



## सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

## OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंजिल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009  
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250671MN0000813803

क	फ़ाइल संख्या FILE NO.	S/49-167/CUS/MUN/2023-24
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-094-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	24.06.2025
ड	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order - In - Original No. MCH/ADC/MK/210/2023-24 dated 22.11.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	24.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Aleo World Gym (IEC 3003002082) Satsang Road, Near Old Court Chowk, Opposite Greatway Hosiery, Ludhiana-141003



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पक्षिमी क्षेत्रीय पीठ</td> <td><b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b></td> </tr> <tr> <td style="vertical-align: top;">दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2<sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पक्षिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पक्षिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>				
दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	<p>सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-</p> <p>Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -</p> <p>(क) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए.</p> <p>(a) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;</p> <p>(ख) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए</p> <p>(b) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;</p> <p>(ग) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए.</p> <p>(c) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees</p> <p>(घ) इस आदेश के विरुद्ध अधिकरण के सामने, मार्गे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद मैं हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद मैं है, अपील रखा जाएगा।</p> <p>(d) 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.</p> <p>6. उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				



**ORDER-IN-APPEAL**

Appeal has been filed by M/s Aleo World Gym, Satsang Road, Near Old Court Chowk, Opposite Greatway Hosiery, Ludhiana-141003 (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/210/2023-24 dated 22.11.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that based on specific intelligence that appellant is involved in the evasion of Customs duty on imports of "Mass Gainers" by mis-declaring the description and thereby misclassifying the product under CTH 21061000 instead of CTH 21069099, an enquiry was initiated and the investigation was carried out by the officers. During the period 2018 to 2020 the products namely- 'Bad Ass Mass Gainer', 'Levrone Anabolic Mass Gainer', 'DY Game Changer Mass Gainer' and 'Mass Muscle Gainer' hereinafter referred to as 'Mass Gainers' were being imported by the appellant and were being mis-declared by the appellant in order to mis-classify the same under Customs Tariff Item CTH 21061000 instead of CTH 21069099 to avail lesser tariff rate of Basic Customs Duty and to evade payment of other consequential Custom duties. An enquiry was therefore initiated and a letter F. No. DRI/LZU/CI/26/Enq-12(Int-11)/2020/9720 dated 24.07.2020 was issued to the appellant to submit documents pertaining to all their imports of Mass Gainers under CTH 21061000 for the period 2018 to till date.

2.1 The appellant vide letter dated 10.08.2020 submitted his interim reply contending that the imported goods should fall under CTH 21061000 instead of CTH 21069099 and further stated that the items imported by them i.e. Mass Gainer is protein concentrate composed of protein complex falling under CTH 21061000 and Carbohydrate complex falling under CTH 17029090 and that they have not classified the same under CTH 17029090, which attracts lower customs duty and classified under CTH 21061000, which attracts higher customs duty. Summons dated 02.09.2020 was issued to the appellant to appear on 14.09.2020, the appellant vide letter dated 07.09.2020 forwarded certain documents and requested for exemption of personal appearance due to prevalent



Covid-19 situation. Further, the appellant was again summoned to appear on 19.11.2020 vide summons issued dated 23.10.2020. However, Shri Sangeet Chopra, CEO of M/s Aleo World Gym appeared on 02.12.2020 instead of 19.11.2020 and tendered his voluntary statement u/s 108 of the Customs Act, 1962, wherein he interalia stated that:

- (i) that his firm is working from 06.05.2003 having IEC no. 3003002082 and are engaged in the trading of "food supplement items" and for this, he used to import the said item i.e. whey protein, Mass gainer, pre workout, Creatine, Glutamine, BCAA, EAA and Amino etc. and after importing the same they used to sell in domestic market and having GST No. 03ADMPC5764GIZO.
- (ii) On being asked about the decision taken on classification of imported items and being declared in B/Es, he stated that he usually decide with CHA and used to see the Tariff Book, which is purely mentioned as per his knowledge.
- (iii) On being requested to explain the nature and classification under CTH 21061000 in respect of one of the imported items by him i.e. "Physique Whey Vanilla (nutrition supplement) under CTH 21061000", he stated that the said item is Whey Protein and consists of 80% protein, 12% carbohydrate, 4% fat and other nutrients and since the imported whey protein powder is a food supplement, which is a finished and prepared product and is imported in packet form with nutritional value depicted on its package, it must be rightly classified under Chapter 2106. He further stated that since imported whey protein consists of very high quantity of protein, hence it must be covered under CTH 21061000- Protein concentrates and textured protein substances.
- (iv) On similar lines, on being requested to explain about the nature and classification under CTH 21069099 in respect of one of the imported items by him i.e. "FA core BCAA 350 grams assorted flavors (Nutritional Supplements) under CTH 21069099", he responded that he will clarify the above query after consulting his team in next statement within two weeks at this office.
- (v) On being shown the B/E no. 7154251 dated 10.07.2018 and requested to explain the nature, nutritional value, packing condition and its classification under CTH 21061000, wherein two products i.e. "Bad Ass Mass gainer 3 kgs assorted flavors (Nutritional Supplement)" and "Leveron Anabolic Mass 3 Kgs assorted flavors (Nutritional Supplements)" both



classified under CTH 21061000, he stated that the said items are mass gainers which are used in health industry to gain mass/weight gainer and are being imported in sealed plastic jars ( 3 kgs/7 kgs). He further stated that in 120 grams of serving size of Anabolic Mass 3 Kg assorted flavors, it consists of 54 grams of carbohydrate and 45 grams of protein, 3.1 grams of fat and 1.2 grams of fiber and other essential nutrients. However, in 150 grams of serving size of Bad Ass mass gainer consists of 61 grams of carbohydrates and 30 grams of proteins, 5 grams if BCAA and other essential nutrients. Regarding classification.

(vi) On being shown the B/E No. 4481105 dated 13.05.2019, wherein the imported product nutrition supplement (food supplement)- Mass Muscle gainer 10 lbs- assorted flavors has been classified under 21061000 and B/E No. 7872068 dated 10.06.2020, wherein the imported product "Food supplement- FA core mass 7 Kgs chocolate has been classified under 21061000 and asked to explain the nature, nutritional value, packing condition and classification under CTH 21061000, he appended his dated signature on both B/Es and stated that in serving size of 255 grams of Elite lab Muscle mass gainer, 174 grams of carbohydrates, 60 grams of protein, 7 grams of fat and other nutritional substance are there and in 100 grams of serving size of FA core mass 7 kgs, 68 grams of carbohydrates, 20 grams of protein, 2 grams of fat and other nutrients. He further stated that both the mass gainers are used in health industry for gaining weight and both the mass gainers are imported in sealed plastic bags, which are directly sold out for consumption. Both the mass gainers can be used as instant ready to mix powder without any kind of further processing. However, regarding classification of both the mass gainers under CTH 21061000.

(vii) On being shown the Commercial invoice no. - (s) fse-2/01/2020/exp dated 16.01.2020, wherein Levrone Anabolic mass 3 kgs Coffee frappe (168 pcs) is classified under CTH 210690, however in corresponding B/E- 7187383 dated 11.03.2020, the said item has been classified under CTH 21061000 and to offer his comments on why M/s Aleo World Gym has mis-classified the said mass gainer under CTH 21061000, inspite of the supplier has classified under other CTH 210690, he perused the documents and appended his signature and stated that he will explain in next statement within two weeks. Further, he stated that the supplier has classified the above-mentioned product (mass gainer) under CTH 210690 as per their country Rules, however, he has classified the said products



under CTH 21061000 as per his understanding and Indian Customs Rules. Further, he stated that in the same B/E, the product (Whey protein and Leveron Whey isolate- chocolate flavored) has been classified under CTH 21061000, while supplier has classified the same under CTH 1806. Furthermore, he stated that since major imported items are whey protein and whey isolate chocolate flavor, M/s Aleo World Gym classified chocolate flavored products under correct CTH 21061000 and that the detailed answer will be submitted in next statement within 2 weeks.

