure of case under section 28(6) of the Customs Act, 1962 may be considered.

### **WAIVER OF SHOW CAUSE NOTICE**

**9.** M/s. Adani Food Products Pvt. Ltd., vide letter dated 09.03.2026, submitted that they have paid the differential duty, applicable interest and penalty @ 15% in terms of Section 28(5) of the Customs Act, 1962, and accordingly, requested for waiver of Show Cause Notice and conclusion of proceedings under Section 28(6) of the Customs Act, 1962.

### **DISCUSSION AND FINDINGS**

**10.** I have carefully gone through the Investigation Report forwarded by the Directorate of Revenue Intelligence, Delhi Zonal Unit, the statement of Shri Paras Jitenderbhai Adani, Director of M/s. Adani Food Products Pvt. Ltd., the challan details evidencing payment, and all other documents and evidence placed on record.

### **11. PAYMENT BY THE IMPORTER**

I find that the importer deposited the differential duty, applicable interest and penalty @ 15% aggregating to Rs. 2,18,00,985/- (Rupees Two Crores Eighteen Lakhs Nine Hundred and Eighty-Five Only) as detailed in the Challan particulars reproduced hereunder:

**Table-5**

| Sl. No. | BE No. and Date.          | Challan No. and date           | Amount Paid in (INR) |
|---------|---------------------------|--------------------------------|----------------------|
| 1       | 6427885 dated:- 30-Oct-24 | 9808945568 dated 18-Nov-2025   | 27,41,205            |
| 2       | 6720122 dated:- 16-Nov-24 | 2122293263 dated 18-Nov-2025   | 27,32,995            |
| 3       | 2090904 dated:- 16-May-25 | 1607523723 dated:- 18-Nov-2025 | 26,74,535            |
| 4       | 3810495 dated:- 11-Aug-25 | 7900263571 dated:- 18-Nov-2025 | 27,85,175            |

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|   |  |                                |               |
|---|--|--------------------------------|---------------|
| 5   | 4194016 dated:- 30-Aug-25  | 1973900885 dated:- 18-Nov-2025 | 27,42,700     |
| 6   | 5088368 dated:- 14-Oct-25  | 1758980184 dated:- 20-Nov-2025 | 27,46,960     |
| 7   | Penalty paid (@15%) on differential duty amount of Rs. 1,78,57,044/- for seven Bills of Entry [ Previous 6(six) BEs and live BE No. 4847040 dated:- 01.10.2025 ] | 1001949295 dated:- 01-Dec-2025 | 26,72,551     |
|   |  | 1775049438 dt. 03.03.2026      | 6,250         |
| <b>Total</b> (Differential duty paid along with interest and penalty for seven Bills of Entry.) |  |                                | 2,18,00,985/- |

**11.1** Subsequently, vide letter dated 09.03.2026, M/s. Adani Food Products Pvt. Ltd. requested for closure of the proceedings under Section 28(6) of the Customs Act, 1962 without issuance of a Show Cause Notice.

**12.** The first question is whether the proceedings in the instant case can be concluded under Section 28(6) of the Customs Act, 1962, given that the voluntary payment was made by M/s. Adani Food Products Pvt. Ltd. during the course of investigation i.e prior to issuance of any Show Cause Notice.

**13. WAIVER OF SCN AND LEGAL VALIDITY OF PRE-SCN PAYMENT UNDER SECTION 28(5)**

**13.1** I find that Section 28(5) of the Customs Act, 1962, on its plain reading, contemplates payment of duty, interest and penalty @ 15% by a person "to whom a notice has been served under sub-section (4)" by the proper officer. In the instant case, M/s. Adani Food Products Pvt. Ltd. has made payment of the differential duty, applicable interest under Section 28AA and penalty @ 15% of the differential duty during the course of investigation itself, prior to issuance of any formal Show Cause Notice under Section 28(4), and has simultaneously, vide letter dated 09.03.2026, requested waiver of issuance of a written Show Cause Notice and closure of the case under Section 28(6) of the Customs Act, 1962. The question that therefore arises is whether the requirement of a prior Show Cause Notice under Section 28(4) as a precondition for the benefit of Section 28(5) can be waived at the instance of the importer, and whether such pre-SCN voluntary payment made during investigation can be treated as a valid payment under Section 28(5). I find that this issue is no longer res integra and

