



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/15-02/SIIB/2019-20
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/AK/18/2019-20
C	पारित कर्ता/ Passed by	SH. AJAY KUMAR, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	03.10.2019
E	जारी करने की दिनांक/Date of issue	03.10.2019
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	SCN & PH waived vide letter dated 11.06.2019
G	नोटीसी/ पार्टी Noticee/Party	1. M/s Kanishk Overseas Private Limited, Plot No. 501, Sub Plot no 8/A, New Area, FTWZ, Kandla Special Economic Zone, Gandhidham (Kutch), Gujarat. 2. Shri Saurabh Gulati Director of M/s Kanishk Overseas Private Limited, Plot No. 501, Sub Plot No. 8/A, New Area, FTWZ, Kandla Special Economic Zone, Gandhidham (Kutch), Gujarat. 3. Shri Sunil Saini, Manager of M/s Kanishk Overseas Private Limited, Plot No. 501, Sub Plot No. 8/A, New Area, FTWZ, Kandla Special Economic Zone, Gandhidham (Kutch), Gujarat.

1. यह अपील आदेश संबन्धित को नि प्रदान शुल्क: 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 (1) के अंतर्गत प्रपत्र सीए- 3 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
मंजिल वी 7, 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 जापन के साथ इयूटि/ 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), अधिनियम शुल्क सीमा और 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 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.
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BRIEF FACTS OF THE CASE

M/s Kanishk Overseas Private Limited, Plot No 501, Sub Plot No. 8/A, New Area, FTWZ, Kandla Special Economic Zone, Gandhidham (Kutch), Gujarat and registered office at G-58, First Floor, Block-G, Kirti Nagar, New Delhi – 110015, is engaged in trading and warehousing of food supplements.

Further, M/s Kanishk Overseas Private Limited, had filed Shipping Bill as per details below:-

Sr. No.	Shipping Bill No./date	Container No.	Description of Goods	Quantity (in PCS)
01	4007823/ 20.05.2019	TRHU1148645	SAN TITANIUM WHEY 5 LBS	120
			SAN TITANIUM WHEY ESSENTIAL 5 LBS	120
			Muscle Tech NITROTECH RIPPED 4 LBS	120
			DYMATIZE ISO 100 5 LS	301
			DYMATIZE ELITE WHEY 5 LBS	332
			Muscle Tech LAB SERIES ISOLATE WHEY Protein 5 LBS	240
			Rule 1 PROTEIN 5 LBS	264
			Rule 1 WHEY Blend 5 LBS	300
			Muscle Pharm COMBAT 100% WHEY 5 LBS	120
			UNIVERSAL CARBO Plus 1 KGS	120
			ULTIMATE NUTRITION WHEY GOLD 5 LBS	300
			CELLUCOR Nutrabort COR-Performance WHEY 5 LBS	120
			Nutrabort ID series CELLUCOR C4 Original 30 servings	2100
			SCIVATION XTEND HYDRASPORT 30 SERV	900
			SCIVATION XTEND ENERGY 30 SERV	1368
			CELLUCOR C4 30 RIPPED	600
			CELLUCOR C4 60	1200
XTEND Pro Whey Isolate 5 LBS	120			
SUNLINE ALASKA Fish Oil OMEGA 3 100 SOFTGELS	1440			

2. Acting on Intelligence received from DRI, AZU, vide letter F.No. DRI/AZU-GI/01/INT-20/2019 dated 21.05.2019 regarding diversion of goods to DTA from KASEZ by M/s Kanishk Overseas Pvt. Ltd., in which it had been indicated that one container viz. TRHU1148645 covered under Shipping Bill No. 4007823 dated 20.05.2019, filled by M/s Kanishk Overseas Pvt. Ltd., meant for re-export of the goods valued of Rs.69, 15,333.00, does not carry the total quantity of the goods declared and substantial quantity has been diverted to DTA. Accordingly, 100% examination of the said container carried out under Panchnama proceeding by SIIB, Mundra along-with staff of SIIB, Kandla on 23.05.2019. Also simultaneous search were conducted at the warehouse of M/s Kanishk Overseas Pvt. Ltd., vide panchnama dated 23.05.2019 & 24.05.2019.

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3. The details of examination done is as under:-

3.1 Panchnama dated 23.05.2019, for Shipping Bill No. 4007823 dated 20.05.2019 for Container Number TRHU1148645 and Tax Invoice No. Export 1/2019-20 dated 17.05.2019 at the MICT CFS, Mundra Port, Kutch, Gujarat:-

The officers of SIIB, Mundra along with staff of SIIB, Kandla carried out 100% examination of Shipping Bill No. 4007823 dated 20.05.2019 for Container Number TRHU1148645 and Tax Invoice No. Export 1/2019-20 dated 17.05.2019 at the MICT CFS, Mundra Port, Kutch, Gujarat and drawn panchnama dated 23.05.2019. During physical verification of the goods loaded in the said container, the goods found as articles of health supplement/protein and physical stock of the goods loaded in the said container have been taken under Panchnama and the details of stock found are as under:-

Sr. No	Name of the Product	Qty Declared (in pcs.)	Qty Found (in pcs.)	Short/ Excess Qty. (in pcs.)
1	SAN TITANIUM WHEY 5 LBS	120	120	0
2	SAN TITANIUM WHEY ESSENTIAL 5 LBS	120	120	0
3	Muscle Tech NITROTECH RIPPED 4 LBS	120	120	0
4	DYMATIZE ISO 100 5 LS	301	0	301
5	DYMATIZE ELITE WHEY 5 LBS	332	0	332
6	Muscle Tech LAB SERIES ISOLATE WHEY Protein 5 LBS	240	240	0
7	Rule 1 PROTEIN 5 LBS	264	120	144
8	Rule 1 WHEY Blend 5 LBS	300	300	0
9	Muscle Pharm COMBAT 100% WHEY 5 LBS	120	120	0
10	UNIVERSAL CARBO Plus 1 KGS	120	180	-60
11	ULTIMATE NUTRITION WHEY GOLD 5 LBS	300	300	0
12	CELLUCOR Nutrabolt COR-Performance WHEY 5 LBS	120	120	0
13	Nutrabolt ID series CELLUCOR C4 Original 30 servings	2100	900	1200
14	SCIVATION XTEND HYDRASPORT 30 SERV	900	300	600
15	SCIVATION XTEND ENERGY 30 SERV	1368	600	768
16	CELLUCOR C4 30 RIPPED	600	0	600
17	CELLUCOR C4 60	1200	0	1200
18	XTEND Pro Whey Isolate 5 LBS	120	120	0
19	SUNLINE ALASKA Fish Oil OMEGA 3 100 SOFTGELS	1440	1440	0
TOTAL		10185	5100	5085

3.2 Panchnama dated 23.05.2019 at Warehouse premises of M/s. Kanishk Overseas Pvt. Ltd., Plot No 8A of Plot No. 501, Phase-II, Kandla Special Economic Zone (KASEZ), Gandhidham:-

During the visit of the Warehouse premises of M/s. Kanishk Overseas Pvt. Ltd., Plot No. 8A of Plot No. 501, Phase-II, Kandla Special Economic Zone (KASEZ), Gandhidham, it is found that the representative of above said premises was not available and hence in presence of security Guard (Shri Akhilesh Yadav), the officers seals the ware house with the help of cloth and lak seal under panchnama proceedings.