2.2 Summons dated 04.12.2020 and 12.01.2021 issued to Shri Sangeet Chopra however no response was received. Accordingly, letters F. No. DRI/LZU/CI-26/Enq-12(Int11)/2020/938 dated 20.05.2021, 10.08.2021, and 27.08.2021 were issued to the Deputy Director, DRI, LZU to conduct follow-up and to record the statement of Shri Sangeet Chopra. A letter F. No. DRI/LDZU/856/Follow up/Misc-05/2020/Pt-II/1494 dated 08.10.2021 was received from the Deputy Director, DRI, LZU forwarding the statement dated 15.09.2021 of Shri Sangeet Chopra, proprietor, M/s Aleo World Gym U/s 108 of the Customs Act, 1962, wherein he interalia stated that:

(i) On being asked to explain the nature of the product FA core BCAA 350 grams assorted flavors and its classification under CTH 21069099, Shri Sangeet Chopra has stated that the above-said product consists of L-Leucine, L-isoleucine and L-valine and that they are basically amino acids and don't have specific classification and therefore to be classified under CTH 21069099.

(ii) On being asked to explain the grounds for the classification of the imported items i.e. Bad Ass Mass, Anabolic Mass, Mass muscle gainer, FA core mass chocolate under CTH 21061000, Shri Sangeet Chopra stated that the said products have been classified under CTH 21061000, which attracts BCD @ 40%, however, the products are correctly classified as per supplier's invoice, in which the supplier has classified all imported products containing cocoa under Chapter 18 (CTH 180690). Further, he reproduced the chapter notes of chapter 18, which is as follows: "Sr. No. 1- This chapter does not cover the preparations of headings 0403, 1901, 1904, 1905, 2105, 2202, 2208, 3003, or 3004" "Sr. No. 2- heading 1806

includes sugar confectionery containing cocoa and subject to note-1 to this chapter, other food preparations containing cocoa" Further, he stated that above mentioned Sr. No. 1 of chapter note does not have mention of



exclusion of CTH 2106 and therefore, it has to be rightly classified in CTH 18069090 and given a comparison table containing CTH declared with customs and correct CTH as per supplier's invoices.

(iii) On being asked to explain the reasons for the classification of the imported items i.e. Anabolic Mass under different CTH in the commercial invoice no. (s)fse2/01/2020/exp dated 16.01.2020 (CTH-210690) and in the corresponding B/E No. 7187383 dated 11.03.2020 (CTH-21061000), he stated that they have classified their goods as per CTH provided by their supplier's invoices and accordingly calculated the customs duty for all products for the last 2 years and paid excess duty to the department. Further, he has stated that in due course of time, he will be applying for re-assessment of B/E for the last 2 years with Indian Customs and that he has not suppressed any facts from the department as they have submitted their supplier invoice to Indian Customs during imports made by them.

2.3 Scrutiny of the import documents submitted by appellant as well as available in this office, revealed that the appellant had filed Bills of Entry from the year Apr '2018 to Jan'2022 classifying "Mass Weight Gainer/ Mass Weight Gainer-Nutrition Supplement under CTH 21061000 and CTH 18069090 as mentioned in **Table-I** of the impugned order

2.4 In Co-operation Agreement No. IND01-2017, submitted by the appellant, it was noticed that the products to be imported by the appellant are of dietary supplements nature, which will be of "Food Grade". Further, it was also mentioned in the said Agreement that the buyer hereby undertakes to sell the products purchased from the manufacturer solely with the manufacturer's trademark incorporated thereon. Hence, from the above, it was inferred that imported product is a type of prepared and finished food supplement and ready to consume during high intensity exercises and that the imported products are in packed form, directly to be sold to the end customer.

2.5 Further, it was also mentioned that the appellant shall not change or modify products in any manner whatsoever, which clearly show that the imported products are finished products and ready to consume. Furthermore, from the packet sizes imported, which are in the range of small quantity, is also show that the same imported packets are to be sold domestically, therefore, repacking etc of the products is also ruled out. Further, from the scrutiny of




documents submitted by the appellant, it was noticed that in some cases seller has mentioned CTH 210690, in their commercial invoice but the appellant has filed B/E under CTH 210610 against the same commercial invoice. This act of the appellant showed their willful intention just to evade applicable Customs duty by misclassifying the said Weight/Mass Gainer under CTH 21061000 (Protein concentrates and textured protein substances).

2.6 From the analysis of data for the imports of 'Weight/Mass Gainer' made by the appellant in previous years, it was noticed that in Jan, 2018 & before 2018, when duty in both- the CTH 21061000, CTH 21069060 and CTH 21069099 were same, the appellant imported above products under the correct CTH 21069099 and sometimes under CTH 21069060 and paid duty @30% in terms of Notification No.12/2012-Cus dated 17.03.2012 (Serial No.92). However, the appellant switched such imports of 'Weight/Mass Gainer' to CTH 21061000 (BCD@40%) only after the new Notification No.50/2017-Cus dated 30.06.2017 was amended vide Notification No.6/2018-Cus dated 02.02.2018 (Serial No.8), wherein, the duty structure on CTH 21069099 was raised with effect from 02.02.2018. This act of the appellant appeared to exhibit their willful intention just to evade applicable customs duty by misclassifying the said Weight/Mass Gainer under CTH 21061000 (Protein concentrates and textured protein substances). The details of such B/Es are as detailed below in Table-2:

**Table-2**

Sr No.	CUSTOM House Code	Bill of Entry No.	Bill of Entry date	ITEM DESCRIPTION	CTH
1	INMUNI	2371771	08-07-2017	LEVRONE ANABOLIC MASS 7000 G- ASSORTED FLAVOURS (NUTRITION SUPPLEMENTS)	21069060
2	INMUNI	3274616	18-09-2017	LEVRONE ANABOLIC MASS 7000 G ASSORTED FLAVOURS (NUTRITION SUPPLEMENTS)	21069060
3	INMUNI	3274616	18-09-2017	LEVRONE ANABOLIC MASS 50 G ASSORTED FALVOURS (NUTRITION SUPPLEMENTS) (NO COMMERCIAL VALUE, FREE SAMPLE)	21069060
4	INMUNI	3274616	18-09-2017	FA CORE MASS 3 KG ASSORTED FLAVOURS (NUTRITION SUPPLEMENTS)	21069060



5	INMUNI	3274616	18-09-2017	FA CORE MASS 50 G ASSORTED FLAVOURS (NUTRITION SUPPLEMENTS)(NO COMMERCIAL VALUE, FREE SAMPLE	21069060
6	INMUNI	3311576	20-09-2017	MASS MUSCLE GAINER-10.16 LBS. (NUTRITION SUPPLEMENTS)	21069060
7	INMUNI	3311576	20-09-2017	MASS MUSCLE GAINER-20 LB (NUTRITION SUPPLEMENTS)	21069060
8	INMUNI	3311576	20-09-2017	MASS MUSCLE GAINER, 5 LB (NUTRITION SUPPLEMENTS)	21069060
9	INMUNI	4279638	05-12-2017	LEVRONE ANABOLIC MASS 50G- ASSORTED FLAVOURS (NO COMMERCIAL VALUE. FREE	21069060
10	INMUNI	4482467	20-12-2017	MASS MUSCLE GAINER 5 LBS - ASSORTED FLAVORS (NUTRITION SUPPLEMENTS)	21069060
11	INMUNI	4482467	20-12-2017	MASS MUSCLE GAINER, 63.75.G (NUTRITION SUPPLEMENTS) (NO COMMERCIAL VALUE, FREE	21069060
12	INMUNI	4650385	02-01-2018	LEVRONE LEVRO LEGENDARY MASS 50 G VANILLA ALMOND (NUTRITION SUPPLEMENTS) (SAMPLES & PROMOTIONAL ITEMS OF NO COMMERCIAL VALUE)	21069060
13	INMUNI	4650385	02-01-2018	BAD ASS MASS 50 G - ASSORTED FLAVORS (NUTRITION (NUTRITION SUPPLEMENTS) (SAMPLES & PROMOTIONAL ITEMS OF NO COMMERCIAL VALUE)	21069060

2.7 The appellant in his statement dated 02.12.2020, has admitted that in serving size of 255 grams of Elite lab Muscle mass gainer, 174 grams of carbohydrates, 60 grams of protein, 7 grams of fat and other nutritional substance are there and in 100 grams of serving size of FA core mass 7kgs, 68 grams of carbohydrates, 20 grams of protein, 2 grams of fat and other nutrients, which clearly shows that in the imported products, protein is very less in comparison to the carbohydrate, which is essential character for mass gainer and therefore the imported product should rightly be classified under 21069099. The appellant in his statement dated 02.12.2020, further stated that both the above mentioned mass gainer are used in health industry for gaining weight and both the mass gainers are imported in sealed plastic bags, which are directly sold out for consumption. Both the mass gainers can be used as instant ready to mix powder without any kind of further processing. Since the imported

products are instant ready to mix food items/supplements, they are rightly classified under CTH 21069099.

