



सीमा शुल्क आयुक्त का कार्यालय,
नवीन सीमा शुल्क भवन, नया कांडला ।

OFFICE OF THE COMMISSIONER OF CUSTOMS,
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)
Phone No: 02836-271468/469, Fax No. : 02836-271467.

A	फाइल संख्या/ File No.	S/10-37/ADJ/ADC/OSR Impex/2018-19
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/PMR/08/2018-19
C	पारित कर्ता/ Passed by	SH. PADALA MOHAN RAO, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	04/05/2018
E	जारी करने की दिनांक/Date of issue	04/05/2018
F	एस.सी.एन. सं. एवं दिनांक /SCN No. & Date	SIIB F.No. S/43-08/SIIB/2017-18/OSR dated 01.05.2018
G	नोटीसी पार्टी /Noticee/Party	M/s. OSR Impex, H-173, Sec-4, Bawana Industrial Area, Delhi, Delhi, Pin-110 039

1. यह अपील आदेश 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 के 1982 नियम 3 के साथ पठित सीमा शुल्क अधिनियम 12 की धारा 19628 A - 3 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 (1) (a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

"सीमा शुल्क आयुक्त (अपील), कांडला

7वीं मंज़िल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़

अहमदाबाद 380 009"

"THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
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 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 2/- 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 2/- 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. 2/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.
5. 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.
6. अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), और सीमा शुल्क अधिनियम 1982, 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.
7. 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 10% भुगतान करना होगा।
An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5708 SOUTH CAMPUS DRIVE
CHICAGO, ILLINOIS 60637

TO: _____
FROM: _____
SUBJECT: _____

DATE: _____
TIME: _____

RE: _____

Brief Facts of the case :-

An intelligence was developed by the Directorate of Revenue Intelligence(DRI), Ahmedabad Zonal Unit, Ahmedabad that Gujarat based some importers are engaged in the gross undervaluation and mis-declaration of imports of "Whey protein and other Food products". On the basis of the intelligence input received from the DRI, AZU, Ahmedabad, a joint examination was conducted alongwith the specified officers of Kandla Economic Zone, Gandhidham in respect of warehouse Bill of Entry No. 1019846 dated 07.12.2017 for import of food supplements i.e. Whey Protein. The said Bill of Entry No. 1019846 dated 07.12.2017 has been filed by M/s. Flamingo Logistics, Unit No. 306 & 304, 2nd floor, Ganga Complex, Phase-2, KASEZ, Gandhidham. jointly with the importer/owner of the goods M/s. OSR Impex, H-173, Sec-4, Bawana Industrial Area Delhi, Delhi Pin-110 039 holding IEC No. 0516918664. The IGM No. 2181504 dated 06.12.2017.

2. The examination of goods imported vide Bill of Entry No. 1019846 dated 07.12.2017 has been conducted jointly with the specified officers of KASEZ, Gandhidham under regular panchnama dated 20.12.2017. During examination of the item viz BSN True Mass, Ultra Premium mass gainer, Nt Wt 5.82 LBS as declared at Sr. No. 6 of the said BoE, found to be excess by 23 Cartons (each carton having 4 units). And, further it was also noticed that 120 cartons (each carton having 2 units) of ON Serious Mass, High Protein Weight Gain Powder Nt wt. 12 Lbs found during examination was not declared in the said BoE. During the panchnama representative samples have been drawn.

3. During investigation, a combined statement of Shri Kiran Singh Kochar, Partner of M/s Flamingo Logistics, Unit No. 306 and 304, 2nd floor, Ganga Complex, Phase-2, KASEZ, Gandhidham and M/s. International Warehousing and Trading in respect of the Bills of Entry No. 1019538 dated 01.12.2017 (in respect of M/s. Macklow International INC, New Delhi), 1019848 dated 07.12.2017 (in respect of M/s. SGI Corporation), 1019846 dated 07.12.2017 (in respect of M/s. OSR Impex), 1019692 dated 05.12.2017 (in respect of M/s. P.K. International) 1019936 dated 08.12.2017 (in respect of M/s. United Distributors) and 1020217 dated 12.12.2017 (in respect of M/s. Nahar Foods) filed by M/s. Flamingo Logistics and M/s. International Warehousing and Trading was recorded on 13.02.2018 under section 108 of Customs Act, 1962, wherein he interalia stated that

- He is partner of M/s Flamingo Logistics, KASEZ, Gandhidham/ M/s. International Warehousing and Trading, Gandhidham.
- The authorised operations of M/s Flamingo Logistics and M/s. International Warehousing and Trading is warehousing services and trading activity as per rule 18(5) and rule 76 of SEZ Rules, 2006. They have been issued with letters of approval FTWZ/001/2011-12 dated 19.05.2011 issued from F.No. KASEZ/IA/FTWZ/001/2011-12 in respect of M/s. Flamingo Logistics, Gandhidham and letter of approval No. 0037/2010-11 dated 29.11.2010 issued from F.No. KASEZ/IA/037/2010-11 in respect of M/s. International Warehousing and Trading, Gandhidham.
- The importers are their clients and they do their authorised activities as per "services agreement cum memorandum of understanding for warehousing and delivering the goods as per the instruction on behalf of foreign supplier/shipper/owner of the goods" agreement entered between M/s Flamingo Logistics/ M/s. International Warehousing & Trading and the respective importers.

The KYC of the importers were received and submitted while filing Bills of Entry of respective importers.