3.3 Panchnama dated 24.05.2019 at Warehouse premises of M/s. Kanishk Overseas Pvt. Ltd., Plot No 8A of Plot No. 501, Phase-II, Kandla Special Economic Zone (KASEZ), Gandhidham:-

During the visit of warehouse premises of M/s. Kanishk Overseas Pvt. Ltd., Plot No. 8A of Plot No. 501, Phase-II, Kandla Special Economic Zone (KASEZ), Gandhidham on 24.05.2019, panchnama was drawn. During panchnama, physical stock taking of the goods lying in the said warehouse in presence of Shri Sunil Kumar, authorized person of M/s. Kanishk Overseas Pvt. Ltd., has been carried out and found stock lying in the said premises which are as under:-

Sr. No.	Description of the cargo	No. of Cartons	No. of Pcs./ Carton	Total No. of Pcs
1	DYMATIZE ELITE 100% WHEY 5 LBS	56	6	336
2	DYMATIZE ISO 100 5 LBS	49	6	294
3	RULE 1 WHEY BLEND 5.24 LBS	285 (2pcs Short in one carton)	6	1708
4	LABRADA WHEY 100 PERCENT 4.13LBS	10	6	60
5	SYNTHA 6 EDGE WHEY PROTEIN 3.77 LBS	248 (1 pcs Short in one carton)	4	991
6	MUSCLETECH NITROTECH WHEY 4 LBS	349	4	1396
7	MUSCLEPHARM COMBAT 100 PERCENT WHEY 5LBS	50	6	300
8	GAT CARBOTEIN 3.85 LBS	54	4	216
9	INNER ARMOUR WHEY 5LB	75	4	300
10	UNIVERSAL CARBO PLUS 1KG.	82	6	492
11	MUSCLETECH MASSTECH EXTREME 22.04 LBS	249 (bucket)		249
12	BPI ISO HD 4.9 LBS	125	4	500
13	ULTIMATE NUTRITION WHEY GOLD 5LBS	225 (2 pcs Short in one carton)	4	898
14	DYMATIZE SUPER MASS GAINER 6 LBS	83	6	498
15	BPI WHEY HD 5LBS	123 (2 pcs Short in one carton)	4	490
16	CELLUCOR WHEY 5LBS	148	6	888
17	DYMATIZE SUPER MASS GAINER 12 LBS	151	2	302
18	RULE 1 PROTEIN 5LBS	66 (2 pcs Short in one carton)	4	262
19	ULTIMATE NUTRITION PROSTAR WHEY 5.28LBS	1200 (3 pcs Short in one carton)	4	4797
20	SAN NUTRITION 100 PERCENT PURE TITANIUM WHEY ESSENTIAL 5 LBS	166	6	996
21	SAN NUTRITION 100 PERCENT PURE TITANIUM WHEY 5 LBS	164	6	984
22	INNER ARMOUR HARD MASS GAINER 12LBS	75	2	150
23	CELLUCOR C4 60 SERVING	355	12	4260
24	SCIVATION XTEND ENERGY 30 SERVINGS	99	12	1188
25	SCIVATION XTEND HYDRASPORT 30 SERVINGS	73	12	876

26	CELLUCOR C4 RIPPED 30 SERVING	100	12	1200
27	CELLUCOR C4 30 SERVINGS	45	12	540
28	RSP WHEY 4 LBS	349 (2 pcs Short in one carton)	4	1394
29	SCIVATION XTEND PROTEIN 5 LBS	196 (3 pcs Short in one carton)	6	1173
30	LABRADA MUSCLE MASS GAINER 12 LBS	1000	2	2000
31	MUSCLE PHARM GLUTAMINE 300 GRAMS	168	12	2016
32	GAT L CARNITINE 473 ML	200	12	2400
33	RONNIE COLEMAN PRO ANTIUM WHEY 5 LBS	230(2 pcs Short in one carton)	6	1378
34	ULTIMATE NUTRITION ISO SENSATION 5LBS	1583	2	3766
35	Sunline Alaska Deep Sea Fish Oil Omega 3 - 100 Softgels, 1000 Mg	403	96	38688
36	MUSCLETECH NITROTECH RIPPED 4 LBS	593(2 pcs Short in one carton)	4	2370
37	MUSCLETECH NITROTECH WHEY 4 LBS	378	4	1512
38	MUSCLETECH LAB SERIES 100 PERCENTWHEY PROTEIN 5 LBS	88	4	352
39	DYMATIZE ISO 100 5 LBS	205	6	1230
40	DYMATIZE ELITE 100% WHEY 5 LBS	107	6	642
41	DYMATIZE ELITE WHEY 5 LBS	59	6	354
42	Promotional Shakers	25	50	1250
43	Promotional bags	6	20	120
44	ISO Ultimate nutrition & Pro star Whey Gold Samples	180	12	2160

RECORDING OF STATEMENT

4. During the course of investigation in the instant case, Statements of various persons were recorded under Section 108 of the Customs Act, 1962 and the gist of the same is detailed below:-

4.1 Statement dated 24/25.05.2019 of Shri Sunil Kumar Saini, Manager of M/s Kanishk Overseas Pvt. Ltd., recorded under Section 108 of Customs Act, 1962. Content of the statement is as under:-

- That M/s. Kanishk Overseas Pvt. Ltd. is engaged in trading and warehousing of food supplements.
- That he agreed with shortage of goods found.
- That the Shipping Bill is prepared by him on the basis of invoice provided by Shri Saurabh Gulati and stuffing was made as per verbal directions given by Shri Saurabh Gulati.

- That he works as per the direction given by Shri Saurabh Gulati and the intentions of such short shipment are known to Shri Saurabh Gulati only.
- That Shri Saurabh Gulati informed him about the same on 22.05.19 that their container bearing No. TRHU1148654 under Shipping Bill No. 4007823 dated 20.05.2019 has been held by the department. Shri Saurabh Gulati also directed him to file an amendment in the Shipping Bill No. 4007823 dated 20.05.2019 with reference to the quantity and accordingly he filed an amendment request.
- That he doesn't maintain any stock register in the warehouse. He provides details of dispatch in DTA Clearances and Shipping Bill Export on Whatsapp to Shri Saurabh Gulati who in turn maintains stock position on his laptop.
- That he perused Panchnama dated 23.05.2019 drawn at MICT CFS, Mundra Port and Annexure A i.e. details of Cargo Short/Excess Found in Container No. TRHU1148645 as per Panchnama dated 23.05.2019 drawn at MICT CFS, Mundra, compared to actual stock available as per records and Panchnama dated 24.05.2019 drawn at warehouse, KASEZ, Gandhidham.
- That for the Goods mentioned at S.No. 1,2,6 and 7, there is shortage of 1800 PCS, 1212 PCS, 780 PCS and 624 PCS respectively, as mentioned in below given Annexure-A and he agreed with such shortage. Further, overall shortage noticed as above he stated that as per the directions of Shri Saurabh Gulati, Partner of M/s Kanishk Overseas Pvt Ltd, these goods were removed clandestinely by them from KASEZ through various private vehicles to DTA.
- That he has been issued verbal direction for above mentioned clandestine removal and there is no any written/ electronic communication for the same.