2.8 The contention of the appellant in his statement dated 15.09.2021, wherein he has stated that the imported products should rightly be classified under Chapter 1806, since the products contain chocolate, is not tenable because the CTH 18069040, which states as "preparations containing cocoa for making beverages", which clearly shows that the main ingredient should be chocolate in the products to be classified under 18069040. However, in the imported products, the main ingredient is not cocoa but cocoa is added as an flavoring agent. From the certificate of analysis, it is clearly visible that the said imported product contains carbohydrate complex and other salts, which are food supplement of chocolate flavor and cocoa is just added for flavor. The said product said to contain many carbohydrate complex and other goods like milk, soy and coconut, which does not mean that the imported product should be classified in the chapter heading of milk or soy or coconut. Therefore, the contention of the appellant appeared not tenable and just an afterthought to escape the liability.

2.9 As per Chapter note 5(b) of Chapter 21 which covers, "*Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption*"; Mass gainers food supplements imported by the appellant are also ready to consume product directly or after processing as stated by the proprietor of the FIRM in his statement dated 02/12/2020. Hence, they are rightly classifiable under CTH 2106 and not any other chapter such as Chapter 1806. As per explanatory notes of chapter 2106 where it is mentioned that CTH 2106 consists of "*Preparations consisting of mixture of chemicals (Organic Acid, Calcium Salts etc.) with food stuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.)*" Mass gainers food supplements imported by appellant appeared to be under CTH 2106 which covers "*Food preparations not elsewhere specified or included*" because these products are also mixture of carbohydrate complexes intended solely for health industry for fulfilling the need of nutrients to the body.

2.10 CTH 2106 covers "*Food preparations not elsewhere specified or included*". As per explanatory note no. 16 of Chapter 2106, "*Preparations often referred to as food supplements based on extracts from plants*". Since imported



A handwritten signature in black ink, appearing to read "A.P.", is positioned below the CBR logo.

products are mass gainer food supplements and sold in market with the same description, products are classifiable under CTH 2106.

2.11 General Rules for the Interpretation provides that when by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be affected as follows:

(a) *General Rules for the Interpretation GRI-3(a) provides "The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods".*

(b) *"Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable".*

2.12 As per chapter note 5(a) of Chapter 21, heading 2106 covers "Protein concentrates and textured protein substances" under HS code 21061000. The appellant here is importing Weight /Mass Gainer which is for gaining mass and not for building muscles. Therefore, the essential character of the goods is not protein. Hence, they are correctly classifiable under CTH 21069099.

2.13 On the basis of above descriptions, it thus appeared that imported products listed above are prepared Mass Gainer and not the Protein supplement based food supplements and are rightly classifiable under CTH 21069099. The appellant appeared to have knowingly resorted to mis-classification with the sole purpose of evading Customs duty. The duty liability for the consignments covered under of this notice are given in the respective Table-1, the gist of the said details are produced as under in **Table-3** below:



**Table-3**

Customs House Code	B/E No. & Date		Number of B/Es	Assessable Value (in Rs.)	Total Duty paid (in Rs.)	Total Duty payable (in Rs.)	Differential Duty payable (in Rs.)
A	B		C	D	E	F	G
INMUNI	5842773	04.04.2018	11	21430185	14792993	16501243	1708250
	7)54251	10.07.2018					
	7424202	30.07.2018					
	8008033	11.09.2018					
	97641iS	23.01.2019					
	4708792	30.08.2019					
	6854093	12.02.2020					
	2952849	01.03.2021					
	3081950	09.03.2021					
	5297322	03.09.2021					
INLDH6	7087603	15.01.2022	4	8943215	5514642	6886275	1371633
	7217498	13.03.2020					
	4432510	24.06.2021					
	4471317	26.06.2021					
INSGF6	6255199	15.11.2021	4	5351467	3509382	4120630	611248
	8378712	08.10.2018					
	6477938	14.01.2020					
	7187383	11.03.2020					
INQRP6	7872068	11.06.2020	3	2857149	1899130	2200004	300874
	8095452	18.09.2018					
	4812944	07.09.2019					
	6768725	05.02.2020					
INCPR6	2003056	17.12.2020	2	3531411	2469163	2719187	250024
	2162473	19.12.2020					
INCPR6	3935324	04.07.2019	3	1028731	719288	792122	72834
	5427508	24.10.2019					
	5704598	16.11.2019					
	<b>Total</b>		27	4,31,42,157	2,89,04,599	332,19,461	43,14,862

2.14 Investigation in the matter culminated in Show Cause Notice F. No. GEN/ADJ/ADC/193/2023-Adjn dated 17.03.2023 wherein it was proposed as to why:

**(I) For INMUNI Port- In respect of 11 Bills of Entry as per Table-3**

a. The classification of the impugned goods namely "Mass gainer food supplements" under CTH 21061000 imported vide the above said Bills of entry as in Table-3 should not be rejected and the same may be reclassified under CTH 21069099.



- b. Differential Duty of Customs amounting to Rs. 17,08,250/- only (Rs. Seventeen Lakhs Eight Thousands Two Hundred and Fifty only) in respect of 11 Bills of Entry as in Table-3 arising due to wrong classification of the imported goods during the period 04-04-2018 to 15-01-2022 should not be recovered from them, in terms of Section 28(4) of the Customs Act, 1962;
- c. The applicable interest on Customs duty foregone amount should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962;
- d. Mass gainers food supplements imported during the period 04-04-2018 to 15-01-2022, with the declared value of Rs. 2,14,30,185/-only (Rupees Two Crores, Fourteen Lakhs, Thirty Thousands, One Hundreds and Eighty-Five only), should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, since the said goods were imported by mis-declaration and mis-classification of the same, as detailed in Table-3;
- e. Penalty should not be imposed upon them under Section 112 and/or 114A of the Customs Act, 1962, for act of omission and/or commission and for the reasons and allegations as discussed in earlier paragraphs.
- f. Penalty should not be imposed upon Shri Sangeet Chopra, Proprietor, M/s. Aleo World Gym under Sections 114AA of the Customs Act, 1962, for act of omission and/or commission and for the reasons and allegations as discussed in earlier paragraphs.

**(II) For INLDH6 Port In respect of 4 Bills of Entry as in Table-3.**

- a. The classification of the impugned goods namely "Mass gainer food supplements" under CTH 21061000 imported vide the above said Bills of entry as in Table-3 should not be rejected and the same may be re-classified under CTH 21069099.
- b. Differential Duty of Customs amounting to Rs. 13,71,633/- only (Rs. Thirteen Lakhs Seventy One Thousands Six Hundred and Thirty Three only) in respect of 4 Bills of Entry as in Table-3 arising due to wrong



classification of the imported goods during the period 13-03-2020 to 15-11-2021 should not be recovered from them, in terms of Section 28(4) of the Customs Act, 1962;

- c. The applicable interest on customs duty foregone amount should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962;
- d. Mass gainers food supplements imported during the period 13-03-2020 to 15-11-2021, with the declared value of Rs. 89,43,215/-only (Rupees Eighty-Nine Lakhs, Forty-Three Thousands, Two Hundreds Fifteen only), should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, since the said goods were imported by mis-declaration and mis-classification of the same, as detailed in Table-3;
- e. Penalty should not be imposed upon them under Section 112 and/or 114A of the Customs Act, 1962, for act of omission and/or commission and for the reasons and allegations as discussed in earlier paragraphs.
- f. Penalty should not be imposed upon Shri Sangeet Chopra, proprietor, M/s. Aleo World Gym under Sections 114AA of the Customs Act, 1962, for act of omission and/or commission and for the reasons and allegations as discussed in earlier paragraphs.

**(III) For INSNI6 Port In respect of 4 Bills of Entry as in Table-3.**

- a. The classification of the impugned goods namely "Mass gainer food supplements" under CTH 21061000 imported vide the above said Bills of entry as in Table-3 should not be rejected and the same may be re-classified under CTH 21069099.
- b. Differential Duty of Customs amounting to Rs. 6,11,248/- only (Rs. Six Lakhs Eleven Thousands Two Hundred and Forty-Eight only) in respect of 4 Bills of Entry as in Table-3 arising due to wrong classification of the imported goods during the period 08-10-2018 to 10-06-2020 should not be recovered from them, in terms of Section 28(4) of the Customs Act, 1962;



- c. The applicable interest on customs duty foregone amount should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962;
- d. Mass gainers food supplements imported during the period 08-10-2018 to 10-06-2020, with the declared value of Rs. 53,51,467/-only (Rupees Fifty-Three Lakhs, Fifty-One Thousands, Four Hundreds Sixty-Seven only), should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, since the said goods were imported by mis-declaration and mis-classification of the same, as detailed in Table-3;
- e. Penalty should not be imposed upon them under Section 112 and/or 114A of the Customs Act, 1962, for act of omission and/or commission and for the reasons and allegations as discussed in earlier paragraphs.
- f. Penalty should not be imposed upon Shri Sangeet Chopra, proprietor, M/s. Aleo World Gym under Sections 114AA of the Customs Act, 1962, for act of omission and/or commission and for the reasons and allegations as discussed in earlier paragraphs.

