		<b>OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</b>
A	File No.	VIII/48-221/GR-I/Adj/F 365/MCH/20-21
B	Order-in-Original No.	MCH/ADC/AK/27/2020-21
C	Passed by	Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	14.07.2020
E	Date of Issue	14.07.2020
F	SCN NO. & Date	Waiver of SCN and PH vide letter dated NIL and 30.05.2020
G	Noticee/Party/Importer / Exporter	M/s Fitnuss 365, Eldeco Estate One, Plot No. B1/12A, Sector-6, Opp- Babarpur Mandi, Gt Road, Panipat, Haryana-132103
H	DIN No.	20200771MO00006KF117

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
- 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 7<sup>th</sup> Floor, Mridul Tower, Behind Times of India,  
Ashram Road, Ahmedabad-380 009.”

- 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.
- 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 –  
(i) उक्त अपील की एक प्रति और  
A copy of the appeal, and  
(ii) 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.
- 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.
- 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.
- 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 'Dietary Supplement' vide Bill of Entry No. 7398073 dated 05.04.2020 by M/s Fitnuss 365, Eldeco Estate One, Plot No. B1/12A, Sector-6, Opp- Babarpur Mandi, Gt Road, Panipat, Haryana-132103 for violation of Customs Act and Rules thereon.**

**BRIEF FACTS OF THE CASE**

M/s Fitnuss 365, Eldeco Estate One, Plot No. B1/12A, Sector-6, Opp- Babarpur Mandi, GT Road, Panipat, Haryana-132103 (IEC No. CODPP5205F) filed Bill of Entry No. 7398073 dated 05.04.2020 through their Custom Broker M/s R R Logistics for clearance of 7785.090 Kgs of goods declared as "Dietary Supplement" under CTH 21069099/21061000 having assessable value of Rs. 48,88,499.35/- imported vide BL No.- HLCUBSC200208558 dated 08.02.2020 declaring the country of origin as "United States". The goods are covered under Commercial Invoice No. VA0001 dated 11.06.2019 issued by M/s CLN Distribution, 3306 Central Ave, Matawan, NJ 07747, United States.

1.1 The container of the said Bill of Entry was selected for scanning and reported as "Mis-match". Therefore the Said Bill of Entry assessed on 100% examination. Accordingly, goods are examined 100% in presence of Customs Broker representative Shri Harsh Ahuja. During the course of examination, it is found that the cargo in container was completely different from what was declared in aforesaid Bill of Entry. Details of the cargo found in the container are as under:-

**TABLE-A**

S.No.	Items found in Container	Quantity
1	BCAA Strong Rainbow Candy- 243gm	240 Pcs
2	Hyper Crush Blue Ice Assorted-461 gm	270 Pcs
3	Maximum Whey Assorted 5lbs	720 Pcs
4	Super CLA-180 ct	600 Pcs
5	T-Bomb Extreme Clinical Strenth-168 ct	180 pcs
6	UYM XXXL 1350 Assorted-12lbs	570 pcs

1.2 From the above, it appeared that M/s Fitnuss 365 has mis-declared the imported goods to with intent to evade payment of appropriate customs duty and by way of misdeclaration the impugned goods, the importer has rendered the said goods having declared value of Rs. 48,88,499.35/- liable for confiscation under Section 111(l) &(m) of the Customs Act, 1962 and has also rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

**WAIVER OF SHOW CAUSE NOTICE AND PERSONAL HEARING**

2. The importer vide their letter dated 28.05.2020 has submitted that they have imported Dietary Supplement of GAT brand as per declared invoice and packing list. However, their shipper i.e. M/s CLN Distribution, 3306 Central Ave, Matawan, NJ 07747,

United States has sent wrong shipment of MHP brand as what declared in invoice. Further, said importer has submitted that as heavy amount is involved in exchange of wrong products, they are agreed to purchase the 6 items which found in cargo. Said importer has also submitted invoice No. IN0037 dated 26.05.2020 for these 6 items mentioned in **TABLE-A** above. They also submitted various copies of emails through which they interacted with the supplier during the period from 11.05.2020 to 01.06.2020, wherein Shri Christopher Norton, Owner of CLN Distribution, Matawan apologize to them for the wrong shipment.