4.2 Statement dated 11.06.2019 of Shri Saurabh Gulati Director of M/s Kanishk Overseas Pvt. Ltd., recorded under Section 108 of Customs Act, 1962. Content of the statement is as under:-

- That his firm is indulged in trading and warehousing of food supplements. They have been granted Letter of Approval N. 22/2018-19 dated 13.02.2019 by the Development Commissioner, KASEZ, Gandhidham.
- That he looks after all the Trading/Warehousing activities of the above said company. Shri Sunil Saini is his manager at KASEZ and he works as per his direction. Further he stated that all the day to day operations of M/s. Kanishk Overseas Pvt. Ltd. at KASEZ, are being dealt by Shri Sunil Saini (Manager).



- That Shri Sunil Saini has wrongly stated the chronology of events of 22.05.2019. He stated that on 21.05.2019 Shri Sunil Saini (Manager) informed him about the short loading of cargo in the container No. TRHU1148654 and on the same day he instructed him to file an amendment in shipping bill 4007823 dated 20.05.2019, but due to his family work he filed the amendment on 22.05.2019 and the mean time he got information about the hold-up of the above said container by Customs Authorities.
- That physical stock register is not maintained at his warehouse. He personally keeps the stock on his laptop as reported by Shri Sunil Saini.
- That some consignment viz. Cellucore C4 and Scivation Xtend were clandestinely remove by us to DTA and the same were sold to the open market.
- That he admitted the shortage/excess mentioned in Annexure-A and Annexure-B (Given below in the following paragraph).
- That the excess quantity found at S.No. 2, 3, 4 and 6 of Annexure-B, he stated that he was not aware of the reason of the same. And he is ready to pay the applicable duties; on the goods found short and account the excess goods in our stock and pay applicable duty at the time of clearance in DTA.
- That he is ready to pay all the applicable duties along with interest and penalties. And he requested to the officials to waive issuance of Show Cause Notice.

5. From the above-discussed facts and submissions, actual and correct details of excess/shortage arrived at and accordingly, following Annexure-Ai.e details of Cargo Short/Excess Found in Container No. TRHU1148645 as per Panchnama dated 23.05.2019 drawn at MICT CFS, Mundra, compared to actual stock available as per records and Panchnama dated 24.05.2019 drawn at the warehouse, KASEZ and Annexure-Bi.e. Details of Cargo Short/Excess Found on comparing actual stock available as per records with stock taken during Panchnama dated 24.05.2019 at Warehouse, KASEZ are below:-

Annexure -A						
Details of Cargo Short/Excess Found in Container No. TRHU1148645 as per Panchnama dated 23.05.2019 drawn at MICT CFS, Mundra, compared to actual stock available as per records and Panchnama dated 24.05.2019 drawn at the warehouse, KASEZ						
(Qty in PCS)						
Sr. No.	ITEM DESCRIPTION	Qty as per records	Stock Found as per Panchnama dated 24.05.2019	Short age/ Excess	Shortage/ Excess Found in Container No. TRHU1148 645	Overall Shortage
1	CELLUCOR C4 30 SERVINGS (12	1740	1740	0	-1800	-1800

	PCS/CARTON) 420 CARTONS - 5040 UNITS X 5 USD PER UNIT					
	CELLUCOR C4 RIPPED 30 SERV					
	CELLUCOR C4 RIPPED 30 SERVINGS (12 PCS/CARTONS) 350 CARTONS - 4200 UNITS X 7 USD PER UNIT					
2	CELLUCOR C4 60 SERV					
	CELLUCOR C4 60 SERVINGS (12 PCS/CARTONS) 856 CARTONS - 10272 UNITS X 7 USD PER UNIT	4272	4260	-12	-1200	-1212
3	DYMATIZE ELITE WHEY 5 LBS	1002	1332	330	-332	-2
4	DYMATIZE ISO 100 5 LBS					
	DYMATIZE NUTRITION ISO 100 5 LBS (6 PCS/CARTON) 204 CARTONS - 1220 units x \$32.00/unit	1224	1524	300	-301	-1
5	RULE 1 PROTEIN 5LBS	120	262	142	-144	-2
6	SCIVATION XTEND ENERGY 30 SERVINGS (12 PCS/CARTONS) 414 CARTONS - 4968 UNITS X 6 USD PER UNIT	1200	1188	-12	-768	-780
7	SCIVATION XTEND HYDRASPORT 30 SERVINGS (12 PCS/CARTONS) 250 CARTONS - 3000 UNITS X 5.5 USD PER UNIT	900	876	-24	-600	-624
8	UNIVERSAL CARBO PLUS 1KG.	552	492	-60	60	0
					-5085	-4421

Annexure - B

Details of Cargo Short/Excess Found on comparing actual stock available as per records with stock taken during Panchnama dated 24.05.2019 at Warehouse, KASEZ.

(Qty in PCS)

Sr. No.	ITEM DESCRIPTION	Qty as per records	Stock Found as per Panchnama dated 24.05.2019	Shortage / Excess	Unit Price (Rs)	Value (Rs)
1	ALASKA BRAND OMEGA 3 SOFTGELS FISH OIL (100 SOFTGELS/BOTTLE) 419 CARTONS X 96 UNITS - 40224 UNITS x USS 0.85 PER UNIT - Sunline Alaska Deep Sea Fish Oil Omega 3 - 100 Softgels, 1000 Mg	38784	38688	-96	65	6240
2	RONNIE COLEMAN PRO ANTIUM WHEY 5 LBS (6PCS/CARTON) 35 CARTONS - 210 UNITS X 21 USD					
	RONNIE COLEMAN PRO ANTIUM WHEY 5 LBS (6 PCS/CARTON) 295 CARTONS - 1770 UNITS X \$21 PER PCS	1380	1378	-2	1512	3024
3	SCIVATION XTEND 90	120	0	-120	880	105600