**(IV) For INSGF6 Port In respect of 03 Bills of Entry as in Table-3.**

- a. The classification of the impugned goods namely "Mass gainer food supplements" under CTH 21061000 imported vide the above said Bills of entry as Table-3 should not be rejected and the same may be re-classified under CTH 21069099.
- b. Differential Duty of Customs amounting to Rs. 3,00,874/- only (Rs. Three Lakhs Eight Hundred and Seventy-Four only) in respect of 3 Bills of Entry as in Table-3 arising due to wrong classification of the imported goods during the period 18-09-2018 to 05-02-2020 should not be recovered from them, in terms of Section 28(4) of the Customs Act, 1962;
- c. The applicable interest on customs duty foregone amount should not be demanded and recovered from them under Section 28 AA of

the Customs Act, 1962;

- d. Mass gainers food supplements imported during the period 18-09-2018 to 05-02-2020, with the declared value of Rs. 28,57,149/-only (Rupees Twenty-Eight Lakhs, Fifty-Seven Thousands, One Hundreds Forty-Nine only), should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, since the said goods were imported by mis-declaration and mis-classification of the same, as detailed in Table-3;
- e. Penalty should not be imposed upon them under Section 112 and/or 114A of the Customs Act, 1962, for act of omission and/or commission and for the reasons and allegations as discussed in earlier paragraphs.
- f. Penalty should not be imposed upon Shri Sangeet Chopra, proprietor, M/s. Aleo World Gym under Sections 114AA of the Customs Act, 1962, for act of omission and/or commission and for the reasons and allegations as discussed in earlier paragraphs.

**(V) For INQRP6 Port In respect of 02 Bills of Entry as in Table-3.**

- a. The classification of the impugned goods namely "Mass gainer food supplements" under CTH 21061000 imported vide the above said Bills of entry as in Table-3 should not be rejected and the same may be re-classified under CTH 21069099.
- b. Differential Duty of Customs amounting to Rs. 2,50,024/- only (Rs. Two Lakhs Fifty Thousands and Twenty-Four only) in respect of 2 Bills of Entry as in Table-3 arising due to wrong classification of the imported goods during the period 17-12-2020 to 29-12-2020 should not be recovered from them, in terms of Section 28(4) of the Customs Act, 1962;
- c. The applicable interest on customs duty foregone amount should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962;



- d. Mass gainers food supplements imported during the period 17-12-2020 to 29-12-2020, with the declared value of Rs. 35,31,411/-only (Rupees Thirty-Five Lakhs, Thirty-One Thousands, Four Hundreds and Eleven only), should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, since the said goods were imported by mis-declaration and mis-classification of the same, as detailed in Table-3;
- e. Penalty should not be imposed upon them under Section 112 and/or 114A of the Customs Act, 1962, for act of omission and/or commission and for the reasons and allegations as discussed in earlier paragraphs.
- f. Penalty should not be imposed upon Shri Sangeet Chopra, proprietor, M/s. Aleo World Gym under Sections 114AA of the Customs Act, 1962, for act of omission and/or commission and for the reasons and allegations as discussed in earlier paragraphs.

**(VI) For INCPR 6 Port In respect of 03 Bills of Entry as in Table-3,**

- a. The classification of the impugned goods namely "Mass gainer food supplements" under CTH 21061000 imported vide the above said Bills of entry as in Table-3 to this Show Cause Notice should not be rejected and the same may be re-classified under CTH 21069099.
- b. Differential Duty of Customs amounting to Rs. 72,834/- only (Rs. Seventy-Two Thousands Eight Hundred and Thirty-Four only) in respect of 3 Bills of Entry as in Table-3 arising due to wrong classification of the imported goods during the period 04-07-2019 to 16-11-2019 should not be recovered from them, in terms of Section 28(4) of the Customs Act, 1962;
- c. The applicable interest on customs duty foregone amount should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962;
- d. Mass gainers food supplements imported during the period 04-07-2019 to 16-11-2019, with the declared value of Rs. 10,28,731/-only

(Rupees Ten Lakhs, Twenty Eight Thousands, Seven Hundreds Thirty-One only), should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, since the said goods were imported by mis-declaration and mis-classification of the same, as detailed in Table-3;

- e. Penalty should not be imposed upon them under Section 112 and/or 114A of the Customs Act, 1962, for act of omission and/or commission and for the reasons and allegations as discussed in earlier paragraphs.
- f. Penalty should not be imposed upon Shri Sangeet Chopra, proprietor, M/s. Aleo World Gym under Sections 114AA of the Customs Act, 1962, for act of omission and/or commission and for the reasons and allegations as discussed in earlier paragraphs.

2.14 Consequently the adjudicating authority passed a impugned speaking order wherein the adjudicating authority ordered as under :-

**For INMUN 1 Port- In respect of 11 Bills of Entry.**

- i. She rejected the classification of the impugned goods namely "Mass gainer food ' ( supplements" under CTH 21061000 imported vide the above said Bills of entry as detailed in Table-3 and order to re-classify the same under CTH 21069099.
- ii. She confirmed and ordered to recover the differential Duty of Customs amounting to Rs.17,08,250/- (Rs. Seventeen Lakhs Eight Thousands Two Hundred and Fifty only) in respect of 11 Bills of Entry as retailed in Table-3 arising due to wrong classification of the imported goods during the period 04-04-2018 to 15-01-2022 from appellant, in terms of Section 28(4) of the Customs Act, 1962;
- iii. She ordered to charge and recover the applicable interest on Customs duty foregone amount from appellant under Section 28AA of the Customs Act, 1962;
- iv. She confiscated the goods i.e. Mass gainers food supplements imported during the period 04-04-2018 to 15-01-2022, with the declared value of



Rs. 2,14,30,185/-only (Rupees Two Crores, Fourteen Lakhs, Thirty Thousands, One Hundreds and Eighty- Five only), under Section 111 (m) of the Customs Act, 1962. However, she refrained from imposing redemption fine in lieu of confiscation, as the goods were not physically available for confiscation.

v. She imposed a penalty of Rs. 17,08,250/- (Rs. Seventeen Lakhs Eight Thousands Two Hundred and Fifty only) upon M/s Aleo World Gym under Section 114A of the Customs Act, 1962.

vi. She refrained from imposing any penalty on Shri Sangeet Chopra, proprietor, M/s. Aleo World Gym under Sections 14AA of the Customs Act, 1962.

**For INLDH6 Port- In respect of 04 Bills of Entry.**

i. She rejected the classification of the impugned goods namely "Mass gainer food supplements" under CTH 21061000 imported vide the above said Bills of entry as detailed in Table-3 and order to re-classify the same under CTH 21069099.

ii. She confirmed and ordered to recover the differential Duty of Customs amounting to Rs. 13,71,633/- only (Rs. Thirteen Lakhs Seventy-One Thousands Six Hundred and Thirty-Three only) in respect of 04 Bills of Entry as detailed in Table-3 arising due to wrong classification of the imported goods during the period 13.03.2020 to 15.11.2021 from appellant, in terms of Section 28(4) of the Customs Act, 1962;

iii. She ordered to charge and recover the applicable interest on customs duty foregone amount from appellant under Section 28AA of the Customs Act. 1962;

iv. She confiscated the goods i.e. Mass gainers food supplements imported during the period 13.03.2020 to 15.11.2021, with the declared value of Rs. 89,43,215/-only (Rupees Eighty-Nine Lakhs, Forty-Three Thousands, Two Hundreds Fifteen only), under Section 111 (m) of the Customs Act, 1962. However, she refrained from imposing redemption fine in lieu of confiscation, as the goods were not physically available for confiscation.



- v. She imposed a penalty of Rs. 13,71,633/- only (Rs. Thirteen Lakhs Seventy-One Thousands Six Hundred and Thirty-Three only) upon M/s Aleo World Gym under Section 114A of the Customs Act, 1962.
- vi. She refrained from imposing any penalty on Shri Sangeet Chopra, proprietor, M/s. Aleo World Gym under Sections 114AA of the Customs Act, 1962.