stands conclusively settled by the Hon'ble Supreme Court in Commissioner of Customs, Mumbai v. Virgo Steels [2002 (141) E.L.T. 598 (S.C.)]. In the said judgment, the Hon'ble Apex Court, after a detailed examination of the doctrine of waiver vis-à-vis the mandatory requirement of notice under Section 28 of the Customs Act, 1962, held that even though the requirement of issuance of notice under Section 28 of the Customs Act, 1962 is mandatory in its operation, since such provision is one which deals with the individual rights of the person concerned and is solely for his benefit, the said person can always waive such a right. The Hon'ble Court further held that this Section casts a duty on the Officer to issue notice to the person concerned of the proposed action to be taken, and that such right of notice being personal to the person concerned, the same can be waived by that person. The relevant paras are produced below for reference:

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

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

**13.2** The aforesaid legal position, as settled by the Hon'ble Supreme Court in Virgo Steels (supra), has been further reinforced and operationalised by the Central Board of Indirect Taxes and Customs vide its Instruction F.No. 137/46/2015-Service Tax dated 18.08.2015, wherein the Board has expressly clarified that in cases involving the extended period of limitation, where an assessee pays the duty, interest and penalty equal to 15% of the duty and makes a request in writing that a written Show Cause Notice may not be issued, such a request constitutes an informed waiver of a written SCN. Crucially, the Board has also clarified that there is no bar on an assessee making payment of duty, interest and reduced penalty of 15% even before the date of receipt of a formal communication from the Department, and that such an assessee cannot be placed on a worse footing than one who pays within thirty days of receipt of

the SCN. Thus, the Board's Circular not only recognises the principle of informed waiver of SCN as enunciated by the Hon'ble Supreme Court in Virgo Steels (supra), but also expressly extends its benefit to cases of pre-SCN voluntary payment made during investigation, thereby providing an additional and independent administrative sanction for treating such Pre SCN payment during the course of investigation as valid payment under Section 28(5) of the Customs Act, 1962. The relevant paras are produced below for reference:

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

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

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

**13.3** Accordingly, following the ratio of the Hon'ble Supreme Court in Virgo Steels (supra) and in consonance with the Board's Instruction, I hereby hold that the payment of Rs. 2,18,00,985/- made by M/s. Adani Food Products Pvt. Ltd. during the course of investigation, prior to issuance of any formal Show Cause Notice under Section 28(4) of the Customs Act, 1962, shall be treated as payment duly made in terms of Section 28(5) of the Customs Act, 1962, and the proceedings in the instant case are accordingly fit for conclusion under Section 28(6)(i) of the Customs Act, 1962.

#### **14. DETERMINATION OF DUTY, INTEREST AND PENALTY UNDER SECTION 28(6) OF THE CUSTOMS ACT, 1962**

**14.1** As mandated under Section 28(6) of the Customs Act, 1962, the proper officer is required to determine the duty payable under Section 28(4) together with the interest leviable under Section 28AA. Upon such determination, the proper officer is required to ascertain whether the duty, interest and penalty at

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the rate of fifteen percent have been discharged in full. Where the entire liability stands paid, the proceedings are deemed to be concluded in terms of Section 28(6)(i) of the Customs Act, 1962. Accordingly, I proceed to determine the duty payable under section 28(4), interest payable under section 28AA and penalty@15% of the said duty as mandated under section 28(5) of the customs act, 1962.