SERVINGS						
4	SCIVATION XTEND PROTEIN 5 LBS (6 PCS/CARTONS) 167 CARTONS - 1002 UNITS X 21 USD PER UNIT	1782	1176	-6	1512	9072
	XTEND PROTEIN 5 LBS (6 PCS / CARTONS) TOTAL 250 CARTONS - 1500 UNITS X 21 USD PER PCS					
5	ULTIMATE NUTRITION WHEY GOLD 5LBS	900	898	-2	1297.738	2595.476
6	BPI WHEY HD 5LBS	500	490	-10	1546.6	15466
7	DYMATIZE SUPER MASS GAINER 12 LBS	317	302	-15	2112	31680
8	MUSCLETECH LAB SERIES 100 PERCENTWHEY PROTEIN 5 LBS	360	352	-8	1511.45	12091.6
9	MUSCLETECH MASSTECH EXTREMEN 22LBS	250	249	-1	2913.935	2913.935
10	MUSCLETECH NITROTECH 3.97LBS	5280	5278	-2	1687.2	3374.4
	MUSCLETECH NITROTECH WHEY 4 LBS (4 PCS/CARTONS) 400 CARTONS - 1600 UNITS X \$ 20/- PER PCS					
11	ULTIMATE NUTRITION ISO SENSATION 5LBS	3169	3166	-3	1933.25	5799.75
12	ULTIMATE NUTRITION PROSTAR WHEY 5.28LBS	4800	4797	-3	1581.75	4745.25
13	WHEY PROTEIN 4LBS SYNTHA 6 EDGE	1000	991	-9	1423.575	12812.18
14	CELLUCOR WHEY 5LBS	880	888	8	1873.495	14987.96
15	DYMATIZE SUPER MASS GAINER 6 LBS	496	498	2	1054.5	2109
16	MUSCLE PHARMA GLUTAMINE 300 GRAMS (12 PCS / CARTONS) 166 CARTONS - 1992 UNITS X 5.5 USD PER PCS	1992	2016	24	386.65	9279.6
17	RSP WHEY 4 LBS (4 PCS/CARTONS) 52 CARTONS - 208 UNITS X \$ 14.75/- PER PCS	1392	1394	2	1036.925	2073.85

SEIZURE OF CARGO

6. During the examination of the container during Panchnama proceedings substantial shortage was found in the above said container and Statements of Shri Sunil Saini, Manager of M/s Kanishk Overseas Pvt. Ltd., and Shri Saurabh Gulati Director of M/s Kanishk Overseas Pvt. Ltd. was recorded U/S 108 of Customs Act and in their statements they agreed and confirmed that they have clandestinely removed some of the short cargo to DTA. Also, during the stock taking remaining of the short cargo along with some excess cargo was found in the warehouse premises of M/s Kanishk Overseas Pvt. Ltd. Hence, it appears that the exporter has intentionally and deliberately made Short shipment and the short quantity was

removed/intended to remove in to the DTA to evade applicable customs duty. Therefore, the goods under section 110(1) of the Customs ACT, 1962 was placed under seizure vide Seizure-Memo dated 06.06.2019 and the seized cargo was handed over to M/s Kanishka Overseas Pvt Ltd, KASEZ, Gandhidham vide Supratnama dated 06.06.2019. The details of the cargo seized vide seizure memo F.No. S/15-02/SIIB/2019-20 dated: 06.06.2019 is as below:

S.No.	Description of the cargo	Quantity In Pcs
1	DYMATIZE ELITE WHEY 5 LBS	332
2	DYMATIZE ISO 100 5 LBS	301
3	RULE 1 PROTEIN 5LBS	144
4	CELLUCOR WHEY 5LBS	8
5	DYMATIZE SUPER MASS GAINER 6 LBS	2
6	MUSCLE PHARMA GLUTAMINE 300 GRAMS	24
7	RSP WHEY 4 LBS	2
8	SAN NUTRITION 100 PERCENT PURE TITANIUM WHEY ESSENTIAL 5 LBS	6

7. On scrutiny of the records withdrawn from the Warehouse premises of M/s. Kanishk Overseas Pvt. Ltd., Plot No 8A of Plot No. 501, Phase-II, Kandla Special Economic Zone (KASEZ), Gandhidham during panchnama and on comparison with the stock position as per book and physical stock taken in respect of Shipping Bill No. 4007823 dated 20.05.2019 for Container Number TRHU1148645 and Tax Invoice No. Export 1/2019-20 dated 17.05.2019 and at Warehouse premises of M/s. Kanishk Overseas Pvt. Ltd., Plot No 8A of Plot No. 501, Phase-II, Kandla Special Economic Zone (KASEZ), Gandhidham, it is clear that there are shortage in some products/items as well as excess in some products/items. The detailed worksheet showing factual position of the same are attached to this order as ANNEXURE-1&ANNEXURE-2.

REQUEST FOR WAIVER OF SHOW CAUSE NOTICE AND PERSONAL HEARING

8. Shri Saurabh Gulati, Director of M/s Kanishk Overseas Pvt. Ltd., in his statement has requested to waive the issuance of show cause notice and personal hearing in the matter and adjudicate the case on merit. Also, M/s Kanishk Overseas Pvt. Ltd vide letter dated 23.07.2019, informed that they have voluntarily paid Custom duty Rs. 13,48,153, Rs. 385/- = 13,48,538 /- and Penalty on custom Duty @15% of Rs. 2,02,280/- and submitted copies of TR-6 challan dated 19.07.2019 for Rs. 1348153/-, TR-6 challan dated 23.07.2019 for Rs. 385/- and TR-6 challan dated 23.07.2019 for Rs. 2,02,280/- towards the shortage of the goods which were cleared in DTA clandestinely.

LEGAL PROVISION, OBSERVATION AND CONCLUSION

9. In light of the facts and submissions of Shri Sunil Saini and Shri Saurabh Gulati, it is unambiguously proved that M/s Kanishk Overseas Pvt. Ltd. has mis-declared the quantity of cargo in their export consignment attempted to export in container No. TRHU1148654 covered under shipping Bill No. 4007823 dated 20.05.2019 and also clandestinely removed cargo into DTA to evade applicable customs duties. The goods cleared clandestinely in DTA had been imported and allowed to be warehoused in M/s Kanishk Overseas Pvt. Ltd., KASEZ against In-

Bond Bill of Entry for re-export purpose. The imported goods are edible items in form of packages of Livestock Products in packaged form. Therefore, import of the same are subject to certain restrictions. However, restrictions are not applicable in case the imported consignment is meant for 100% re-export. In the instant case too, the conditions had been relaxed and the clearance of the goods were allowed without any restriction as the same was imported by a unit located in SEZ for re-export purpose. But, some of the imported quantity has clandestinely been diverted by the importer in to DTA with the intention to evade payment of appropriate customs duty and attempted to adjust the same as exported by adopting the modus operandi of short shipment by mis-declaring the quantity in export documents. Therefore, it is evident that the clearance of the imported goods, cleared clandestinely in DTA, without complying the conditions stipulated under the Foreign Trade Policy and following Allied Acts:-

(i) Prevention of Food Adulteration Act, 1954 and Food Safety and Standard Authority Act, 2006: under this legislation all imported high risk food items are required to be complied with the conditions of Food Safety and Standard Authority of India (FSSAI) before clearance to home consumption.

(ii) The Livestock Importation Act, 1898 : under this legislation all imported livestock products are regulated by this Act and a certificate under 'Animal Quarantine & Certification Services' (AQCS) scheme is required to be obtained from the concerned Quarantine Authority before clearance to home consumption.