**For INSN16 Port- In respect of 04 Bills of Entry.**

- i. She rejected the classification of the impugned goods namely "Mass gainer food supplements" under CTH 21061000 imported vide the above said Bills of entry as detailed in Table-3 and order to re-classify the same under CTH 21069099.
- ii. She confirmed and ordered to recover the differential Duty of Customs amounting to Rs. 6,11,248/- only (Rs. Six Lakhs Eleven Thousands Two Hundred and Forty-Eight only) in respect of 04 Bills of Entry as detailed in Table-3 arising due to wrong classification of the imported goods during the period 08.10.2018 to 16.06.2020 from appellant, in terms of Section 28(4) of the Customs Act, 1962;
- iii. She ordered to charge and recover the applicable interest on customs duty foregone amount from appellant under Section 28AA of the Customs Act, 1962;
- iv. She confiscated the goods i.e. Mass gainers food supplements imported during the period 08.10.2018 to 16.06.2020, with the declared value of Rs. 53,51,467/- only (Rupees Fifty-Three Lakhs, Fifty'-One Thousands, Four Hundreds Sixty-Seven only), under Section 111 (m) of the Customs Act, 1962. However, she refrained from imposing redemption fine in lieu of confiscation, as the goods were not physically available for confiscation.
- v. She imposed a penalty of Rs. 6,11,248/- only (Rs. Six Lakhs Eleven Thousands Two Hundred and Forty-Eight only) upon M/s Aleo World Gym under Section 114A of the Customs Act, 1962.
- vi. She refrained from imposing any penalty on Shri Sangeet Chopra, proprietor, M/s. Aleo World Gym under Sections 114AA of the Customs



Act, 1962.

**For INSGF6 Port- In respect of 03 Bills of Entry.**

- i. She rejected the classification of the impugned goods namely "Mass gainer food supplements" under CTH 21061000 imported vide the above said Bills of entry as detailed in Table-3 and order to re-classify the same under CTH 21069099.
- ii. She confirmed and ordered to recover the differential Duty of Customs amounting to Rs. 3,00,874/- only (Rs. Three Lakhs Eight Hundred and Seventy-Four only) in respect of 03 Bills of Entry as detailed in Table-3 arising due to wrong classification of the imported goods during the period 18.09.2018 to 05.02.2020 from appellant, in terms of Section 28(4) of the Customs Act, 1962;
- iii. She ordered to charge and recover the applicable interest on customs duty foregone amount from appellant under Section 28AA of the Customs Act, 1962;
- iv. She confiscated the goods i.e. Mass gainers food supplements imported during the period 18.09.2018 to 05.02.2020, with the declared value of Rs. 28,57,149/-only (Rupees Twenty-Eight Lakhs, Fifty-Seven Thousands, One Hundreds Forty-Nine only), under Section 111 (m) of the Customs Act, 1962. However, she refrained from imposing redemption fine in lieu of confiscation, as the goods were not physically available for confiscation.
- v. She imposed a penalty of Rs. 3,00,874/- only (Rs. Three Lakhs Eight Hundred and Seventy-Four only) upon M/s Aleo World Gym under Section 114A of the Customs Act, 1962.
- vi. She refrained from imposing any penalty on Shri Sangeet Chopra, proprietor, M/s. Aleo World Gym under Sections 1 MAA of the Customs Act, 1962.

**For INQRP6 Port- In respect of 02 Bills of Entry.**

- i. She rejected the classification of the impugned goods namely "Mass gainer food supplements" under CTH 21061000 imported vide the above said



Bills of entry as detailed in Table-3 and order to re-classify the same under CTH 21069099.

- ii. She confirmed and ordered to recover the differential Duty of Customs amounting to Rs. 2,50,024/- only (Rs. Two Lakhs Fifty Thousands and Twenty-Four only) in respect of 02 Bills of Entry as detailed in Table-3 arising due to wrong classification of the imported goods during the period 17.12.2020 to 29.12.2020 from appellant, in terms of Section 28(4) of the Customs Act, 1962;
- iii. She ordered to charge and recover the applicable interest on customs duty foregone amount from appellant under Section 28AA of the Customs Act, 1962;
- iv. She confiscated the goods i.e. Mass gainers food supplements imported during the period 17.12.2020 to 29.12.2020, with the declared value of Rs. 35,31,411/-only (Rupees Thirty-Five Lakhs, Thirty-One Thousands, Four Hundreds and Eleven only), under Section 111(m) of the Customs Act, 1962. However, she refrained from imposing redemption fine in lieu of confiscation, as the goods were not physically available for confiscation.
- v. She imposed a penalty of Rs. 2,50,024/- only (Rs. Two Lakhs Fifty Thousands and Twenty-Four only) upon M/s Aleo World Gym under Section 114A of the Customs Act, 1962.
- vi. She refrained from imposing any penalty on Shri Sangeet Chopra, proprietor, M/s. Aleo World Gym under Sections 114AA of the Customs Act, 1962.

**For INCPR6 Port- In respect of 03 Bills of Entry.**

- i. She rejected the classification of the impugned goods namely "Mass gainer food supplements" under CTH 21061000 imported vide the above said Bills of entry as detailed in Table-3 and order to re-classify the same under CTH 21069099.
- ii. She confirmed and ordered to recover the differential Duty of Customs amounting to Rs. 72,834/- only (Rs. Seventy-Two Thousands Eight



Hundred and Thirty-Four only) in respect of 03 Bills of Entry as detailed in Table-3 arising due to wrong classification of the imported goods during the period 04.07.2019 to 16.11.2019 from appellant, in terms of Section 28(4) of the Customs Act, 1962;

- iii. She ordered to charge and recover the applicable interest on customs duty foregone amount from appellant under Section 28AA of the Customs Act, 1962;
- iv. She confiscated the goods i.e. Mass gainers food supplements imported during the period 04.07.2019 to 16.11.2019, with the declared value of Rs. 10,28,731/- only (Rupees Ten Lakhs, Twenty-Eight Thousands, Seven Hundreds Thirty-One only), under Section 111(m) of the Customs Act, 1962. However, she refrained from imposing redemption fine in lieu of confiscation, as the goods were not physically available for confiscation.
- v. She imposed a penalty of Rs. 72,834/- only (Rs. Seventy-Two Thousands Eight Hundred and Thirty-Four only) upon M/s Aleo World Gym under Section 114A of the Customs Act, 1962.
- vi. She refrained from imposing any penalty on Shri Sangeet Chopra, Proprietor, M/s. Aleo World Gym under Sections 114AA of the Customs Act, 1962.

### **3. SUBMISSIONS OF THE APPELLANT:**

Being aggrieved with the impugned order, the appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 It is submitted that the impugned show cause notice dated 17.03.2023 on the subject matter has been issued on the basis of investigations conducted by the Lucknow Zonal Unit of Directorate of Revenue Intelligence and the Department has simply gone by their assertions as regards alleged misclassification of goods imported by the Appellant. Even the Customs Department at Mundra itself vide their letter F. No. VII/ 48-752/ Misc-Nutrition/Gr.1/MCH/2017-18 dated 29.09.2017 has held that the subject goods are appropriately classifiable under CTH 21061000. This gives credence and validity to the classification of the subject imported goods by the appellant under



CTH 21061000. Change of opinion by the Department cannot be a ground for invoking the extended period of limitation to saddle the appellant with a huge liability. Therefore on this point alone the Order-In-Original dated 22.11.2023 deserves to be set aside.