**14.2** On perusal of the investigation report, I find that the differential duty arising on account of undervaluation of Long Pepper (CTH-09041110) imported vide six previous Bills of Entry, is determined at Rs. 1,52,56,109/- and the applicable interest of Rs. 11,67,444/- under Section 28AA of the Customs Act, 1962, as tabulated hereunder:

**Table-6**

| S.No. | CUSTOM HOUSE CODE | BENUMBER | BEDATE    | QUANTTY | UQC | UNITPRICE | ITEMWISE ASSESSMENT VALUE | DUTY     | USD | Exchange Rate | Actual AV | Actual duty                    | Differential duty | INTEREST as on 20.11.25 |
|-------|-------------------|----------|-----------|---------|-----|-----------|---------------------------|----------|-----|---------------|-----------|--------------------------------|-------------------|-------------------------|
| 1     | INMUN1            | 6427885  | 30-Oct-24 | 14100   | KGS | 2         | 2422540                   | 960537.2 | 7   | 84.95         | 8389500   | 3326436.75                     | 2365899.55        | 375302.9697             |
| 2     | INMUN1            | 6720122  | 16-Nov-24 | 14100   | KGS | 2         | 2432521                   | 964494.7 | 7   | 85.3          | 8417700   | 3337618.05                     | 2373123.35        | 359869.5272             |
| 3     | INMUN1            | 2090904  | 16-May-25 | 14000   | KGS | 2         | 2446416                   | 970004   | 7.2 | 86.4          | 8708000   | 3452722                        | 2482718           | 191815.4729             |
| 4     | INMUN1            | 3810495  | 11-Aug-25 | 14700   | KGS | 2         | 2634144                   | 1044438  | 7.2 | 88.6          | 9378600   | 3718614.9                      | 2674176.7         | 110996.6493             |
| 5     | INMUN1            | 4194016  | 30-Aug-25 | 14700   | KGS | 2         | 2613333                   | 1036187  | 7.2 | 87.9          | 9305100   | 3689472.15                     | 2653285.65        | 89412.09177             |
| 6     | INMUN1            | 5088368  | 14-Oct-25 | 14700   | KGS | 2         | 2666848                   | 1057405  | 7.2 | 89.7          | 9493848   | 3764310.732                    | 2706905.432       | 40047                   |
|       |                   |          |           |         |     |           |                           |          |     |               |           | 21,289,175                     | 15,256,109        | 1,167,444               |
|       |                   |          |           |         |     |           |                           |          |     |               |           | Total ( Diff. Duty + Interest) | <b>16,423,552</b> |                         |

**14.3** Further, the additional duty arising on account of reassessment of the live Bill of Entry No. 4847040 dated 01.10.2025 is determined at Rs. 26,00,935/- along with interest of Rs. 97,679/- auto-calculated by system during re-assessment. The total differential duty arising from the previous Bills of Entry and for the live Bill of Entry worked out to Rs. **1,78,57,044/-**. I further find that in terms of Section 28(5) of the Customs Act, 1962, penalty is leviable @ 15% of the total differential duty of Rs. 1,78,57,044/-, that works out to Rs. 26,78,557/-. Therefore, the aggregate of the aforesaid components, being the total amount determined to be payable under Section 28(5) of the Customs Act, 1962, is produced below:-

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**Table-7**

Amount in Rs.

|  | <b>Differential duty</b> | <b>Interest</b>  |
|--|--------------------------|------------------|
| Previous Bs/E (total 6)  | 1,52,56,109              | 11,67,444        |
| Live B/E   | 26,00,935                | 97,679           |
| <b>Total</b>   | <b>1,78,57,044</b>       | <b>12,65,123</b> |
| <b>Penalty@15%</b> of Total Differential Duty (i.e 1,78,57,044)                    | 26,78,557                |                  |
| <b>Total amount to be paid</b> (Total Diff. Duty + Total Interest + Total Penalty) | <b>2,18,00,724</b>       |                  |

**15. VERIFICATION OF PAYMENT AND CONCLUSION OF PROCEEDINGS UNDER SECTION 28(6)(I) OF THE CUSTOMS ACT, 1962**

**15.1** I have verified the challan details furnished by M/s. Adani Food Products Pvt. Ltd. through ICEGATE and ICES system and found the same to be correct. I find that, against the total liability of Rs. 2,18,00,724/-, the importer has made total payment of Rs. 2,18,00,985/- as detailed below:

