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OFFICE OF THE COMMISSIONER OF CUSTOMS
CUSTOM HOUSE, MP & SEZ, MUNDRA, KUTCH (GUJRAT)
Phone: 02838-271165/66/67/68 Fax: 02838-271162/69/71

A	File No.	VIII/48-198/Misc/Gr.I/MCH/20-21
B	Order-in-Original No.	MCH/ADC/AK/25/2020-21
C	Passed By	Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	08.07.2020
E	Date of Issue	08.07.2020
F	SCN No. & Date	SCN waived vide letter dated 16.03.2020
G	Noticee / Party / Importer / Exporter	M/s Unlimited Nutrition Private Limited, 43-45 & 52, 4th Floor, Nawab Building, Dadabhai Nawroji Road, Fort, Mumbai-400001
H	DIN No.	20200771MO00004ABA47

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- 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 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील), कांडला 7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA Having his office at 7th Floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

5. उक्त अपील की एक प्रति और

A copy of the appeal, and

इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 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, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) 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.

Sub.: Import of Nutrition Supplement vide Warehouse Bill of Entry No. 2597880 dated 27.03.2019 filed by the importer M/s Unlimited Nutrition Private Limited, 43-45 & 52, 4th Floor, Nawab Building, Dadabhai Nawroji Road, Fort, Mumbai-400001.

BRIEF FACTS OF THE CASE

M/s Unlimited Nutrition Private Limited, 43-45 & 52, 4th Floor, Nawab Building, Dadabhai Nawroji Road, Fort, Mumbai-400001 holding IEC Code No. 0313047367 (herein after referred to as Importer for sake of brevity) filed Warehouse Bill of Entry No. 2597880 dated 27.03.2019 through their Custom House Agent Arihant Shipping Agencies for clearance of 11522 Kgs of Nutrition Supplements having value at Rs. 1,27,19,376/- (Assessable value) imported vide Bill of Lading No. ORD0207996 dated 18.12.2019 and Invoice No. 936128759 dated 22.12.2018.

1.1 The said Bill of Entry was cleared through RMS (Risk Management System), wherein "No Assessment" and "No Examination" were prescribed. The goods were deposited/stored in the bonded warehouse. Bond Section, Custom House Mundra vide letter dated VIII/48-19/WH/MCH/19-20 dated 01.07.2020 informed that during course of unloading of cargo in warehouse, there were some undeclared/excess goods received in container which was not declared in shipping documents, Bill of Entry. Details of which are as under:-

TABLE-A

Sr.No.	Bill of Entry	Description of goods	Excess Quantity in Box
01.	2597880 dated 27.03.2019	Isopure India LOW CARB GF/LF CHOC	130

1.2 Accordingly, the examination of the goods was carried out by the Bond Section, Custom House Mundra, wherein 130 boxes of Nutrition Supplements i.e. "Isopure India LOW CARB GF/LF CHOC" found excess which were not declared in any of the import documents including aforesaid Bill of Entry. Therefore, it is alleged that the importer mis-declared the quantity of the goods to evade the Customs duty. The importer has mis-declared the quantity of goods to the tune of 130 boxes valued at Rs. 13,53,107/-. The duty involved in the mis-declared goods is Rs. 9,46,092/-.

1.3 It appears from the above that the Importer has mis-declared the goods imported vide Bill of Entry no 2597880 dated 27.03.2019 with reference to the quantity, value and duty etc. and failed to observe the conditions of Section 46 (4) of the Customs Act, 1962. Sub-Section (4) of section 46 provides that the importer while presenting a bill of entry shall make and subscribe to a declaration as to truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice or such any other documents relating to imported goods. Further, sub Section (4A) of Section 46 provides that the importer who present a bill of entry shall ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it and compliance with the restriction or prohibition, if any, relating to the goods under this act or other laws for the time

being in force. The importers while declaring the contents of quantity, description and the accuracy and completeness of information through the invoice, bill of lading, packing list etc (import documents) has not declared the correct information which are required under section 46(4) and 46(4A) of the Act. The above acts of mis-declaration have rendered the goods liable for confiscation under the provisions of section 111(l) & 111(m), of the Customs Act, 1962 and also rendered the importer liable to penal action under Section 112(a) of the Customs Act, 1962.