- Being warehousing operator, we M/s Flamingo Logistics/M/s. International Warehousing & Trading, KASEZ was filed the Bills of Entry in systems on behalf of the Importers.
- Classification of the imported goods is finalised by them only after getting confirmation from the respective importers on trial copy (checklist).
- The value of the imported goods is finalised/declared in the Bill of Entry on the basis of the import documents i.e. Invoice, Packing List etc. provided by the respective importers.
- The original importer or subsequent owner of the goods is liable for payment of duty for imported goods warehouse at SEZ unit on its clearances to DTA sales.
- First of all on the basis of documents provided by the respective importers, M/s Flamingo Logistics/M/s. International Warehousing & Trading used to feed the details of Bills of Entry in SEZ online system. After getting approval from the concerned importers about the classification, valuation etc., they used to submit the Bill of Entry to the Customs authority through online system and subsequently a print out of the same is taken in quadruplicate. Further, the Bill of Entry along with all other relevant import documents viz. Invoice, Packing List, Certificate of Origin, Bill of Lading etc. are being submitted to the assessing officers posted at KASEZ, who assess the Bill of Entry in online system on the basis of self declaration made by them and endorse the same on the hard copies of the Bill of Entry. The said assessing officer also endorses the examination order on reverse of duplicate copy of the Bill of Entry. On the basis of these documents, Transshipment Permit is generated in online system at Mundra and container is moved to KASEZ after completion of all formalities. On arrival of the goods in KASEZ, goods being unloaded in the warehouse after verification of container No. and Seal No. by the Preventive Officer of KASEZ. No other documents are being submitted to the Customs authorities KASEZ at the time of import.
- Vide Public Notice No. 91/2016-17 dated 10.02.2017, issued from F.No. KASEZ/Cus/Tech/104/2016-17 by the Deputy Commissioner (Customs), KASEZ, Gandhidham, all appraisers and Preventive Officers of Kandla Special Economic Zone, Gandhidham are notified as the Authorised Officers for the jurisdiction of KASEZ, Gandhidham for imported food clearance for Food and Safety & Standard Authority of India.
- Application in Schedule - 2 alongwith the Bill of Entry and concerned import documents viz. Bill of Lading, Invoice, Packing List etc. are being submitted to the Customs authorities for drawl of samples of imported food items.
- He had perused the panchanamas dated 13.12.2017, 20.12.2017 & 21.12.2017 and he fully agreed with the contents of the panchnamas dated 20.12.2017 drawn at warehouse of M/s. International Warehousing & Trading/ M/s Flamingo Logistics, KASEZ, Gandhidham in respect of Bill of Entry No. 1019936 dated 08.12.2017, 1020217 dated 12.12.2017, 1019538 dated 01.12.2017, 1019846 dated 07.12.2017, 1019848 dated 07.12.2017 and 1019692 dated 05.12.2017 for import of food supplements and food items.
- Being the warehousing operator, M/s Flamingo Logistics/M/s. International Warehousing & Trading, Gandhidham had filed Bills of Entry for warehousing of the imported goods on behalf of the respective importers viz. 1019936 dated 08.12.2017 in respect of M/s. United Distributor Inc., Mumbai, 1020217 dated 12.12.2017 in respect of M/s. Nahar Foods, Delhi, 1019538 dated 01.12.2017 in respect of M/s. Macklow International LLC, Delhi, 1019846 dated 07.12.2017 in respect of M/s. OSR Impex, Delhi, 1019848 dated 07.12.2017 in respect of M/s. SGI Corporation, Delhi and 1019692 dated 05.12.2017 in respect of M/s. P.K. International, Mumbai.
- The value of the imported goods were declared in Bills of Entry on the basis of the import documents i.e. Invoice, Packing List etc. provided by the respective importers.

- The value of the imported goods was declared on the basis of the documents provided by the respective Importers. He did not have any idea of correct value of the imported goods. Further, he had requested to check the value of contemporaneous imports of identical/similar items and may accordingly enhance the value and the same is acceptable by our principal i.e. the importer.
- FASSAI norms are complied in terms of its labeling norms. However, where ever the norms are not fully complied, with the approval of competent authority of Customs, KASEZ, Gandhidham, we carry out permissible labelling rectifications at our warehouse as per regulation 6(5) of Food Safety and Standards (Import) Regulations, 2017.
- The samples are sent to FASSAI accredited laboratory for confirmation of the imported goods and only after getting FASSAI certificate with respect to its conformation to FASSAI norms the DTA Bills of Entry are being filed.
- He and his company M/s Flamingo Logistics/M/s. International Warehousing & Trading, Gandhidham is fully aware of the provisions of Customs Act, 1962. The importers were made aware of the provisions of Customs Act, 1962 while entering into agreements.

4. Further, a statement of Shri Saurabh Gulati, Partner of M/s. OSR Impex, H-173, Sec-4, Bawana Industrial Area Delhi, Delhi Pin-110 039, was recorded under section 108 of Customs Act, 1962, on 27.02.2018, wherein he interalia admitted that:

- He came to know about M/s Flamingo Logistics a warehouse at KASEZ through Shri Kiran Singh Kochar, Partner of M/s Flamingo Logistics, Unit No. 306 and 304, 2nd floor, Ganga Complex, Phase-2, KASEZ, Gandhidham and also partner of M/s. International Warehousing and Trading, Shed No. 384, Type - A2, Sector - IV, KASEZ, Gandhidham. they store the imported goods at KASEZ Warehouse as the procedure for getting clearances from FSSAI for food supplements takes considerable time under FSSAI norms, they keep the goods at warehouse and M/s. Flamingo Logistics and at the warehouse they carry out the necessary activity for clearances of imported goods from FSSAI and Customs as per their requirement.
- M/s. OSR Impex and M/s Flamingo Logistics are working on the basis of services agreement cum memorandum of understanding for warehousing and delivering the goods as per the instruction on behalf of foreign supplier/shipper/owner of the goods agreement entered into between them. No other trade agreement between them. He perused the copy of agreement dated 01.06.2016 and he agreed and confirmed that the agreement dated 01.06.2016 between M/s. OSR Impex and M/s Flamingo Logistics submitted by M/s Flamingo Logistics while filing Bill of Entry is true and correct.
- He fully agreed with the contents of the panchnama dated 20.12.2017 drawn at M/s Flamingo Logistics, KASEZ, Gandhidham in respect of Bill of Entry No. 1019846 dated 07.12.2017 for import of food supplements by M/s. OSR Impex. He agreed with the statement of Shri Kiran Singh Kochar, Partner of M/s Flamingo Logistics dated 13.02.2018.
- He agreed and confirmed that the import documents shown are provided by M/s. OSR Impex to M/s Flamingo Logistics, Gandhidham and the same is as per their record. Further, the details of instructions are as per their instructions.
- Being the warehousing operator and as per SEZ rules, M/s Flamingo Logistics, Gandhidham had filed Bills of Entry for warehousing of the imported goods on behalf of M/s. OSR Impex, New Delhi in respect of Bill of Entry No. 1019846 dated 07.12.2017.
- M/s. OSR Impex is liable to pay duty of the imported goods on its clearance to Home Consumption (DTA). They give Demand Draft alongwith challan for the duty amount as calculated in the Bill of Entry for Home Consumption (DTA).