3.2 It is submitted that in the present case demand has been confirmed and demanded the Customs duty for the period from April, 2018 to January, 2022. It is submitted that the appellant did, in fact declare the correct description of the goods on the Bills of Entry which is not at all under challenge. Also the Order - in-Original dated 22.11.2023 does not bring about any piece of specific evidence to suggest that the goods which were imported did not confirm to the description of the goods as declared in the Bills of Entry. Thus there was no suppression of any fact on the part of the appellant and as such extended period of limitation as provided under sub-section (4) of Section 28 of the Customs Act, 1962 is not invokable in the present case. Since the show cause notice in this case has been issued beyond "one year" from the "relevant date", which was the normal period of limitation under Section 28(1) of the Customs Act, 1962 at the time of import of goods, and as such the confirmation and demand of differential duty under Section 28(4) of the Customs Act is bad in law and deserves to be set aside. It is further submitted that the order passed in this case has not brought out any evidence or any circumstances based upon which the allegation of suppression of any material fact and "intention to evade the Customs duty" is substantiated. It is also submitted that mere inaction or omission cannot be held to be a ground for invocation of extended period of limitation under the Customs Act, 1962. The extended period of limitation for demand of Customs duty can be invoked only when deliberate attempt to mis-declare or suppress is present and not otherwise. From the plain reading of Section 28 (4) of the Customs Act, 1962 it can be seen that the extended period of limitation for demand of Customs duty can be invoked only if the ingredients prescribed for invocation of same is present. It is also settled principle that the "burden of proof" for proving the presence of ingredients for invoking extended period of limitation for demand of Customs duty lies on the department and it has to be proved based on material evidences and not on presumptions and assumptions. In the instant case, the Order-in-Original has failed to bring out anything on records in material form which could prove that the ingredients prescribed under Section 28(4) of the Customs Act, 1962 were present in this case and the appellant in any way had the intention to evade such duty. In this regard, the ratio laid down by the Hon'ble Supreme Court in the case of Collector



of Central Excise Vs Chemphar Drug and Lubricants [1989 (40) E.L.T. 276 (S.C.)], which is pari materia to this case may please be appreciated.

3.3 It is submitted that as regards the aspect of "invocation of extended period", has not given any reasoning and / or finding in the Discussion and Finding part of the Order dated 22.11.2023 justifying the invocation of extended period under Section 28(4) for demand and recovery of duty is present in this case. It is also submitted that Section 17(2) of the Customs Act, 1962 does empowers the "proper officer" to verify the entries made in the Bill of Entry and for this purpose he may examine or test any imported goods or any part thereof. The Appellant has not received any communication upon this aspect to submit any more documents than the one filed along with the Bills of Entry, when such Bills of Entry were filed, and thus allegation that the Appellant has mis-stated or suppressed facts does not survive as no extra documents were called for by the assessing officers at any time during the assessment proceedings or examination of goods. Thus, there is no basis upon which the extended period of limitation for demand of duty under Section 28(4) of the Customs Act, 1962 could have been invoked in this case nor there are any findings of the Adjudicating Authority on this aspect. Therefore the confirmation and demand of differential duty under Section 28(4) of the Customs Act, 1962 vide the subject order-in- original passed by the Adjudicating Authority is bad in law and deserves to be quashed.

3.4 It is submitted that the description of goods and CTH were very well mentioned on the Bills of Entry as per the assessment of the Appellant at the time of filing of Bills of Entry. The other documents as required under the prescribed procedure for filing the Bills of Entry were duly submitted and the labels of goods were having all the details for examination by the Customs Authorities as per the specified procedure. Thus the finding that the Appellant has suppressed any fact or has mis-stated with intent to evade the duty cannot survive. It is submitted that only contravention upon which the impugned show cause notice dated 17.03.2023 and the Order-In- Original dated 22.11.2023 proceeds is that of Section 46(4) of the Customs Act, 1962, which says that the appellant while presenting a Bill of Entry shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed. In view of above submissions, this very requirement is very well fulfilled in the instant case and apart from this, no other contravention is invoked either in the




show cause notice or in the Order-In- Original, hence the very basis for demand of duty and it's confirmation is vague. Thus, the Order-In-Original suffers from grave legal infirmity and as such liable to be set aside.

3.5 It is also submitted that though the Adjudicating Authority has deliberated the HSN Explanatory Notes of Chapter Heading 2106 as per his convenience but has failed to appreciate that as per Rule 1 of the General Rules of Interpretation of the Customs Tariff, for legal purposes, the classification of goods has to be determined in accordance with terms of heading and any relative Section Note or Chapter Note. It is also submitted that in terms of Rule 2 (b) of the said Rules, a reference in a heading to a material or substance shall be taken to include a reference to mixtures or combination of that material or combination of that material or substance with other material or substance. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The said Rule also provides that classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3. Further, as per Rule 3 (a), the heading which provides the most specific description shall be preferred to headings providing a more general description and as per Rule 3 (b), mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of material or component which gives them their essential character, insofar as this criterion is applicable. In the instant case by application of Rule 3 (a) and Rule 3 (b), the most specific description for the product in question is Protein concentrates and also it is this component which gives the said product it's essential character and marketability. Thus, the said product has been rightly classified by appellant at Tariff Heading 21061000 while importing. Moreover, the subject goods under import are known in the market parlance as "Protein Concentrate" and not as "Mass Gainer Nutritional Supplements or Food Supplements or Dietary Supplements". It is further submitted that when a product is understood in the market in a particular sense, then in absence of the statutory definition of such product in the Tariff, Common parlance or the Market Parlance has to be preferred over the Dictionary meaning or other scientific or technical meaning. In this case, the product in question is understood in the market as "Protein Concentrates", and not understood as "Mass Gainer Nutrition or Dietary or Food Supplement". In such a scenario, by application of the HSN Explanatory Notes, the product imported by the Appellant would be more appropriately classified



under CTH 21061000. The Adjudicating Authority has failed to appreciate these aspects and has proceeded to adjudicate the case beyond the scope of the show cause notice itself, which is bad in law. In this regard, the ratio laid down in the cases of Collector of C. Ex Vs Krishna Carbor. Paper Co. Ltd [1988 (37) ELT 480 (SC)], Dunlop India Ltd Vs UOI [1983 (13) ELT 1566 (SC)] and Commissioner of C. Ex New Delhi Vs Connaught Plaza Restaurant (Pvt) Ltd [2012 (286) ELT 321 (SC)], by Hon'ble Supreme Court which is pari-materia to interpretation of Customs Tariff may kindly be appreciated.

3.6 It is further submitted that "Mass Gainer food supplements" are covered under the CTH 21061000 which covers Protein Concentrates and Textured Protein Substances; hence the appellant has correctly classified them under that CTH. However, as per the order dated 22.11.2023, the correct classification should have been CTH 21069099, which is meant for "others" of "others" of CTH 2106. The said Order under Para 11.8 states that, "...in the imported products, protein is very less in comparison to the carbohydrate, which is essential character for mass gainer and therefore the imported product should rightly be classified under 21069099..." In this regard it is submitted that it has low level of protein in comparison to the carbohydrates and fats because mass gainer is typically taken to increase the calorie level in body to further instigate muscle gain.

3.7 It is submitted that in Para 11.6 of the order dated 22.11.2023, it is mentioned that, "... in some case seller has mentioned CTH 210690 in their commercial invoice but M/s Aleo World Gym has filed B/E under CTH 210610 against the same commercial invoice. This act of the appellant clearly shows their willful intention just to evade applicable customs duty..." In this regard it is humbly submitted that the classification mentioned in the invoice of overseas supplier is not sacrosanct and is subject to interpretation by the appellant and the assessing officer at the port of import. They cannot be treated as gospel truth as held by the CESTAT, Hyderabad in Customs Appeal No. 27557 of 2013 in case of The Commissioner of Central Excise and Customs Vishakhapatnam II Commissionerate, Vishakhapatnam versus M/S Reliance Infrastructure Ltd. It was held in Para 43(k) of the CESTAT order that, "Classification of imported goods is a part of assessment which power and responsibility is with appellant, the proper officer or the adjudicating authority and not with the overseas supplier."

3.8 It is submitted that the order issued by the Adjudicating Authority failed to appreciate that the item under import i.e. Mass Gainer is nothing but a type of protein concentrate only and is used for weight gain and building muscle mass. It contains whey proteins concentrates and it is a dietary supplement. The % age of protein varies in different brands and it is not fixed for all products. The level is kept different keeping in mind the customers' requirements. Moreover, protein concentrates do not mean that it will have 100% protein in it, in order to be eligible for being classifiable under CTH 21061000. Study shows that this item may include other ingredients such as carbohydrate, added sugars, artificial flavoring, thickeners, vitamins, and minerals. The amount of protein per scoop can vary from 10 to 50 grams. It is the scoop size or serving size that determines the protein intake and not the % age of protein in the product. It will not be out of context to mention here that more intake of protein is harmful to heart and to kidneys of humans. In this background, it is submitted that the product Mass gainer is nothing but Protein Concentrate only and therefore rightly classified under CTH 21061000 during import. In this regard, it is further submitted that the component which gives essential characteristics to the aforesaid goods are Proteins which are vital for making body and muscle mass and as such these goods are bought and sold in the market as "High Protein Weight Gain Powder" and understood in the commercial parlance as such. This can be appreciated from the Labels used on these products. It is submitted that the said powders do essentially contain "whey protein concentrate" and other nutrients and flavouring materials. These powders are marketed in retail as "weight gainers/mass gainers" which is essentially a function of "protein". Though the said powders contain other substances viz. nutrients or flavouring materials, but it is the protein concentrate which gives them the essential characteristics and marketability. In these circumstances, it is submitted that applying the principles enunciated under Rule 2(b) and also 3(b) of General Rule of Interpretation of the Customs Tariff, the goods confirm to the specific description "Protein Concentrate and Textured Protein Substances" at Tariff Heading 21061000 and accordingly the appropriate duty of Customs has been paid on such goods. The combination of complex amino acids with the proteins, thus, fortifies the fact that the essential character of the products lies in proteins. These proteins and amino acids are used for building muscular mass, not simply for weight gain as assumed in the show cause notice. These are body building products which includes muscle mass gain. In Collector of Central Excise Hyderabad v. Bakelite Hylam Ltd. [1997 (91) E.L.T. 13 (S.C.)J it was held that

