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**CONSULTANTS:**

GST, CUSTOMS, FOREIGN TRADE LAWS,  
FOREIGN EXCHANGE MANAGEMENT ACT.

## OPINION

1. **Querist :**

M/s. Greenbay Forwarders on behalf of M/s.Intermed, Chennai.

2. **Facts :**

2.1 M/s.Intermed is an exporter of various drugs / drug formulations for which they avail various export incentives, including MEIS benefit. It is noticed that in respect of four shipping bills covering export of "Artemether and Lumefantrine" the exporter has availed MEIS benefit by classification of these goods under Heading 3004 9059 and 30049099. Heading 3004 9059 covers "Other Anti-malarial Drugs" and heading 30049099 covers 'others'.

2.2 The customs department has issued Audit Consultative Letter dated 12.6.2021 from File No.CHE/245/C-III/TBA-129/2021-AUDIT in this regard suggesting that the above two products viz. Artemether and Lumefantrine should fall under Heading 3003 6000 and 3004 6000 of the First Schedule to the Customs Tariff Act and consequently, for goods falling under these headings MEIS benefit is not available. On the basis of these observations the department has demanded return of MEIS benefit to the extent of Rs.2,38,355/- with interest in terms of Section 28AAA.

3. **Query :**

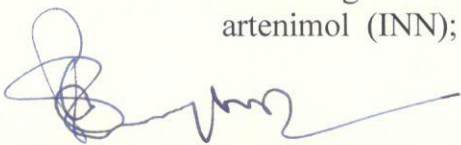
In the above context, querist would like to know whether the demand made by the customs is sustainable.

4. **Opinion :**

4.1 It is noticed that the exporter has classified the above two anti-malarial drugs 'Artemether and Lumefantrine' under heading 3004 9059 as "Other Anti-malarial Drugs" and under 3004 9099 as "Others". With effect from 1.1.2017 in terms of Finance Act 2016 an amendment was made and the following sub-heading note to Chapter 30 was added.

**"Sub-heading Notes :**

2. Sub-headings 3003 60 and 3004 60 cover medicaments containing artemisinin (INN) for oral ingestion combined with other pharmaceutical active ingredients, or containing any of the following active principles, whether or not combined with other pharmaceutical active ingredients : amodiaquine (INN); artelinic acid or its salts; artemimol (INN); artemotil (INN); **artemether (INN)**; artesunate



(INN); chloroquine (INN); dihydroartemisinin (INN); **lumefantrine (INN)**; mefloquine (INN); piperaquine (INN); pyrimethamine (INN) or sulfadoxine (INN).”

4.2 Heading 3003 60 00 reads as follows:

“Other, containing antimalarial active principles described in Sub-heading Note 2 to this Chapter.”

Heading 3004 60 00 reads as follows:

“Other, containing antimalarial active principles described in Sub-heading Note 2 to this Chapter.”

The main heading for ‘3003’ is “*Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale*”.

The main heading for ‘3004’ is “*Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale*”.

4.3 In the light of the above, it will be obvious that these two items need to be classified under 3003 6000/ 3004 6000. For goods falling under the above two headings, there is no MEIS benefit. As such, the benefit availed by the exporter is not correct. Section 28AAA of Customs Act 1962 provides for recovery of the wrong credit given from the exporter.

4.4 Under such circumstances, the demand made by the department appears to be in order and the exporter can pay the amount received as incentive with interest at the earliest to avoid accumulation of further interest and also further penal proceedings.



**S. MURUGAPPAN**

sm/ss

**Disclaimer:-** The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.