- They had purchased the food supplements imported vide Bill of Entry No. 1019846 dated 07.12.2017 from M/s. SJ Associates USA INC, 10405, 108th Street S Richmond HL, NY 11419 USA vide Invoice No. US1039 dated 27.10.2017.
- M/s. OSR Impex has no relation with the overseas supplier i.e. M/s. SJ Associates USA INC. The only relation is seller and buyer.
- They sale the imported food supplements to dealers in India
- They intent to sale the imported goods to the dealers only.
- M/s Flamingo Logistics, Gandhidham gave a trial copy (check list) of Bill of Entry, the classification and other details are entered at trial copy and M/s. OSR Impex confirms the details and instructed M/s Flamingo Logistics to present the Bill of Entry before Customs authorities.
- The value of the imported goods was declared in Bills of Entry No. 1019846 dated 07.12.2017 on the basis of the import Invoice No. US1039 dated 27.10.2017
- He admitted that there was excess of 92 packets of BSN True Mass, Ultra Premium Mass gainer 5.82 LBS (23 cartons x 4 packets) as against its declaration. And, further 120 cartons (2 packets in each cartons) i.e. 240 packets of On Serious Mass, High Protein Weight Gain Powder, Net Weight 12 LBS (5.44 Kgs) is not mentioned/declared at Import documents are found alongwith the imported goods.
- He agreed with the details retrieved from NIDB for identical goods imported. He further agreed and confirmed that the details/description of the goods shown are identical goods as compared with description of goods imported vide Bill of Entry No. 1019846 dated 07.12.2017. The imported goods vide Bill of Entry No. 1019846 dated 07.12.2017 are USA origin. He agreed with the value of identical goods imported. He also agreed that the value of goods imported vide Bill of Entry No.1019846 dated 07.12.2017 might be enhanced and assessed on the basis of the value of import of identical goods.
- He agreed and confirmed that the description of the goods mentioned at manufacturer invoices are identical as compared to the goods imported vide Invoice No. US1039 dated 27.10.2017. He agreed with the value difference at Invoice No.US1039 dated 27.10.2017 vis-a-vis manufacturer invoices shown to him. He agreed to pay the duty considering the identical goods imported, while clearing the goods to DTA (Home Consumption).
- He agreed with the import value of the identical goods imported at the relevant time and he agreed to pay duty on the basis of the import value of identical goods.
- The payment was to be made within 90 to 120 days from the date of bill of lading.
- Till then the remittance for goods imported vide Bill of Entry No.1019846 dated 07.12.2017 was not made.
- M/s. OSR Impex, New Delhi is registered with Food and Safety & Standard Authority of India. The registration No.10016011003497. He submitted copy of registration of Food and Safety & Standard Authority of India for trading of Food items.
- The imported goods meets the FSSAI norms and labelling norms. However, where ever the labelling norms are not fully met, with the approval of competent authority of Customs, KASEZ, Gandhidham, they carry out permissible labelling rectifications at our warehouse as per regulation 6 of Food Safety and Standards (Import) Regulations, 2017.
- The samples are sent to FSSAI accredited laboratory for confirmation of the imported goods and only after getting FSSAI certificate with respect to its conformation to FSSAI norms the DTA Bills of Entry were being filed.
- He was aware of provisions of Customs Act, 1962 and its penal provisions.

➤ He stated that as the goods imported are food supplements and being perishable in nature, and requested the goods might be allowed to clear as early as possible and they agreed to enhance the value on the basis of contemporary value of identical goods imported and ready to pay the duty calculated on the basis of the contemporary value. He stated that he would present himself before the investigating officer whenever my presence is required in the process of investigation. He does not want to say anything further.

5. As regards to the intelligence of DRI with respect to FSSAI norms is concerned, the panchnama transpires that the expiry dates are mentioned in the products and the products have considerable period of expiry (in view of amendment which got operationalised with effect from 01.12.2017 in Food Safety and Standards (Import) Regulations, 2017 (copy placed opposite)). The date of manufacturing is not mentioned in the packages of many of the food supplements i.e. whey protein. The label of the packages do not contain veg/non-veg symbol.

6. The imported goods were required to be referred to the Food and Drugs Laboratory to verify whether the imported food products have conformity to FASSAI norms or otherwise. In case of imported packaged food consignments, sub-regulation (4) of regulation 6 of Food Safety and Standards (Import) Regulations, 2017 enables the following special dispensation on labeling allowed for the rectifiable labeling deficiencies at the custom bound warehouse by affixing a single non detachable sticker or by any other non detachable method next to the principle display panel namely:—

- (a) Name and address of the importer;
- (b) Food Safety and Standards Authority of India's Logo and license number,
- (c) Non-Veg or Veg Logo
- (d) Category or sub category along with generic name, nature and composition for proprietary food

In respect of such rectifiable labelling deficiencies, as per sub-regulation (5) of Regulation (6) of Food Safety and Standards (Import) Regulations, 2017, the Authorised Officer may pass an order directing the Food Importer or his authorised agent to carry out the permissible labelling rectifications, within a specified time in the customs area without altering or masking the original label information in any manner.

7. On request from the importer viz. M/s. OSR Impex, H-173, Sec-4, Bawana Industrial Area Delhi, Delhi Pin-110 039 the Deputy Commissioner of Customs, KASEZ has been advised to send the samples drawn during the panchnama dated 20.12.2017 to approved and Drugs Laboratory duly considering the request, if any, made by the importer to rectify the labeling deficiencies, on merit in view of the sub-regulation (4) of regulation (6) of Food Safety and Standards (Import) Regulations, 2017 and such label was asked to send alongwith the label alongwith the sealed samples informing that the intended label will be affixed on the product without masking the original label information.

8. The Deputy Commissioner of Customs, KASEZ, Gandhidham vide their letter F.No. KASEZ/Cus/Tech/Zest/17-18 dated 27.03.2018 has forwarded the test result conducted by M/s. Hi-Tech Healthcare Laboratory, Ahmedabad. Vide the Test Report M/s. Hi-Tech Healthcare Laboratory, Ahmedabad has reported that all the goods under import vide Bill of Entry No. 1019846 dated 07.12.2017 conforms to the General Provisions laid down under Regulations No.