(iii) Standard of Weights & Measures (Packaged Commodities) Rules, 1977: under this legislation all imported packaged products are required to be complied with the labeling conditions before clearance to home consumption.

Further, in terms of DGFT Notification No.44(RE-200)1997-2002 dated 24.11.2000 these imported goods are required to be complied with the condition laid down in respect of packaged food products.

In addition to above, the M/s Kanishk Overseas Pvt. Ltd. has deliberately violated the Legal provisions of Section 50 of Customs Act, 1962 read with Rule 46, 75 of SEZ Rules, 2006, conditions of LOA and provisions of Rule 11 of the Foreign Trade (Regulation) Rules, 1993.

Therefore, had the goods were not imported by SEZ unit for re-export purpose the same would have been allowed to be cleared on compliance of the conditions of 'Food Safety and Standard Authority of India (FSSAI), 'Animal Quarantine & Certification Services' (AQCS) and Labeling as per the provisions of 'Standard of Weights & Measures (Packaged Commodities) Rules, 1977'. In case any of the conditions of these allied legislations is not fulfilled, the import of such product shall be held as prohibited, render such goods liable to confiscation under Section 111(d) of Customs Act, 1962 and penalty is also imposable under Section 112 ibid. By these deliberate acts M/s Kanishk Overseas Pvt. Ltd., KASEZ have committed an offence as much as they have grossly violated and contravened the conditions of LOA, various provisions of

Customs Act, 1962, provisions of Rule 11 of the Foreign Trade (Regulation) Rules, 1993 and SEZ Rules 2006, therefore:-

- (i) The goods of total value of Rs.69, 15,333.00 as mis-declared in Shipping Bill No. 4007823 dated 20.05.2019 under container No. TRHU1148654 is liable to be confiscated under section 113 (K) of Customs Act, 1962. However, the short shipped quantity of goods valued to Rs.34,73,805/-, covered under Annexure-1 (Attached to this order), has been diverted in to DTA;
- (ii) The goods covered under Annexure-1, valued to Rs 19,28,126/-, is liable to be confiscated under section 111 (d) of Customs Act, 1962;
- (iii) Duty amount of Rs. 13,48,146/- on Total quantity of 4421 PCS valued at Rs.19,28,126/- as mentioned in Annexure-1, which has been removed clandestinely and found short, is liable to be recovered under section 28(4) of Customs Act, 1962;
- (iv) Total quantity of 772 (330+300+142) as mentioned at Sr.No. 5, 6, 7 of Annexure-1 which was found short in container but found lying at warehouse and a quantity of 60 as mentioned at Sr.No. 8 of Annexure-1, which was found excess in container but found short in warehouse, are liable to be accounted for in the stock of M/s Kanishk Overseas Pvt. Ltd.
- (v) The goods mentioned at Sr.No. 1 to 13 of Annexure -2 (Attached to this order), valued to Rs 2,15,415/- which is found short at the warehouse is liable to be confiscated under section 111(d) and section 111(j) of Customs Act, 1962.
- (vi) Duty amount of Rs. 1,50,618/- valued at Rs.2,15,415/- in respect of goods mentioned at Sr.No. 1 to 13 of Annexure-2, which is found short at the warehouse is liable to be recovered under section 28(4) of Customs Act, 1962.
- (vii) The goods mentioned at Sr.No. 14 to 17 of Annexure-2, valued to Rs 28,450/-, which is found excess at the warehouse, is liable to be confiscated under section 111(f) of Customs Act, 1962 and the same has to be account for in the stock of M/s Kanishk Overseas Pvt. Ltd.
- (viii) Penalty under Section 112 of Customs Act, 1962 for importation and clandestinely clearance to DTA and under Section 114 ibid for attempt to export goods improperly is also imposable.
- (ix) Separate penalty under Section 114AA of Customs Act, 1962 is also imposable for intentionally mis-declaring the quantity and for improper accounting.

Further, Shri Saurabh Gulati, Director of M/s Kanishk Overseas Pvt. Ltd. in his statement has requested to waive the issuance of show cause notice and personal hearing in the matter and adjudicate the case on merit.

DISCUSSION AND FINDINGS

10. I have carefully gone through the case records, facts of the case and the submissions made by M/s Kanishk Overseas Pvt. Ltd. and I find that they have requested for waiver of Issuance of Show Cause Notice and opportunity of personal hearing. Thus, the principle of natural justice has been completed.

10.1 Now, I proceed to decide the case on the basis of the documents available on record. I find that M/s Kanishk Overseas Pvt. Ltd. have filed Shipping Bill No. 4007823 dated 20.05.2019 for export of Rs. 69,15,333.00 in container No. TRHU1148654 showing the description of goods under CTH 21061000 & quantity and on physical verification of goods by the officers during panchnama proceeding, I find that the export consignment does not contain the total quantity of goods as declared in the said shipping bill and substantial quantity of the goods have been diverted to DTA.

10.2 I find that on comparison with the stock position as per records withdrawn from the Warehouse premises of M/s. Kanishk Overseas Pvt. Ltd., KASEZ, Gandhidham and physical stock, found shortage in some products/items and excess in some products/items as discussed in para 7 and shown in Annexure 1 & Annexure 2 (Attached to this Order). Further, I find that Shri Sunil Saini, Manager of M/s Kanishk Overseas Pvt. Ltd and Shri Saurabh Gulati, Partner of M/s Kanishk Overseas Pvt. Ltd in their statements dated 24.05.2019 & 25.05.2019 and dated 11.06.2019 respectively, recorded under Section 108 of the Customs Act, 1962, accepted and confirmed that they had clandestinely removed some of the short cargo in to DTA. Further, with regards to the statements of the importers/Exporters recorded under Section 108 of the Customs Act, 1962, I rely on the case of *Surjeet Singh Chhabra v. Union of India, 1997 (89) E.L.T. 646 (S.C.)*, wherein the Supreme Court has held that confessional statement made before Customs officer is an admission and binding since Customs officers are not police officers in terms of Section 25, Evidence Act, 1973. The Madras High Court in the case of *Assistant Collector of Customs v. Govindasamy Ragupathy, 1998 (98) E.L.T. 50 (Mad.)* held that confessional statement made under Sec. 108 of Customs Act, 1962 before Customs officers are to be regarded as voluntary. It is settled legal proposition that statement recorded under section 108 of the Act is admissible unlike a statement recorded by a Police Officer. Even Importers/exporters have not retracted/rebutted from their confessional statements. Hence, their admitted facts need not be required to be proved. Therefore, it is unequivocally proved from the facts accepted by the manager and partner of M/s Kanishk Overseas Pvt. Ltd. that they had illicitly/ clandestinely/ stealthily cleared the imported warehoused goods in to DTA without permission from the appropriate authority, without preparing any document and without payment of duty. Thereby, they have grossly violated and contravened the conditions of LOA, various provisions of Customs Act, 1962, SEZ Rules 2006, provisions of Rule 11 of the Foreign Trade (Regulation) Rules, 1993.