2.1 Further, shipper i.e. M/s CLN Distribution, 3306 Central Ave, Matawan, NJ 07747, US vide letter dated 16.06.2020 has submitted that said shipment was wrongfully fulfilled with the incorrect goods due to mistake in loading. M/s CLN Distribution has accepted responsibility for wrong shipment. Further, M/s CLN Distribution vide letter dated 09.07.2020 has submitted that value for the order of goods of MHP brand which was mistakenly sent is USD 28,500.00 and the order placed was for USD 54,141.60. Therefore, remaining balance of USD 25,641.00 will be cleared and settled in the next shipment. They also submitted invoice No. IN0037 dated 26.05.2020 having value of USD 28,500.00. Further, importer i.e. M/s Fitnuss 365 has requested to waive show cause notice and personal hearing in the matter

### DISCUSSION AND FINDINGS

3. I have carefully gone through the records of the case and I find that the importer vide their letter dated 30.05.2020 has waived the issuance of show cause notice and also waived opportunity of personal hearing. Thus, I find that principles of natural justice as provided in Section 122 A of the Customs Act, 1962, has been complied with and therefore, I proceed to decide the case on the basis of evidences available on record. The points to be decided in the instant case are:-

- I. Whether the impugned goods are mis-declared or not; &
- II. Whether the impugned goods are liable for confiscation under Section 111(I) and 111(m) of the Customs Act, 1962 and the importer is liable to penalty under Section 112(a) *ibid*.

3.1 I find that the impugned goods are declared in the Bill of Entry are 21 types of Dietary Supplement of GAT Brand having assessable value of Rs. 48,88,499.35. However, during examination in presence of Customs Broker representative, total 6 items of Dietary Supplement of MHP Brand has been found which was completely different from what was declared in aforesaid Bill of Entry. Details of the cargo found in the container are mentioned in **TABLE-A** above.

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, whatever declared in the Bill of Entry is not found in the Bill of entry rather 6 different items, which are not in import documents are found in the container. Further, the invoice value, which is declared in Invoice Number VA001 dated 11.06.2019 is US\$54141.60, whereas the value found is US\$ 28500.00. I find that the 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. Further, the importers have not declared correct particular with respect to the goods imported and therefore, liable for confiscation under Section 111(m) of the Customs Act, 1962. For the omission and commission of the act by the importers, they rendered themselves liable for penal action under Section 112(a) ibid. Shipper i.e. M/s CLN Distribution vide letter dated 16.06.2020 has accepted responsibility for wrong shipment and submitted that value for the order of goods of MHP brand which was mistakenly sent is US\$ 28,500.00 and the order placed was for US\$54,141.60. I find that said importer and shipper both has accepted responsibility for wrong shipment.

3.3 I also find that said importer has submitted invoice No. IN0037 dated 26.05.2020 having value of US\$28,500.00 of 6 items of Dietary Supplement (details mentioned in Table-A). However, as per prevailing practice of assessment of these goods at Mundra Port, value of mis-declared goods comes to Rs. 27,46,310/-. Details of which are as under:-


TABLE-B

S.No.	Items found in Container	Quantity	Unit Price in USD	Value in Rs.
1	BCAA Strong Rainbow Candy- 243gm	240 Pcs	7.5	1,37,430/-
2	Hyper Crush Blue Ice Assorted-461 gm	270 Pcs	5	1,03,073/-
3	Maximum Whey Assorted 5lbs	720 Pcs	22	12,09,384/-
4	Super CLA-180 ct	600 Pcs	4	1,83,240/-
5	T-Bomb Extreme Clinical Strenth-168 ct	180 pcs	5	68,715/-
6	UYM XXXL 1350 Assorted-12lbs	570 pcs	24	10,44,468/-
<b>Total</b>				<b>27,46,310/-</b>

4. In view of the above discussions and findings, I pass the following order:

**ORDER**

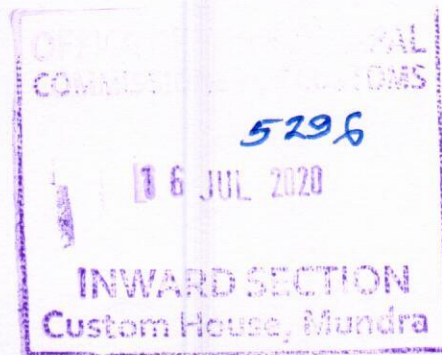
- a. I order for confiscation of goods found in cargo valued at **Rs. 27,46,310/-** covered under B/E No. 7398073 dated 05.04.2020 under Section 111 (l) & (m) of the Custom Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of fine of Rs. 3,00,000.00 (Rupees Three Lakh only) in lieu of confiscation under Section 125 of the Customs Act, 1962.
- b. I also impose a penalty of Rs.2,75,000 (Rupees Two Lakh Seventy Five thousand only) on the importer M/s Fitnuss 365 under Section 112(a) of Customs Act, 1962.
5. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.

  
(AJAY KUMAR)  
Additional Commissioner,  
Custom House Mundra  
Dated: 14.07.2020

F.No. VIII/48-221/GR-I/Adj/F-365/MCH/20-21


By REGD. POST A.D/Hand Delivery

To,  
M/s Fitnuss 365,  
Eldeco Estate One, Plot No. B1/12A,  
Sector-6, Opp- Babarpur Mandi, GT Road,  
Panipat, Haryana-132103 -244713



**Copy to:**

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

  
16/7  
Supriya H (EDI)  
PO