2.12.1 of Food Safety and Standards (Food Product and Food Additive) Regulations, 2011 and the provisions of Food Safety and Standards Act, 2006 and rules made thereunder.

9. As regards to under-valuation of the imported goods, during the course of investigation, the value of the imported goods has been ascertained and compared with the data retrieved from NIDB. Further, the copies of Bills of Entry and Invoices available for these imported goods with Customs, Mundra, were obtained and analyzed to ascertain fair assessable value.

In respect of the goods mentioned at Sr. No. 3, 4, 6 & 7 vide Bill of Entry No. 1019846 dated 07.12.2017 and in respect of ON Serious Mass, High Protein Weight Gain Powder Nt wt. 12 Lbs found during examination and which was not declared vide Bill of Entry No. 1019846 dated 07.12.2017, the data retrieved from NIDB and related invoices received from the Customs, Mundra revealed that the Importers of the identical goods have imported their goods from the manufacturer/brand owners. The manufacturer invoices are available for comparison of the value of the goods imported vide Bill of Entry No. 1019846 dated 07.12.2017. M/s. OSR Impex, Delhi has imported their goods from M/s. S J Associates USA INC, 10405 108th Street S Richmond HL NY-11419, USA vide Invoice No. US1039 dated 27.10.2017. M/s. S J Associates USA INC, USA is other than the actual manufacturer/brand owner. It is also revealed that an intermediary other than actual manufacturer/brand owner cannot afford to supply goods much lesser value than the manufacturer/brand owner could supply since there always some margin of profit being retained by a dealer for his act of intermediary. The respective values of goods declared by M/s. OSR Impex, Delhi at Bill of Entry are much lesser to the corresponding values of identical goods imported directly from the manufacturer/brand owner of the product. Further, for the goods mentioned in the table at Sr. No. 1 & 5, the identical imports are available for comparison from the data retrieved from NIDB. The value of imports of identical goods found to be much higher than the value as compared to the value declared by M/s. OSR Impex, Delhi.

Further, for the item mentioned in the table at Sr. No. 2 viz Nut n More Almond Infused Whey Protein Vanilla Flavour Nt Wt 2 Lbs, the identical imports were not available for comparison from the data retrieved from NIDB.

In view of the aforementioned paras, the value declared by M/s. OSR Impex, Delhi, is liable for rejection under Rule 12 of Customs Valuation (Determination of Imported Goods) Rules, 2007 and the value is required to be re-determined on the basis of the value of identical goods under Rule 4 of Customs Valuation (Determination of Imported Goods) Rules, 2007 in respect of the goods imported vide Bill of Entry No. 1019846 dated 07.12.2017. The gist of value of the identical goods imported is listed below:-

S. No.	Item Description (as per panchnama)	IN-BOND		Comparable value of identical goods imported (retrieved from NIDB)					Undervaluation committed by the importer (in %age)
		Qty	Value declared in In-Bond BE (Per Unit)	BE No.	BE Date	Port	Qty	Amount (Per Unit)	
1	GAT SPORT, WHEY PROTIN, Isolated Blend Muscle Protein Shake, Net Weight :	480	1192.46	4101038	22.11.2017	Mundra	1000	1500	20.50

	5LBS(2268g)								
2	NUT N MORE ALMOND INFUSED WHEY PROTEIN, Vanilla Flavour, NET Weight: 2.0LBS(909g)	900	331.24	Not found					0.00
3	NITRO TECH, WHEY ISOLATE+ LEAN MUSCLEBUILDER ,Dietary supplement Net Weight 10 LBS(4.54 Kg)	1000	2285.55	3859005	17.10.2017	Mundra	818	3891.06	41.26
4	XTEND BCAAS , Dietary Supplement , NET Weight,44.0 OZ(1248g)	1200	660.44	9920966	01.06.2017	Mundra	4548	1945	66.04
5	GASPARI NUTRITION, PRECISION PROTEIN, 100% HYDROLYZED WHEY PROTEIN WITH EET* Net Weight 4LBS(1.81)	1000	993.72	2506277	18.07.2017	Mundra	396	1794	44.61
6	BSN TRUE-MASS, Ultra Premium mass Gainer, Net Weight 5.82 LBS(2.64Kg)	324	927.47	9715126	16.05.2017	Mundra	132	1954.28	66.01
7	ISOPURE PROTEIN POWDER, LOW CARB, Net Weight 7.5LBS(3.4Kg)	580	2782.41	3991686	14.11.2017	Mundra	448	4626	39.85
8	ON SERIOUS MASS, HIGH PROTEIN WEIGHT GAIN POWDER Net weight: 12 LBS(5.44Kg)	240	Not declared	3123810	06.09.2017	Mundra	1600	2141.53	Not declared

In the above table, on comparison of declared value vis-à-vis respective NIDB value in respect of all the goods declared vide BE No. 1019846 dated 07.12.2017 except item declared at Sr. No. 2, it may be observed that in general the importer has undervalued the imported goods by 20.50% to 66.01% which results in undervaluation of imported goods at an average of 46.30%. Since in the case of item mentioned at Sr. No. 2 viz NUT N MORE ALMOND INFUSED WHEY PROTEIN, Vanilla Flavour, NET Weight: 2.0LBS (909g), NIDB data could not be obtained for comparison thus, if agreed the value of item mentioned at Sr. No. 2 viz NUT N MORE ALMOND INFUSED WHEY PROTEIN, Vanilla Flavour, NET Weight: 2.0LBS (909g) may be enhanced from the declared value (per unit) of Rs. 331.24 to Rs. 613.41 taking consideration the an average of 46.30% undervaluation committed by importer in respect of other goods in the Bills of Entry No. 1019846 dated 07.12.2017.