10.3 I find that the goods cleared illicitly/ clandestinely/ stealthily in DTA had been imported and allowed to be warehoused in M/s Kanishk Overseas Pvt. Ltd., KASEZ against In-Bond Bill of Entry for re-export purpose. The imported goods are edible items in the form of packages of Livestock Products in packaged form. Therefore, import of the same are subject to certain restrictions. However, restrictions are not applicable in case the imported consignment is meant for 100% re-export. In the instant case too, the conditions had been relaxed and the clearance of the goods were allowed without any restriction as the same was imported by a unit located in SEZ for re-export purpose. But, some of the imported quantity has illicitly/ clandestinely/ stealthily been diverted by the importer in to DTA with the intention to evade payment of appropriate customs duty and attempted to adjust the same as exported by adopting the modus operandi of short shipment by mis-declaring the quantity in export documents. Further, I find that it is evident that the clearance of the imported goods, cleared illicitly/ clandestinely/ stealthily in DTA, had been allowed to be imported without complying the conditions of other certifications stipulated under the Foreign Trade Policy and following Allied Acts related to import of edible items in form of packages of Livestock Products in packaged form for the purpose of home clearance:-

(i) Prevention of Food Adulteration Act, 1954 and Food Safety and Standard Authority Act, 2006: under this legislation all imported high risk food items are required to be complied with the conditions of Food Safety and Standard Authority of India (FSSAI).

(ii) The Livestock Importation Act, 1898 : under this legislation all imported livestock products are regulated by this Act and a certificate under 'Animal Quarantine & Certification Services' (AQCS) scheme.

(iii) Standard of Weights & Measures (Packaged Commodities) Rules, 1977: under this legislation all imported packaged products are required to be complied with the labeling conditions. Further, in terms of DGFT Notification No.44(RE-200)1997-2002 dated 24.11.2000 these imported goods are required to be complied with the condition laid down in respect of packaged food products.

In case any of the conditions of the above said Allied Acts / Legislations is not fulfilled, the import of such product shall be held as restricted and render such goods liable to confiscation under Section 111(d) of Customs Act, 1962 and penalty is also imposable under Section 112 ibid.

10.4 I find that M/s Kanishk Overseas Pvt. Ltd. is located in KASEZ. As per Rule 46 (1(c) of SEZ Rules, 2006 – the goods shall not be subjected to routine examination and 'Let Export Order' shall be given on the basis of self-certification by the unit. Further, as per Rule 75 of SEZ Rules, 2006 – all inward or outward movement of goods in to or from the zone by the unit or developer shall be based on self-declaration and no routine examination of these goods shall be made unless specific orders of the Development Commissioner or the specified officers are obtained. Therefore, it is apparent that SEZ is a trust based scheme wherein more reliance has

been placed on the SEZ units under self-certification to ensure smooth functioning of their import and export transactions. But, M/s Kanishk Overseas Pvt. Ltd. have willfully mis-declared the quantity of goods in export container and illicitly/ clandestinely/ stealthily removed the same in to DTA. Therefore, in terms of Rule 25 of the SEZ Rules, 2006 M/s Kanishk Overseas Pvt. Ltd. is required to pay-back an amount equivalent to the customs duty or the benefits availed on the said goods with an applicable interest.

10.5 I find that as per provision of Section 50 (2) of Customs Act, 1962 read with Rule 46(1)(a) of SEZ Rules, 2006, the exporter of any goods, while presenting a shipping bill or bill of export shall make and subscribe to a declaration as to the truth of its contents. Further, under Section 50(3) ibid the exporter who presents a shipping bill or bill of export under section shall ensure:- (a) the accuracy and completeness of the information given therein; (b) the authenticity and validity of any document supporting it; and (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force. Therefore, the exporter is required to furnish full information but in the instant case, the importer failed to do so. Therefore, I find that the exporter M/s Kanishk Overseas Pvt. Ltd., have wilfully mis-declared the actual and correct quantity of goods exported in the documents viz., Shipping Bill, Export invoices, packing list as required under Section 50 ibid and thereby contravened the provisions of Section 50 of the Customs Act, 1962, thus made the goods liable to confiscation under Section 113(k) of the Customs Act, 1962, and rendered themselves liable for penalty under Section 114 of the Customs Act, 1962 for attempt to export goods improperly.

10.6 I find that as per provision of Section 113(k) of Customs Act, 1962, any goods cleared for exportation which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer shall be liable to confiscation. In the instant case too, the exporter has either not loaded full quantity or unloaded part quantity without the permission of the proper officer. Therefore, the goods of total value of Rs.69, 15,333.00 as declared in Shipping Bill No. 4007823 dated 20.05.2019 under container No. TRHU1148654 is liable to be confiscated under section 113 (K) of Customs Act, 1962 as M/s. Kanishak has wilfully short shipped the goods in Container No. TRHU1148645 and mis-declared the quantity in the above said shipping bill, thereby they have contravened the provisions of Section 50 of the Customs Act, 1962, thus made the goods liable to confiscation under Section 113(k) of the Customs Act, 1962. Further, I find that the quantity of goods, short shipped in the container, valued to Rs. 34,73,805/-, covered under Annexure-1 above, has been diverted in to DTA. Detail of the goods found Short/Excess in Container No. TRHU1148645 as per Panchnama dated 23.05.2019 drawn at MICT CFS, Mundra, as compared to actual stock available as per records and Panchnama dated 24.05.2019 drawn at the warehouse, KASEZ is shown in the Annexure-1 (Attached to this order). Further, the duty amount of Rs. 13,48,531/- on total quantity of 4421 PCS which has been found short and cleared clandestinely to DTA

Without even filing any import documents, is liable to be recovered under section 28(4) of Customs Act, 1962.

10.7 Further, I find that as provided under Rule 48(1) of SEZ Rules, 2006 read with Section 68 of Customs Act, 192 any warehoused goods can be cleared for home consumption after presenting bill of entry for home consumption in the prescribed form and after payment of appropriate duty on being ordered for clearance by the proper officer. But, in the instant case, the exporter has failed to do so and removed the goods clandestinely. Therefore, I find that the goods valued to Rs 2,15,415/-, which is found short at the warehouse, KASEZ is liable to be confiscated under section 111(j) of Customs Act, 1962 and duty amount of Rs. 1,50,661/- is liable to be recovered under section 28(4) of Customs Act, 1962 and interest if any.

10.8 I find that as per section 111(f) of the Customs Act, 1962, "any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which is not so mentioned". In the instant case, I find that the goods valued to Rs 28,451/-, as shown at Sr. No. 14 to 17 in Annexure-2 (Attached to this order) is found in excess at the warehouse of M/s Kanishk Overseas Pvt. Ltd., during panchnama proceedings, and the same is liable to be confiscated under section 111(f) of Customs Act, 1962 and the same is to be accounted for in the stock of M/s Kanishk Overseas Pvt. Ltd.