WAIVER OF SCN & PERSONAL HEARING

2 The Importer vide their letter dated 16.03.2020 has submitted that their supplier or freight forwarders has shipped excess cargo by mistake and further they requested for waiver of the Show Cause Notice and Personal Hearing and to decide the matter on merit.

DISCUSSION & FINDING

3. I have carefully gone through the facts of the case, entire available records & evidences submitted before me. I find that the importer vide their letter dated 16.03.2020 have requested for waiver of the show cause notice and personal hearing in the matter, therefore, I find that the principle of natural justice as provided in section 122 A of the Customs Act, 1962, has been completed. Hence, I proceed to decide the case on the basis of the documentary evidences available on records.

3.1 I find that M/s Unlimited Nutrition Private Limited filed Warehouse Bill of Entry No. 2597880 dated 27.03.2019 for clearance of 11522 Kgs of Nutrition Supplements i.e. "Isopure India LOW CARB GF/LF CHOC" and cargo was stored in M/s Seabird Marine Services(Gujarat) Private Limited, Mundra. However, on examination by Bond Section, Custom House Mundra, 130 boxes of said nutrition Supplements found in excess which were not declared by them in their import documents, which have been accepted by them vide their letter dated 16.03.2020.

3.2 I find that in terms of Section 46 (4) and (4A) of the Customs Act, 1962, the importers of any goods are required to declare correct details/particulars in Bill of Entry being filed by them, and are also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry, whereas in the instant case, the importer had filed Bill of Entry with incorrect particulars by not declaring 130 boxes of nutrition Supplements i.e. "Isopure India LOW CARB GF/LF CHOC" valued at Rs. 13,53,107/-. I find that the excess goods imported vide above mentioned Bill of Entry is mis-declared in terms of Section 46(4) (4A) of the Customs, Act, 1962 and this has made the goods liable for confiscation under the provisions of Section 111(l) of the Customs Act, 1962 which states that any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act shall be liable to confiscation. For the omission and commission of the act by the importers, they rendered themselves liable for penal action under Section 112(a) *ibid*.


4. These proceedings are limited to the excess cargo found during the examination only and this order per se cannot restrict any other action. The duty involved in this case is Rs. 9,46,092/-

5. In view of foregoing discussion and findings, I pass the following order.

ORDER

a. I order for confiscation of goods viz. 130 boxes of nutrition Supplements i.e. "Isopure India LOW CARB GF/LF CHOC" valued at Rs. 13,53,107/-covered under Warehouse Bill of Entry No. 2597880 dated 27.03.2019 under Section 111 (l) & (m) of Custom Act, 1962. However, I allow the redemption of confiscated cargo on payment of redemption fine of Rs.2,00,000.00 (Rupees Two lakh only) in lieu of confiscation under Section 125 of the Custom Act, 1962.

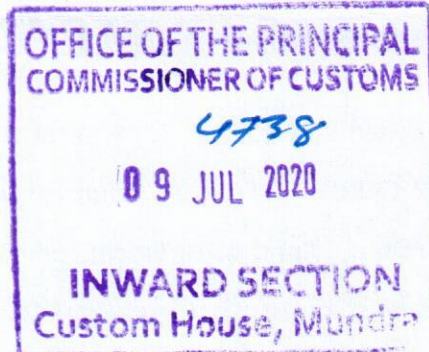
b. I also order imposition of penalty of Rs. 1,50,000.00 (Rupees One Lakh Fifty Thousand only) on M/s Unlimited Nutrition Private Limited in terms of Section 112(a) of the Custom Act, 1962.


(AJAY KUMAR)
Additional Commissioner,
Custom House Mundra

F.NO. VIII/48-198/Misc/Gr.I/MCH/20-21


Dated: 08.07.2020

To,
M/s Unlimited Nutrition Private Limited,
43-45 & 52, 4th Floor, Nawab Building,
Dadabhai Nawroji Road, Fort,
Mumbai-400001



Copy to:

1. The Commissioner of Customs, Custom House, Mundra.
2. The Deputy Commissioner of Customs (RRA/TRC/Gr-1), Custom House, Mundra.
- ✓ 3. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
4. Guard File.


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Rajesh (EDI)
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