10. During the statement recorded under section 108 of Customs Act, 1962, the data retrieved from NIDB and manufacturer/brand owner invoices were shown to Shri Saurabh Gulati, authorised signatory of M/s. OSR Impex, H-173, sec-4, Bawana Industrial Area Delhi, Delhi Pin-110 039 and Shri Saurabh Gulati had accepted the fact that goods imported are identical as mentioned in the description at NIDB data and at invoices and he also agreed with the value difference as ascertained for the each good mentioned above. He also agreed to pay the duty considering the identical goods imported, while clearing the goods to Home consumption. During the statement he further agreed that *there was excess of 92 packets of BSN True Mass, Ultra Premium Mass gainer 5.82 LBS (23 cartons x 4 packets) as against its declaration. And, further 120 cartons (2 packets in each cartons) i.e. 240 packets of On Serious Mass, High Protein Weight Gain Powder,*

Net Weight 12 LBS (5.44 Kgs) is not mentioned/declared at Import documents which are found alongwith the imported goods during the examination.

11. The calculation of differential duty on the basis of the contemporary import is as under:-

S. No	Item description	Qty	Value declared in In-Bond BE	Duty (Rs.)	identical goods imported (retrieved from NIDB) Amount (Per Unit)	Re-determined value	Difference in AV	Duty Payable	Difference Duty	
1	GAT SPORT, WHEY PROTIN, Isolated Blend Muscle Protein Shake, Net Weight : 5LBS(2268g)	480	572380	311730	1500	720000	147620.00	392126.40	80396.40	
2	NUT N MORE ALMOND INFUSED WHEY PROTEIN, Vanila Flavour, NET Weight: 2.0LBS(909g)	900	298115	162359		552069	253954.00	300667.82	138308.82	
3	NITRO TECH, WHEY ISOLATE+ LEAN MUSCLEBUILDER ,Dietary supplement Net Weight 10 LBS(4.54 Kg)	1000	2285548	1244755	3891	3891060	1605512.00	2119149.10	874394.10	
4	XTEND BCAAS , Dietary Supplement , NET Weight,44.0 OZ(1248g)	1200	792527	519550	1945	2334000	1541472.74	1271143.08	751593.08	
5	GASPARI NUTRITION, PRECISION PROTEIN, 100% HYDROLYZED WHEY PROTEIN WITH EET* Net Weight 4LBS(1.81)	1000	993716	541198	1794	1794000	800284.00	977048.28	435850.28	
6	BSN TRUE-MASS, Ultra Premium mass Gainer, Net Weight 5.82 LBS(2.64Kg)	324	215172	117187	1954.28	633186.72	418014.72	344846.15	227659.15	
7	ISOPURE PROTEIN POWDER, LOW CARB, Net Weight 7.5LBS(3.4Kg)	580	1613795	878906	4626	2683080	1069285.00	1461259.03	5823	
8	ON SERIOUS MASS, HIGH PROTEIN WEIGHT GAIN POWDER Net weight: 12 LBS(5.44Kg)	240	Not Declared	Not Declared	2141.53	513967.2	513967.20	279916.82	279916.82	
Total							13121362.92	6350109.66	7146156.67	3370471.67

It appears that the importer M/s. OSR Impex, Delhi had mis-declared the value of the imported goods with intent to short payment of duty. Further, also the item viz BSN True Mass, Ultra Premium mass gainer, Nt Wt 5.82 LBS as declared at Sr. No. 6 vide the said BoE, found to be in excess by 92 units (4 unit*23 Cartons) and also 240 units (2 unit*120 Cartons) of ON Serious Mass. High Protein Weight Gain Powder Nt wt. 12 Lbs imported were found to be not declared at

the said BoE. The difference in assessable value of the goods arrived at Rs. 1,31,21,363/- and resultant differential duty on account of such mis-declaration of the value of the goods arrived at Rs. 33,70,472/-.

12. It appears that the importer had imported the goods without declaring correct quantity of items of import and also under-valued the goods at Bill of Entry No. 1019846 dated 07.12.2017. Accordingly, the goods imported vide Bill of Entry No. 1019846 dated 07.12.2017, appears to be liable for confiscation under Section 111(m) of Customs Act, 1962 as the goods do not correspond in respect of value or any other particulars with the entry made under this Act. The relevant provisions of Customs Act, 1962 are reproduced below;

SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation: -

(m) ¹[any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 ²[in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

Accordingly, the goods imported vide Bill of Entry No. 1019846 dated 07.12.2017, has been placed under seizure vide Seizure Memo dated 27.02.2018 and the same has been handed over to M/s. Flamingo Logistics, Gandhidham under supurtnama dated 27.02.2018.

13. The act of omission and commission by M/s. OSR Impex, Delhi makes the goods liable for confiscation under section 111 (m) of Customs Act, 1962 make M/s. OSR Impex, Delhi liable for penalty under section 112 of Customs Act, 1962. The relevant provisions of Customs Act, 1962 is reproduced below:-

SECTION 112. Penalty for improper importation of goods, etc. - Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty ⁴[not exceeding the value of the goods or five thousand rupees], whichever is the greater;

⁵[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty 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 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 penalty so determined;]

⁶[(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty ⁷[not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

⁸[(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty ⁹[not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;]

⁸[(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty ¹⁰[not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

14. It appears that the value of the imported goods vide Bill of Entry No. 1019846 dated 07.12.2017 is to rejected under Rule 12 (2) (ii) (a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and same appears to be re-determined as per the provisions of Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The relevant provisions of the Rule 12 and 4 is reproduced below:-

12. Rejection of declared value. -

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

4. Transaction value of identical goods. -

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be

made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

15. Accordingly, it appears that the respective unit assessable value declared for all imported goods imported vide Bill of Entry No. 1019846 dated 07.12.2017 are to be rejected under rule 12 (2) (iii) (a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and to be re-determined i.e. value of the identical goods imported, under Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

16. Further, it appears that the import consignment imported vide BE 1019846 dated 07.12.2017 are liable for confiscation under section 111 (m) of Customs Act, 1962 for the act of not declaring the correct value of the goods in the Bills of Entry.

17. Further, it appears that the act of making the imported goods liable for confiscation is liable for penalty under section 112 of Customs Act, 1962.

18. M/s. OSR Impex, H-173, sec-4, Bawana Industrial Area Delhi, Delhi Pin-110 039 vide their letter dated 19.02.2018, has requested for release of goods at enhanced value on the basis of contemporary prices of identical goods imported. M/s. OSR Impex, Delhi vide their letter dated 15.03.2018 further requested that allow them waiver of personal hearing and show cause notice.