10.9 Further, I am of the considered view that M/s Kanishk Overseas Pvt. Ltd. and Shri Saurabh Gulati Director of M/s Kanishk Overseas Pvt. Ltd., are liable for imposition of penalty under the provisions of Section 112 and 114AA of the Customs Act, 1962. As discussed in foregoing para the M/s Kanishk Overseas Pvt. Ltd. have wilfully mis-declared the quantity of goods and does not carry the total quantity of the goods declared and substantial quantity has been diverted in to DTA. Further, in respect of imposition of penalty under Section 112 of the Customs Act, 1962, I find that once the goods are held liable for confiscation under Section 111(d), 111(j) and 111(f) of the Customs Act, 1962, the person who in relation to such goods has done an act which has rendered goods liable for confiscation is liable for penalty under Section 112 of the Customs Act, 1962. Further, in respect of imposition of penalty under Section 114 of the Customs Act, 1962, I find that once the goods are held liable for confiscation under Section 113(k) of the Customs Act, 1962, the person who in relation to such goods has done an act which has rendered goods liable for confiscation is liable for penalty under Section 114 of the Customs Act, 1962.

10.10 Further, I find that penalty under Section 114AA on M/s Kanishk Overseas Pvt. Ltd., Shri Sunil Saini, Manager and Shri Saurabh Gulati Director of M/s Kanishk Overseas Pvt. Ltd., are justifiable in addition to Section 112 of the Customs Act, 1962 because from the facts of the case it is evident that they knowingly / intentionally mis-declared the quantity of the goods in order to divert the goods in DTA. Shri Sunil Saini, Manager and Shri Saurabh Gulati, Director had knowingly and intentionally made, signed and fabricated documents, which were presented to the Customs authorities which they knew were false and incorrect in respect of the mis-declared quantity of the exported goods in order to divert the said goods to DTA. Therefore, I

hold that M/s Kanishk Overseas Pvt. Ltd., Shri Saurabh Gulati and Shri Sunil Saini are liable to penalty in terms of the provisions of Section 114AA of the Customs Act, 1962 for intentionally mis-declaring the quantity and for improper accounting of the goods.

11. In view of the forgoing discussions and findings, I pass the following order:-

O R D E R

- a. I order for confiscation of the goods valued at Rs. 34,41,528.00, [(Rs.69,15,333.00 as declared) minus (Rs.34,73,805.00 cleared in DTA clandestinely)] in Shipping Bill No. 4007823 dated 20.05.2019, under Section 113 (k) of the Customs Act, 1962. However, I give an option to M/s Kanishk Overseas Private Limited to redeem the confiscated goods on payment of redemption fine of Rs. 5,00,000.00 (Rupees Five Lakh only) in lieu of confiscation under Section 125 of the Customs Act 1962.
- b. I order for confiscation of the goods covered under Annexure-1 (attached to this order) valued at Rs. 19,28,126.00 under Section 111 (d), 111(f) and 111(j) of the Customs Act, 1962. However, as the goods are not available for confiscation, I do not impose any redemption fine on the goods so removed illicitly/clandestinely/ stealthily.
- c. I order for confiscation of the goods covered under Annexure-2 (attached to this order) valued at to Rs 2,15,415.00, which is found short and removed illicitly/clandestinely/ stealthily into DTA, at the warehouse under Section 111 (j) of the Customs Act, 1962. However, as the goods are not available for confiscation, I do not impose any redemption fine on the goods so removed clandestinely.
- d. I order to account for the total quantity of 772 (330+300+142) as mentioned at S.No. 5, 6, 7 of Annexure-1. (attached to this order) which was found short in container but found lying at warehouse and a quantity of 60 as mentioned at S.No. 8 of Annexure-1 (attached to this order), which was found excess in container but found short in warehouse in the stock of M/s Kanishk Overseas Pvt. Ltd.
- e. I order for confiscation of the goods covered under Annexure-2 (attached to this order), valued at to Rs 28,451.00, which is found in excess at the warehouse under Section 111 (f) of the Customs Act, 1962 and same has to be account for in the stock of M/s Kanishk Overseas Pvt. Ltd.
- f. I confirm Customs duty amounting to Rs. 13, 48,146.00 (Rs. Thirteen Lakh Forty Eight Thousand One Hundred Forty Six Only) under the provisions of Section 28 (4) of the Customs Act, 1962. Since the amount of Rs. 13, 48,146.00 (Rs. Thirteen Lakh Forty Eight Thousand One Hundred Forty Six Only) has already been paid by them vide Challan dated 19.07.2019 towards Customs Duty, the same is appropriated against the above Customs Duty.
- g. I confirm Customs Duty amounting to Rs. 1,50,618.00 (Rs. One Lakh Fifty Thousand Six Hundred Eighteen Only) under the provisions of Section 28 (4) of the Customs Act, 1962 with interest if any.

- h. I impose a penalty of Rs. 2,02,280.00 (Rupees Two Lakh Two Thousand Two Hundred Eighty only) on M/s Kanishk Overseas Pvt. Ltd., under Section 28 (5) of the Customs Act, 1962. Since M/s Kanishk Overseas Pvt. Ltd., has voluntarily already paid Rs. 2,02,280.00 towards penalty, the same is appropriated against the above penalty.
- i. I impose a penalty of Rs. 5,00,000.00 (Rupees Five Lakh Only) on M/s Kanishk Overseas Pvt. Ltd., under Section 114 of the Customs Act, 1962.
- j. I impose a penalty of Rs. 10,00,000.00 (Rupees Ten Lakh Only) on M/s Kanishk Overseas Pvt. Ltd., under Section 112 of the Customs Act, 1962.
- k. I impose a penalty of Rs. 10,00,000.00 (Rupees Ten Lakh only) on M/s Kanishk Overseas Pvt. Ltd., under Section 114AA of the Customs Act, 1962.
- l. I impose a penalty of Rs.5,00,000.00 (Rupees Five Lakh Only) on Shri Saurabh Gulati Director of M/s Kanishk Overseas Pvt. Ltd., under Section 112 of the Customs Act, 1962.
- m. I impose a penalty of Rs.5,00,000.00 (Rupees Five Lakh Only) on Shri Saurabh Gulati Director of M/s Kanishk Overseas Pvt. Ltd., under Section 114AA of the Customs Act, 1962.
- n. I impose a penalty of Rs.3,00,000.00 (Rupees Three Lakh Only) on Shri Sunil Saini, Manager of M/s Kanishk Overseas Pvt. Ltd., under Section 112 of the Customs Act, 1962.
- o. I impose a penalty of Rs.3,00,000.00 (Rupees Three Lakh Only) on Shri Sunil Saini, Manager of M/s Kanishk Overseas Pvt. Ltd., under Section 114AA of the Customs Act, 1962


(AJAY KUMAR)

Additional Commissioner,
Custom House, Kandla

Dated: 03.10.2019

F. No. S/15-02/SIIB/2019-20

To,

1. M/s Kanishk Overseas Private Limited,
Plot No. 501, Sub Plot no 8/A,
New Area, FTWZ, Kandla Special Economic Zone,
Gandhidham (Kutch), Gujarat.
2. Shri Saurabh Gulati Director of M/s Kanishk Overseas Private Limited,
Plot No. 501, Sub Plot No. 8/A,
New Area, FTWZ, Kandla Special Economic Zone,
Gandhidham (Kutch), Gujarat.
3. Shri Sunil Saini, Manager of M/s Kanishk Overseas Private Limited,
Plot No. 501, Sub Plot No. 8/A,
New Area, FTWZ, Kandla Special Economic Zone,
Gandhidham (Kutch), Gujarat.