**Table-8**

| Sl. No. |              | BE No. and Date.        | Challan No. and date  | Amount Paid in (INR)                           |
|---------|--------------|-------------------------|---|--|
| 1       | Previous B/E | 6427885 dt:- 30-Oct-24  | 9808945568 dt 18-Nov-2025   | 27,41,205                                      |
| 2       |              | 6720122 dt:- 16-Nov-24  | 2122293263 dated 18-Nov-2025  | 27,32,995                                      |
| 3       |              | 2090904 dt:- 16-May-25  | 1607523723 dated:- 18-Nov-2025  | 26,74,535                                      |
| 4       |              | 3810495 dt:- 11-Aug-25  | 7900263571 dated:- 18-Nov-2025  | 27,85,175                                      |
| 5       |              | 4194016 dt:- 30-Aug-25  | 1973900885 dated:- 18-Nov-2025  | 27,42,700                                      |
| 6       |              | 5088368 dt:- 14-Oct-25  | 1758980184 dated:- 20-Nov-2025  | 27,46,960                                      |
| 7       | Live B/E     | 4847040 dt:- 01.10.2025 | Paid in System (only Diff. duty and interest taken for calculation purpose) | 26,98,614 (Diff. Duty: 26,00,935 +Int: 97,679) |

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|  |                                   |                    |
|--|-----------------------------------|--------------------|
| Penalty paid (@15%) on differential duty amount of Rs. 1,78,57,044/- for seven Bills of Entry [ Previous 6(six) BEs and live BE No. 4847040 dt:- 01.10.2025] | 1001949295 dated:-<br>01-Dec-2025 | 26,72,551          |
|  | 1775049438 dt.<br>03.03.2026      | 6,250              |
| <b>Total</b> (Differential duty paid along with interest and penalty for seven Bills of Entry.)  |                                   | <b>2,18,00,985</b> |

**15.2** In view of above, I am of the opinion that the duty with interest and penalty has been paid in full by M/s. Adani Food Products Pvt. Ltd. in terms of Section 28(5) of the Customs Act, 1962, and accordingly, the proceedings in the instant case are hereby deemed to be conclusive under Section 28(6)(i) of the Customs Act, 1962, as to the matters stated therein, without prejudice to the provisions of Sections 135, 135A and 140 of the said Act, and without prejudice to any other action that may be taken under the Customs Act, 1962 or any other law for the time being in force.

## **16. CONFISCATION OF GOODS**

**16.1** The subject goods i.e long pepper covered under the above mentioned Bills of Entry were imported by way of gross mis-declaration, particularly with regard to the value of the goods. Accordingly, the impugned goods are liable for confiscation under the provisions of Sections 111(m) of the Customs Act, 1962. However, first proviso to Section 125(1) of the Customs Act, 1962 provides that where the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28 in respect of the goods which are not prohibited or restricted, no such fine shall be imposed. Since the subject goods are neither prohibited nor restricted and proceedings have been deemed to be concluded under Section 28(6)(i) of the Customs Act, 1962, redemption fine is not imposable.

**17. In view of the foregoing findings, I hereby order as under:**

### **ORDER**

(i) The proceedings in respect of M/s. Adani Food Products Pvt. Ltd. (IEC-2499001186) in the instant matter are hereby deemed to be conclusive under Section 28(6)(i) of the Customs Act, 1962, as to the matters related to Bills of Entry stated in Table-8 of Para 15.1 above, without prejudice to any other action that may be taken under the Customs Act, 1962.

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**18.** This order is issued without prejudice to any other action that can be taken against the importer or any other person under this Act or any other law for the time being in force.

(Nitin Saini)  
Commissioner of Customs,  
Customs House Mundra.

F.No. GEN/ADJ/COMM/283/2026-Adjn

**To,**

1. M/s. Adani Food Products Pvt. Ltd. (IEC-2499001186)  
Plot no. E5B, E6, E7, E16, 'B' Road,  
Lodhika GIDC, Kalawad Road, Village Metoda,  
Dist. Rajkot, Gujarat - 360021

**Copy to:**

- (i) The Additional Director, Directorate of Revenue Intelligence (DRI),  
Delhi Zonal Unit, New Delhi, a110003.
- (ii) The Deputy/Assistant Commissioner of Customs, CCO, Ahmedabad.
- (iii) The Deputy/ Assistant Commissioner (EDI), Custom House, Mundra.
- (iv) Notice Board.
- (v) Guard File.