19. As the importer M/s. OSR Impex, H-173, sec-4, Bawana Industrial Area Delhi, Delhi Pin-110 039 had requested for waiver of Show Cause Notice and Personal hearing and accepted to pay the duty on the basis of the contemporary price of the identical goods, the case under the competency of Additional Commissioner has been transferred to adjudication section for adjudication purpose.

DISCUSSION & FINDINGS:-

20. I have carefully gone through the entire records of the case. The importer vide letter dated 15.03.2018 has requested for waiver of Show Cause Notice and also Personal Hearing. Hence, I proceed to decide the matter on the basis of documentary evidences available on record.

21. I find that the following main issues are involved in the subject case matter, which are required to be decided-

- (i) Whether the respective unit assessable value declared for all imported goods imported vide Bill of Entry No. 1019846 dated 07.12.2017 are to be rejected under rule 12 (2) (iii) (a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and has to be re-determined at the value of the identical goods imported, under Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(ii) Whether, the import consignment imported vide BE 1019846 dated 07.12.2017 are liable for confiscation under section 111 (m) of Customs Act, 1962 for the act of not declaring the correct value of the goods in the Bills of Entry

(iii) Whether, the act of making the imported goods liable for confiscation is liable for penalty under section 112 of Customs Act, 1962.

22. The facts of the case indicate that on the basis of the intelligence input received from the DRI, AZU, Ahmedabad, a joint examination was conducted alongwith the specified officers of Kandla Economic Zone, Gandhidham in respect of warehouse Bill of Entry No. 1019846 dated 07.12.2017 for import of food supplements i.e. Whey Protein. The said Bill of Entry No. 1019846 dated 07.12.2017 has been filed by M/s. Flamingo Logistics, Unit No. 306 & 304, 2nd floor, Ganga Complex, Phase-2, KASEZ, Gandhidham. jointly with the importer/owner of the goods M/s. OSR Impex, H-173, Sec-4, Bawana Industrial Area Delhi, Delhi Pin-110 039 holding IEC No. 0516918664. The IGM No. is 2181504 dated 06.12.2017.

23. On the basis aforesaid intelligence, the examination of goods imported vide Bill of Entry No. 1019846 dated 07.12.2017 has been conducted jointly with the specified officers of KASEZ, Gandhidham under regular panchnama dated 20.12.2017. During examination of the item viz BSN True Mass, Ultra Premium mass gainer, Nt Wt 5.82 LBS as declared at Sr. No. 6 of the said BoE, found to be excess by 23 Cartons (each carton having 4 units). And, further it was also noticed that 120 cartons (each carton having 2 units) of ON Serious Mass, High Protein Weight Gain Powder Nt wt. 12 Lbs found during examination was not declared in the said BoE. During the panchanama representative samples have been drawn.

24. During investigation, a combined statement of Shri Kiran Singh Kochar, Partner of M/s Flamingo Logistics, Unit No. 306 and 304, 2nd floor, Ganga Complex, Phase-2, KASEZ, Gandhidham was recorded on 13.02.2018 under section 108 of Customs Act, 1962. Further, statement of Shri Saurabh Gulati, Partner of M/s. OSR Impex, H-173, Sec-4, Bawana Industrial Area Delhi, Delhi Pin-110 039, was recorded under section 108 of Customs Act, 1962, on 27.02.2018.

25. During the further course of investigation, It revealed that the importer M/s. OSR Impex, Delhi have mis-declared the value of the imported goods with intent to short payment of duty. Further, also the item viz BSN True Mass, Ultra Premium mass gainer, Nt Wt 5.82 LBS as declared at Sr. No. 6 vide the said BoE, found to be in excess by 92 units (4 unit*23 Cartons) and also 240 units (2 unit*120 Cartons) of ON Serious Mass. High Protein Weight Gain Powder Nt wt. 12 Lbs imported were found to be not declared at the said BoE. The difference in assessable value of the goods arrived at Rs. 1,31,21,363/- and resultant differential duty on account of such mis-declaration of the value of the goods arrived at Rs. 33,70,472/-. Accordingly the value declared by M/s. OSR Impex, Delhi, is liable for rejection under Rule 12 of Customs Valuation (Determination of Imported Goods) Rules, 2007 and the value is required to be re-determined on the basis of the value of identical goods under Rule 4 of Customs Valuation (Determination of Imported Goods) Rules, 2007 in respect of the goods imported vide Bill of Entry No. 1019846 dated 07.12.2017. It is further observed that the importer had imported the goods without declaring correct quantity of items of import and also under-valued the goods at Bill of Entry No. 1019846 dated 07.12.2017. Accordingly, the goods imported vide Bill of Entry No. 1019846 dated 07.12.2017, are liable for

confiscation under Section 111(m) of Customs Act, 1962 as the goods do not correspond in respect of value or any other particulars with the entry made under this Act. It is further observed that the act of omission and commission by M/s. OSR Impex, Delhi makes the goods liable for confiscation under section 111 (m) of Customs Act, 1962 and consequently has made M/s. OSR Impex, Delhi liable for penalty under section 112 of Customs Act, 1962. Accordingly, the goods imported vide Bill of Entry No. 1019846 dated 07.12.2017, has been placed under seizure vide Seizure Memo dated 27.02.2018 and the same has been handed over to M/s. Flamingo Logistics, Gandhidham under supurtnama dated 27.02.2018.

26. I find from the available records that in the instant case the SIIB, Custom House, Kandla has proposed that the respective unit assessable value declared for all imported goods imported vide Bill of Entry No. 1019846 dated 07.12.2017 are to be rejected under rule 12 (2) (iii) (a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and has to be re-determined i.e. value of the identical goods imported, under Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

26.1 In regard to rejection of the declared value of the subject imported goods, I find that Rule 12(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 stipulates that *"When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3."*

Further, Rule 4 on Transaction value of identical goods stipulates as under-

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and

the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

As regards to under-valuation of the imported goods, during the course of investigation, the value of the imported goods has been ascertained and compared with the data retrieved from NIDB. Further, the copies of Bills of Entry and Invoices available for these imported goods with Customs, Mundra, were obtained and analyzed to ascertain fair assessable value.