even the Decorative Laminate Sheets contained 60-70% paper, 30- 40% resin,



the essential character was determined by the presence of resin, though numerically in lesser quantity, by applying the rule 3 (b) of the GRIs. This case was followed in Collector of Central Excise, Ahmedabad v. Jai Laminates Ltd. [1997 (93) E.L.T. 368 (Tribunal)], which was also affirmed in the Hon'ble Supreme Court in Jai Laminates Ltd. v. Collector [1997 (93) E.L.T. 368 (Tribunal)]. The ratio of Hon'ble Tribunal Order in Rana Enterprises v. Commissioner of Customs, Mumbai [2011 (267) E.L.T. 546 (Tri. - Mumbai)] is that classification has to be determined by essential character test and not by percentage of composition. Further, even in value terms, the 'essential character' of the imported products consists of high quality concentrated proteins and amino acids and not carbohydrates. One cannot go by just comparative weight of the constituents. The expression used is not "main ingredient", but "essential character".

3.9 It is submitted that in view of above submissions, once the demand of Customs duty is not sustainable on merits and also because of time bar aspect, the demand of interest under Section 28AA of the Customs Act, 1962 becomes non-est in law because this provision is applicable only when there is a liability to pay the duty and it cannot be invoked, when the Appellant is not at all liable to pay any Customs duty.

3.10 It is also submitted that the Adjudicating Authority has ordered for confiscation of the subject goods under Section 111(m) of the Customs Act, 1962 totally valued at Rs. 4,31,42,158/- however has refrained from imposing any redemption fine as the goods were not physically available for confiscation. Hon'ble CESTAT, New Delhi in case of M/s Midas Fertchem Impex Pvt Ltd. v. Principal Commissioner of Customs, (Import, ACC, New Delhi) in Customs Appeal No. 52239 OF 2021 has held in Para 59 that,

"...

*As far as 111(m) is concerned, we do not find any mis-declaration of the goods, although they deserved to be classified under CTH 3808 as "plant growth regulators" but all the documents including literature was made available to the officer during assessment. We, therefore, also find section 111(m) does not apply."*

3.11 It is also submitted that the description of goods was well written on the Bills of Entry filed with the Department and the Adjudicating Authority has not recorded any specific finding that the description of goods was deficit in any material particular or the imported goods actually were not confirming to the



description of the goods. Also, there is no finding as regards the evidences from which intention to evade the Customs duty can be derived on the part of the Appellant, rather the Adjudicating Authority has presumed the existence of "mens rea" in the matter which is against the settled principles of law and as such imposition of penalty under Section 114A of the Customs Act, 1962 vide Order-In-Original dated 22.11.2023 is illegal and liable to be set aside.

3.12 It is also submitted that the acts of the Appellant were purely based upon bona-fide belief and the issue in this case is purely related to interpretation of the statute and the related classification, hence there was no intention to evade the Customs duty. It is well settled that the burden of proof for establishing the intention to evade the duty lies on the revenue and unless and until this burden is discharged, penalty under Section 114A of the Customs Act, 1962 cannot be imposed. It is also submitted that since the demand of Customs duty is not sustainable in the present case either on merits or on consideration of limitation, penalty under Section 114A of the Customs Act, 1962 would also not be imposable. In this regard, the ratio laid down by Hon'ble Supreme Court in the cases of Cosmic Dye Chemical Vs Collector of Central excise, Bombay [1995 (75) ELT 721 (SC)] and UOI Vs Rajasthan Spinning and Weaving Mills [2009 (238) ELT 3(SC)], which is pari materia to the Customs Act, 1962 may also be seen.

#### **PERSONAL HEARING:**

4. Personal hearing in the matter was held on 29.04.2025 in virtual mode. Shri Pramod Kedia, Consultant, appeared for hearing representing the appellant. He reiterated the submissions made in the appeal memorandum and also referred to a recent judgement dated 30.01.2025 in case of M/s Bright Performance Nutrition Pvt Ltd in Customs Appeal no. 10072 of 2024 by the Division Bench of Hon'ble CESTAT, WZB at Ahmedabad on similar issue wherein the demand was set aside on merits as well as on the period of limitation.

#### **DISCUSSION AND FINDINGS:**

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellants in their appeal. The Appellant has filed the present appeal on 29.01.2024. In the Form C.A.-1, the Appellant has mentioned date of

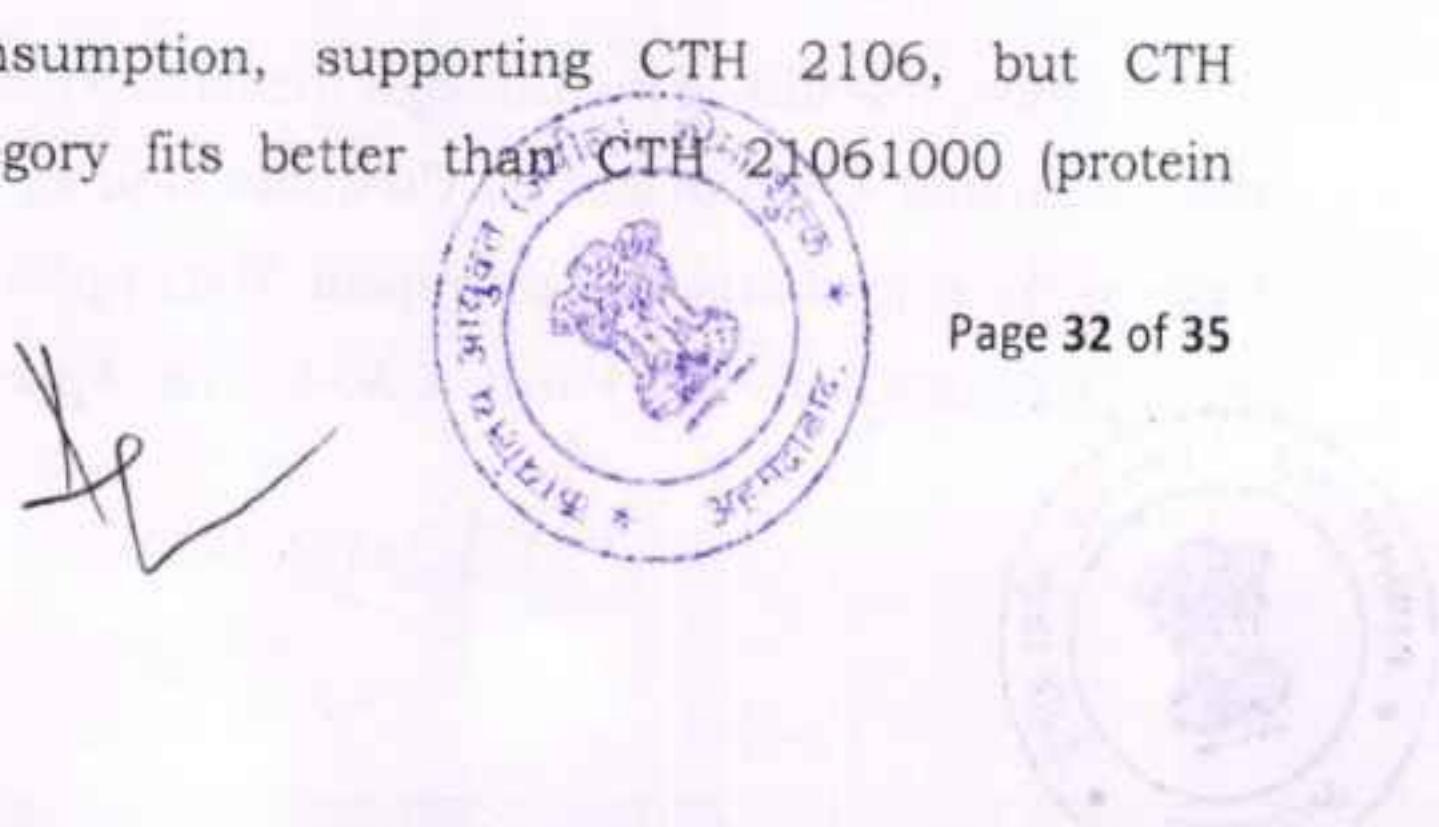


communication of the Order-In-Original dated 22.11.2023 as 30.11.2023. Hence, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has submitted a copy of the Challan No. MCH/2327/2023-24 dtd 19.01.2024 towards payment of pre-deposit of Rs. 3,23,700/-. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

5.1 On going through the material on record, I find that following issues are to be decided in the present appeal:

- i. Whether the classification of "Mass Gainers Food Supplements" under CTH 21061000 is correct, or should it be under CTH 21069099 as determined by the Adjudicating Authority.
- ii. Whether the invocation of the extended period under Section 28(4) of the Customs Act, 1962, is justified in this case or otherwise.
- iii. Whether the imposition of penalty under Section 114A of the Customs Act, 1962 is justified.