Copy to:

1. The Pr. Commissioner of Customs, Kandla.
2. The Development Commissioner, KASEZ, Gandhidham
3. The Deputy Commissioner (RRA/Recovery), Custom House Kandla.
4. The Deputy Commissioner, KASEZ, Gandhidham.
5. Guard file.

Annexure -1 (Attached to OIO No.KDL/ADC/AK/18/2018-19)

M/s Kanishk Overseas Pvt. Ltd., KASEZ, Gandhidham

Details of Cargo Short/Excess Found in Container No. TRHU1148645 as per Panchnama dated 23.05.2019 drawn at MICT CFS, Mundra, compared to actual stock available as per records and Panchnama dated 24.05.2019 drawn at the warehouse, KASEZ

Sr. No.	ITEM DESCRIPTION	Qty as per warehouse records (Qty in PCS)	Stock Found as per Panchnama dated 24.05.2019 at warehouse	Shortage/ Excess (Qty in PCS)	Shortage/ Excess Found in Container No. TRHU1148645	Unit price(Rs)	Value of Shortage/ Excess Found in Container No. TRHU1148645	Overall Shortage (Qty in PCS)	Value (Rs) of the overall shortage
1	CELLUCOR C4 30 SERVINGS (12 PCS/CARTON) 420 CARTONS - 5040 UNITS X 5 USD PER UNIT	1740	1740	0	-1800	397	714951	-1800	714951
	CELLUCOR C4 RIPPED 30 SERV								
2	CELLUCOR C4 RIPPED 30 SERVINGS (12 PCS/CARTONS) 350 CARTONS - 4200 UNITS X 7 USD PER UNIT	4272	4260	-12	-1200	510	611610	-1212	617726
	CELLUCOR C4 60 SERV								
3	SCIVATION XTEND ENERGY 30 SERVINGS (12 PCS/CARTONS) 414 CARTONS - 4968 UNITS X 6 USD PER UNIT	1200	1188	-12	-768	432	332041	-780	337229
4	SCIVATION XTEND HYDRASPORT 30 SERVINGS (12 PCS/CARTONS) 250 CARTONS - 3000 UNITS X 5.5 USD PER UNIT	900	876	-24	-600	397	238317	-624	247850
5	DYMATIZE ELITE WHEY 5 LBS	1002	1332	330	-332	1551	514872	-2	3102
6	DYMATIZE ISO 100 5 LBS	1224	1524	300	-301	2242	674802	-1	2242
	DYMATIZE NUTRITION ISO 100 5 LBS (6 PCS/CARTON) 204 CARTONS - 1220 units x \$32.00/unit								
7	RULE 1 PROTEIN 5LBS	120	262	142	-144	2513	361904	-2	5026
8	UNIVERSAL CARBO PLUS 1KG.	552	492	-60	60	421.8	25308	0	
Total							3473804.9	-4421	1928126
							Duty @69.92%		1348146

Annexure - 2 (Attached to OIO No.KDL/ADC/AK/18/2018-19)

M/s Kanishk Overseas Pvt. Ltd., KASEZ, Gandhidaham

Details of Cargo Short/Excess Found on comparing actual stock available as per records with stock taken during Panchnama dated 24.05.2019 at Warehouse, KASEZ.

S. No.	ITEM DESCRIPTION	Qty as per records (Qty in PCS)	Stock Found as per Panchnama dated 24.05.2019	Shortage / Excess (Qty in PCS)	Unit Price (Rs)	Value (Rs)
1	SOFTGELS/BOTTLE) 419 CARTONS X 96 UNITS - 40224 UNITS x USS 0.85 PER UNIT - Sunline	38784	38688	-96	65	6240
2	NIE COLEMAN PRO ANTIUM WHEY 5 LBS (6PCS/CARTON) 35 CARTONS - 210 UNITS X 21 USD PER COLEMAN PRO ANTIUM WHEY 5 LBS (6 PCS/CARTON) 295 CARTONS - 1770 UNITS X \$21	1380	1378	-2	1512	3024
3	SCIVATION XTEND 90 SERVINGS	120	0	-120	880	105600
4	TION XTEND PROTEIN 5 LBS (6 PCS/CARTONS) 167 CARTONS - 1002 UNITS X 21 USD PER XTEND PROTEIN 5 LBS (6 PCS / CARTONS) TOTAL 250 CARTONS - 1500 UNITS X 21 USD PER	1782	1176	-6	1512	9072
5	ULTIMATE NUTRITION WHEY GOLD 5LBS	900	898	-2	1297.738	2595.476
6	BPI WHEY HD 5LBS	500	490	-10	1546.6	15466
7	DYMATIZE SUPER MASS GAINER 12 LBS	317	302	-15	2112	31680
8	MUSCLETECH LAB SERIES 100 PERCENTWHEY PROTEIN 5 LBS	360	352	-8	1511.45	12091.6
9	MUSCLETECH MASSTECH EXTREMEN 22LBS	250	249	-1	2913.935	2913.935
10	MUSCLETECH NITROTECH 3.97LBS TECH NITROTECH WHEY 4 LBS (4 PCS/CARTONS) 400 CARTONS - 1600 UNITS X \$ 20/- P	5280	5278	-2	1687.2	3374.4
11	ULTIMATE NUTRITION ISO SENSATION 5LBS	3169	3166	-3	1933.25	5799.75
12	ULTIMATE NUTRITION PROSTAR WHEY 5.28LBS	4800	4797	-3	1581.75	4745.25
13	WHEY PROTEIN 4LBS SYNTHA 6 EDGE	1000	991	-9	1423.575	12812.18
	Sub-Total 'A'			277		215415
14	CELLUCOR WHEY 5LBS	880	888	8	1873.495	14987.96
15	DYMATIZE SUPER MASS GAINER 6 LBS	496	498	2	1054.5	2109
16	ARMA GLUTAMINE 300 GRAMS (12 PCS / CARTONS) 166 CARTONS - 1992 UNITS X 5.5 U	1992	2016	24	386.65	9279.6
17	RSP WHEY 4 LBS (4 PCS/CARTONS) 52 CARTONS - 208 UNITS X \$ 14.75/- PER PCS	1392	1394	2	1036.925	2073.85
	Sub-Total 'B'			36		28450
						150618

Duty @69.92% on Rs. 215415/-