In respect of the goods mentioned at Sr. No. 3, 4, 6 & 7 vide Bill of Entry No. 1019846 dated 07.12.2017 and in respect of ON Serious Mass, High Protein Weight Gain Powder Nt wt. 12 Lbs found during examination and which was not declared vide Bill of Entry No. 1019846 dated 07.12.2017, the data retrieved from NIDB and related invoices received from the Customs, Mundra revealed that the Importers of the identical goods have imported their goods from the manufacturer/brand owners. The manufacturer invoices are available for comparison of the value of the goods imported vide Bill of Entry No. 1019846 dated 07.12.2017. M/s. OSR Impex, Delhi has imported their goods from M/s. S J Associates USA INC, 10405 108th Street S Richmond HL NY-11419, USA vide Invoice No. US1039 dated 27.10.2017. M/s. S J Associates USA INC, USA is other than the actual manufacturer/brand owner. It is also revealed that an intermediary other than actual manufacturer/brand owner cannot afford to supply goods much lesser value than the manufacturer/brand owner could supply since there always some margin of profit being retained by a dealer for his act of intermediary. The respective values of goods declared by M/s. OSR Impex, Delhi at Bill of Entry are much lesser to the corresponding values of identical goods imported directly from the manufacturer/brand owner of the product.

Further, for the goods mentioned in the table at Sr. No. 1 & 5, the identical imports are available for comparison from the data retrieved from NIDB. The value of imports of identical goods found to be much higher than the value as compared to the value declared by M/s. OSR Impex, Delhi.

Further, for the item mentioned in the table at Sr. No. 2 viz Nut n More Almond Infused Whey Protein Vanilla Flavour Nt Wt 2 Lbs, the identical imports were not available for comparison from the data retrieved from NIDB.

In view of the aforementioned paras, the value declared by M/s. OSR Impex, Delhi, is liable for rejection under Rule 12 of Customs Valuation (Determination of Imported Goods) Rules, 2007 and the value is required to be re-determined on the basis of the value of identical goods under Rule 4 of Customs Valuation (Determination of Imported Goods) Rules, 2007 in respect of the goods imported vide Bill of Entry No. 1019846 dated 07.12.2017. In the above table, on comparison of declared value vis-à-vis respective NIDB value in respect of all the goods declared vide BE No. 1019846 dated 07.12.2017 except item declared at Sr. No. 2, it may be observed that in general the importer has undervalued the imported goods by 20.50% to 66.01% which results in undervaluation of imported goods at an average of 46.30%. Since in the case of item mentioned at Sr. No. 2 viz NUT N MORE ALMOND INFUSED WHEY PROTEIN, Vanila Flavour, NET Weight: 2.0LBS (909g), NIDB data could not be obtained for comparison thus, the value of item which has been

mentioned at Sr. No. 2 viz NUT N MORE ALMOND INFUSED WHEY PROTEIN, Vanilla Flavour, NET Weight: 2.0LBS (909g) may be enhanced from the declared value (per unit) of Rs. 331.24 to Rs. 613.41 taking consideration the an average of 46.30% undervaluation committed by importer in respect of other goods in the Bills of Entry No. 1019846 dated 07.12.2017.

26.2 During the statement recorded under section 108 of Customs Act, 1962, the data retrieved from NIDB and manufacturer/brand owner invoices were shown to Shri Saurabh Gulati, authorised signatory of M/s. OSR Impex, H-173, sec-4, Bawana Industrial Area Delhi, Delhi Pin-110 039 and Shri Saurabh Gulati had accepted the fact that goods imported are identical as mentioned in the description at NIDB data and at invoices and he also agreed with the value difference as ascertained for the each good mentioned above. He also agreed to pay the duty considering the identical goods imported, while clearing the goods to Home consumption. During the statement he further agreed that *there was excess of 92 packets of BSN True Mass, Ultra Premium Mass gainer 5.82 LBS (23 cartons x 4 packets) as against its declaration. And, further 120 cartons (2 packets in each cartons) i.e. 240 packets of On Serious Mass, High Protein Weight Gain Powder, Net Weight 12 LBS (5.44 Kgs) is not mentioned/declared at Import documents which are found alongwith the imported goods during the examination.*

26.3 Accordingly, the respective unit assessable value declared for all imported goods imported vide Bill of Entry No. 1019846 dated 07.12.2017 are to be rejected under rule 12 (2) (iii) (a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and to be re-determined i.e. value of the identical goods imported, under Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

27. Coming to the proposal in the instant case for confiscation of the aforesaid imported goods under Section 111(m) of the Customs Act, 1962, firstly I refer to the provisions of Section 111(m) of the Customs Act, 1962.

SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation: -

(m) *[any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77² [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];*

27.1 I find that Section 111(m) of the Customs Act, 1962 provides that any goods which do not correspond in respect of value with the entry made under this Act shall be liable to confiscation. In this case M/s OSR Impex has imported the subject goods by wilfully resorting to mis-declaration and undervaluation, therefore, the goods imported vide Bill of Entry No.1019846 dated 07.12.2017 are liable for confiscation under section 111(m) of the Customs Act, 1962, in as much as, the value declared in the Bill of Entry was not true and correct with an intention to evade duty of Customs. I find that there is a difference between "confiscation" and "liable to confiscation". It is settled law that the goods which are liable to confiscation can be ordered for to be confiscated, and fine in lieu of confiscation can be imposed. Mis-declaration of the value of the goods is one of the modality of claiming less payment of duty. In cases where value of goods is not

correctly declared for some purpose, then it would amount to violation of the conditions for import of the goods and it would certainly amount to illegal/ unauthorized and against the statute.

27.2 There is violation of provisions of section 111(m) of Customs Act, 1962 since there was a mis-declaration and undervaluation of the subject goods, therefore, M/s OSR Impex has acted deliberately cannot be ruled out for the reason that they have mis-declared and under-valued the subject goods accordingly, confiscation of the goods under the section 111(m) of the Act is justified, therefore, imposition of redemption fine is also warranted under law and therefore M/s OSR Impex, H-173, Sector-IV, Bawana Industrial Area, Delhi, Pin-110039 is liable for redemption fine under section 125 in lieu of confiscation.