5.2 It is observed that the Adjudicating Authority emphasized that the imported "Mass Gainers Food Supplements" (e.g., Bad Ass Mass Gainer, Levrone Anabolic Mass) are finished, ready-to-consume food supplements, not raw materials, and should be classified under CTH 21069099, not CTH 21061000 as declared by the Appellant. The authority relied on the Co-operation Agreement No. IND01-2017, noting the products are dietary supplements of "Food Grade," sold with the manufacturer's trademark, indicating finished products for direct consumption. Packet sizes (small quantities) and statements by Shri Sangeet Chopra (proprietor) on 02.12.2020 confirmed they are ready-to-mix powders, ruling out repacking. Further, the adjudicating authority relied on the nutritional analysis that showed higher carbohydrate content (e.g., 174g carbs vs. 60g protein in Elite lab Muscle mass gainer), making carbohydrates the essential character, per GRI Rule 3(b). Chapter Note 5(b) of Chapter 21 covers preparations for human consumption, supporting CTH 2106, but CTH 21069099 as a residual category fits better than CTH 21061000 (protein



concentrates).

5.3 It is observed that the Appellant's key contentions are that the goods are protein concentrates under CTH 21061000, as their essential character is derived from protein, supported by General Rules of Interpretation (GRI) Rules 1, 2(b), and 3(a)/(b) and market parlance. A prior Mundra Customs letter dated 29.09.2017 endorsed this classification. The extended limitation period under Section 28(4) was wrongly invoked, as all documents were submitted, and no evidence of willful misstatement or suppression exists. The burden to prove intent lies with the department, per Collector of Central Excise v. Chemphar Drug and Liniments 1989 (40) E.L.T. 276 (S.C.). Confiscation under Section 111(m) and penalty under Section 114A are unjustified, as there was no misdeclaration, citing Midas Fertchem Impex Pvt. Ltd. v. Principal Commissioner of Customs, Customs Appeal No. 52239 of 2021. The Adjudicating Authority failed to consider the defense reply and case laws, violating natural justice principles. The appellant has also relied on judgement dated 30.01.2025 in case of M/s Bright Performance Nutrition Pvt Ltd in Customs Appeal no. 10072 of 2024 by the Division Bench of Hon'ble CESTAT, WZB at Ahmedabad on similar issue wherein the demand was set aside on merits as well as on the period of limitation.

5.4 It is observed that the appeal hinges on whether the classification of "Mass Gainers Food Supplements" under CTH 21061000 correct, or should it be under CTH 21069099 as determined by the Adjudicating Authority and, consequently, liable for penalties due to non-compliance. The Impugned Order centers on reclassifying mass gainers under CTH 21069099 due to their finished nature and higher carbohydrate content, invoking the extended limitation period for duty evasion, confiscating goods for misdeclaration, imposing penalties for evasion, and asserting procedural fairness through evidence review. These contentions form the basis of the OIO, which the Appellant challenges, particularly on classification and limitation.

5.5 During the course of personal hearing, the appellant has relied on M/s Bright Performance Nutrition Pvt Ltd in Customs Appeal no. 10072 of 2024 by the Division Bench of Hon'ble CESTAT, WZB at Ahmedabad on similar issue wherein the demand was set aside on merits as well as on the period of limitation. I have carefully examined the appeal, submissions made during the personal hearing, and the records of the case. It is observed that the CESTAT's decision



in Bright Performance Nutrition Pvt. Ltd. v. Commissioner of Customs, Mundra Final Order No. 10073/2025 dated 30.01.2025 is highly relevant due to striking similarities with the present case:

Aspect	Aleo World Gym	Bright Performance Nutrition
Product Type	Mass Gainers Food Supplements (e.g., Bad Ass Mass Gainer, Levrone Anabolic Mass)	Mass Weight Gainer-Nutrition Supplement
Classification Dispute	CTH 21061000 (Appellant) vs. CTH 21069099 (Department)	CTH 21061000 (Appellant) vs. CTH 21069099 (Department)
Essential Character	Argued as protein concentrates, per GRI Rules 1, 2(b), 3(a)/(b) and market parlance	Argued as protein concentrates, upheld under CTH 21061000 per GRI Rule 3(b)
Limitation Period	Contested extended period under Section 28(4) as no suppression proven	Extended period under Section 28(4) rejected due to no suppression
Evidence	All documents submitted, no willful misstatement	Consistent declarations, no evidence of suppression

5.6 In case of Bright Performance, the CESTAT held that mass gainers, primarily used for muscle building, are correctly classified under CTH 21061000 due to their protein content and market understanding. It rejected CTH 21069099 as a residual category unsuitable for such products. Additionally, the Tribunal found the duty demand time-barred, as the department accepted CTH 21061000 for years without objection, indicating no suppression. These findings also apply to appellant, where the goods are similarly described, and the department's prior acceptance (e.g., 2017 letter) suggests no deliberate misdeclaration.

5.7 The Adjudicating Authority could not have considered this Judgement as it was issued after the issuance of the OIO, necessitating a remand to ensure its application. This aligns with principles of natural justice and Section 128A, which empowers remand for re-adjudication in light of new evidence or guidelines. It is essential for the adjudicating authority to reassess the facts in the light of this authoritative advisory, which was not in existence at the time of the original adjudication. In view of the above, the matter is required to be remanded for de novo adjudication. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs – 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble

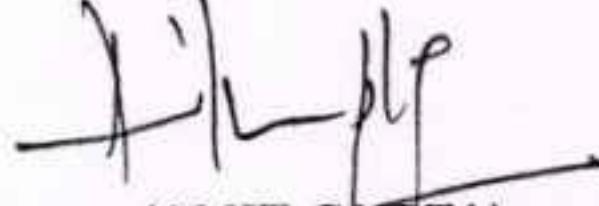
Tribunals in case of Prem Steels P. Ltd. [ 2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] wherein it was held that Commissioner (Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

6. In view of the above findings and in exercise of the powers conferred under Section 128A of the Customs Act, 1962, I hereby set aside the Order-in-Original No. MCH/ADC/MK/210/2023-24 dated 22.11.2023 and remand the matter to the adjudicating authority with the direction to reconsider the case afresh, after giving the appellant an opportunity of being heard and taking into account the judgement in case of M/s Bright Performance Nutrition Pvt Ltd in Customs Appeal no. 10072 of 2024 by the Division Bench of Hon'ble CESTAT, WZB at Ahmedabad.

7. The appeal filed by the appellant is allowed by way of remand.



सत्यापित/ATTESTED  
 अधीक्षक/SUPERINTENDENT  
 सीमा शूलक (अपील), अहमदाबाद.  
 CUSTOMS (APPEALS), AHMEDABAD.

  
 (AMIT GUPTA)

Commissioner (Appeals),  
 Customs, Ahmedabad

F. No. S/49-167/CUS/MUN/2023-24  
1678

Date: 24.06.2025

By Registered post A.D/E-Mail

To,  
 M/s Aleo World Gym (IEC 3003002082)  
 Satsang Road, Near Old Court Chowk,  
 Opposite Greatway Hosiery,  
 Ludhiana-141003

Copy to:

- 1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
- 2. The Pr. Commissioner of Customs, Customs House, Mundra.
- 3. The Additional Commissioner of Customs, Custom House, Mundra.
- 4. Guard File.