27.3 The Section 125 of the Customs Act, 1962 -Option to pay fine in lieu of confiscation stipulates as under-

(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit: Provide that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. 2(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1) the owner of such goods or the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods]

Further, Hon'ble Supreme Court in case of Commissioner of Customs, Ahmedabad Vs M/s Jayant Ointments Pvt Ltd[(100) ELT 10] and Jain Exports Pvt Ltd Vs UOI[1996(66) ELT 537] has held that quantum of redemption fine depends on facts and circumstances of each case and no hard and fast rules may be laid down. Fine could be imposed even in cases of bonafide imports. However, Section 125 of the Customs Act, 1962 provides that such fine shall not exceed the market price of the goods less the duty chargeable thereon and working rule could be to let redemption fine so as to neutralize any benefit that may accrue to the importer from such illegal act of importation of impugned goods. In view of the above narrated facts, I hold that M/s OSR Impex, H-173, Sector-IV, Bawana Industrial Area, Delhi, Pin-110039 is liable for redemption fine under Section 125 of the Customs Act, 1962 in lieu of confiscation.

28. There is a proposal of SIIB, Custom House, Kandla for imposition of penalty under Section 112 of the Customs Act, 1962 on M/s OSR Impex, Delhi.

In this connection, I find that Section 112 of the Customs Act, 1962, stipulates that any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act is liable to penalty as prescribed under the said Section.

I find that for imposition of penalty under Section 112, it is necessary to bring on records the reason that there is omission of the Act and such omission renders the goods liable for

confiscation or abets the doing or omission of such an act or any provision of the Act or Rule are sufficient cause to impose the penalty on person.

In the instant case, on the basis of evidence available on the record, it is already concluded that M/s OSR Impex have wilfully and fraudulently suppressed the value of the subject goods imported with sole intention to evade payment of duty of customs and rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962. The fact of undervaluation of the impugned goods has come to light only after physical examination of the goods and after investigation of the case which was unearthed by the officers of the department. Had it been unnoticed by the officers, then the same would not have come to light. Accordingly, the goods imported vide Bill of Entry No. 1019846 dated 07.12.2017, has been placed under seizure vide Seizure Memo dated 27.02.2018 and the same has been handed over to M/s. Flamingo Logistics KASEZ, Gandhidham under supratnama dated 27.02.2018.

I find that in such cases, *mens rea* is not required for imposition of penalty. I find that it is a settled law that penalty is imposable under Section 112(a) of the Customs Act, 1962 merely for filing incorrect declaration. In other words, there is no requirement of proving *mens rea* in such case. Hon'ble Supreme Court has in the case of UOI Vs Dharmendra Textile Processors-2008(231) ELT 3(SC) observed that *mens rea* is not an essential ingredient in a civil liability. Also Hon'ble Apex Court in case of Chairman SEBI Vs Shriram Mutual Fund 2006(5) SCC 361 has held that :

" Mens rea is not an essential ingredient for contravention of the provisions of a Civil Act. Unless the language of the statute indicates the need to establish the element of mens rea, it is generally sufficient to prove that a default default in complying with the statute has occurred and it is wholly unnecessary to ascertain whether such a violation was intentional or not. The breach of a civil obligation which attracts a penalty under the provisions of an act would attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not."

As I have already held that the act of omission and commission by M/s ~~OSR Impex~~ have made the goods liable for confiscation under section 111 (m) of Customs Act, 1962 consequently, I hold that penalty under Section 112 of the Customs Act, 1962 is attracted on M/s OSR Impex, H-173, Sector-IV, Bawana Industrial Area Delhi, Delhi, Pin-110039

29. In view of the foregoing discussions and findings, I pass the following order-

ORDER

- (i) I reject the unit assessable value declared for all imported goods except the goods as mentioned at Sr. No.2 in the aforementioned table under Rule 12 (2) (iii) (a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order that same shall be re-determined on the basis of value of the identical goods imported, under Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. I further reject the unit assessable value declared in aforementioned table at Sr. No. 2 under Rule 12 (2) (iii) (a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order that same shall be re-determined by enhancing the value from Rs. 331.24 to Rs. 613.41.
- (ii) I order that the import consignment imported vide BE 1019846 dated 07.12.2017 are liable for confiscation under section 111 (m) of Customs Act, 1962 for the act of not

declaring the correct value of the goods in the said Bill of Entry. However, I give an option to the importer M/s OSR Impex, H-173, Sector-IV, Bawana Industrial Area, Delhi, Pin-110039 to redeem the same on payment of redemption fine of Rs.26,00,000/- (Rupees Twenty Six Lakhs Only) under Section 125 of the Customs Act, 1962.

- (iii) I impose penalty of Rs.3,00,000/- (Rupees Three Lakhs Only) on M/s OSR Impex, H-173, Sector-IV, Bawana Industrial Area, Delhi, Pin-110039 under Section 112 of Customs Act, 1962.

Handwritten signature
04/05/18
(PADALA MOHAN RAO)
Additional Commissioner (Adj.)
Custom House, Kandla.

o/c

F. No. S/10-37/ADJ/ADC/OSR Impex/2018-19

Dated 04.05.2018

BY REGISTERED POST/HAND DELIVERY:

To,
M/s OSR Impex,
H-173, Sector-IV,
Bawana Industrial Area,
Delhi -110039

Received
Handwritten signature
04/5/18

Copy to:

1. The Development Commissioner, KASEZ, Gandhidham
2. The Deputy Commissioner (SIIB), Custom House, Kandla w.r.t his letter F.No. S/43-08/SIIB/2017-18/OSR dated 01.05.2018 for information and necessary action, if any, in the matter at his end please.
3. The Deputy Commissioner of Customs, KASEZ, Gandhidham with a request to ensure at the time of release/clearance of impugned imported goods from the warehouse that the said imported goods are meeting with FASSAI norms in accordance with Food Safety and Standards (Import) Regulations, 2017.
4. The Deputy/Assistant Commissioner (RRA), Custom House, Kandla.
5. The Deputy/Assistant Commissioner (Recovery), Custom House, Kandla.
6. The Deputy/ Assistant Commissioner (Gr.I), Custom House, Kandla
7. Guard File

Handwritten signature
07.5.18