

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

K.NANCY, B.COM., B.L. (HONS.),
G.GAUTHAM RAM VITTAL, L.L.B.

CONSULTANTS:

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

OPINION

1. **Querist :**

M/s. K.P.Manish Global Ingredients Pvt. Ltd.,
41, Raghunayakulu Street,
Park Town,
Chennai – 600 003.

2. **Facts :**

The querist imports LycoBeads 5% VBAF and Lycobeads® S Beadlets 5% from the manufacturer Lycored Ltd., Israel. The querist has been classifying these goods under Heading 3203 of the First Schedule to the Customs Tariff Act as 'colouring matter of vegetable or animal origin'. At eight-digit level these are classified under Heading 3203 0090 with 7.5% basic customs duty (the present rate of basic customs duty) by the querist.

3. **Query :**

The querist would like to know whether the classification adopted by them is in order.

4. **Opinion :**

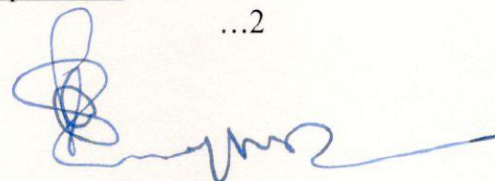
4.1 Heading 3203 of the First Schedule to the Customs Tariff Act covers colouring matter of vegetable or animal origin including dyeing extracts. The HSN Explanatory Notes to Heading 3203 states the following:

“This heading covers the greater part of the products of vegetable or animal origin used **mainly** as colouring substances. These products are generally extracted from materials of vegetable origin (wood, barks, roots, seeds, flowers, lichens, etc.) or of animal origin, by steeping them in water or in weak acid or ammonia solution or, in the case of certain vegetable materials, by fermentation. They are relatively complex materials and generally contain one or more colouring principles with small quantities of other substances (sugars, tannins, etc.) originating either from the raw materials or resulting from the extraction process. They are included in this heading whether or not they are chemically defined compounds.

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The heading also covers preparations based on colouring matter of vegetable or animal origin, of a kind used for colouring any material or used as ingredients in the manufacture of colouring preparations.”

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4.2.1 From the above, it can be seen that for classification under Heading 3203 the product should be mainly used as a colouring substance. It includes preparations based on colouring matter also but the purpose should be colouring of any material or used as ingredients in the manufacture of colouring preparations. The supplier's website www.lycored.com contains details about their various products which includes carotenoids. The website states that carotenoids are essential for a healthy life style. Under the heading 'Overview' the following is stated in the website.

"Carotenoids have been at the very heart of Lycored since day one. Over the years, we've learned so much about them from their ability to partner with other nutrients to the wealth of nutrition found inside each tiny molecule. Before we get into the specifics of various products, let's take a step back and look at these powerful nutrients as a whole."

4.2.2 Then under "what is carotenoids" the following is stated.

"Carotenoids are the tiny pigments that give fruits, veggies, and other organisms their vibrant hues. The human body cannot manufacture them, making supplementation and dietary incorporation a necessity."

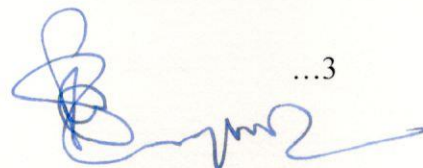
4.2.3 Under "Common carotenoids" Lycopene is also mentioned. Then under "Our carotenoid families" the following is stated.

"We're proud to offer a number of carotenoids in a variety of formulations. Click the boxes below to learn more about our offerings."

4.2.4 One of the products mentioned under carotenoid family is 'Lycopene'. The product details of Lycopene are mentioned in the website as given below.

"Lycopene has inspired and challenged us for over twenty years—it was the carotenoid we started with and the one we keep coming back to, year after year, as we learn more about this incredible phytonutrient and the way it benefits our wellbeing from the womb to our twilight years.

Because of lycopene we established our own approach to vertical integration, which we like to call holistic production. From the seeds of our carefully cultivated tomatoes to the seeds of our scientific and creative thinking, the way we share our lycopene with the world is truly unique and the result of our commitment to quality. Discover our seal and how it represents our core values here."

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4.2.5 The website further states,

“The human body can't produce lycopene on its own, so getting it through our diets is essential. Supplementation can help ensure that we're getting the carotenoid on a regular basis. There is a different recommended dosage depending on the desired effect—check out the numbers below.”

4.2.6 Further details indicated are for General Benefits 10 mg, Skin Health 10 mg, Prostate Health 10-15 mg, Cardiovascular Health 15 mg, Vision Health 15 mg and Bone Health 30 mg. Below that various formulations and product details are given. LycoBeads 5% VBAF is one of the products and its application is given as dietary supplements and suitable for hard shell capsules and tablets. The specification for this product is 5% natural tomato lycopene and it is in the form of microencapsulated alginate beadlets. LycoBeads 5% is another product mentioned in the website with its specification shown as ‘5% natural tomato lycopene’. Its formulation is shown as ‘gelatin-based, microencapsulated powder’ and its application is given as ‘dietary supplements suitable for hard shell capsules and tablets’.

4.3 Apart from the above, the querist has made available the following composition details for “Lycobeads® S Beadlets 5%”.

Ingredients	Composition
Modified Food Starch	59-66%
Sugar	18-23%
Water	5-8%
Lycopene	5%
Sodium Ascorbate	2-4%
dl- a- Tocopherol	0.4-1.4%

For Lycobeads 5% VBAF the following is the composition details provided by the querist.

Ingredients	Composition
Pea starch	44-53%
Alginate	30-35%
Gum Acacia	4-7%
Tomato Lycopene	5%

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- 4.4 From the above, it is clear that though lycopene as such can be used as a food colour of vegetable origin, the products under reference are not pure lycopene intended to be used as food colours but formulations based on lycopene and intended to be used in dietary supplements. The HSN Explanatory Notes to heading 3203 clearly specifies that colouring matter of vegetable origin falling under 3203 is mainly used for colouring. But here the purpose of formulation which is obviously patented by the manufacturer is for using the product as an ingredient in food preparations and as dietary supplements. Therefore, in our view, these products should fall under 2106 as “food preparations not elsewhere specified or included”.
- 4.5 At eight-digit level these will be classifiable under 2106 9099. Our view also is supported by one of the rulings given by US Trade Commission. The product under consideration in that ruling bearing No.NY N281442 dated 8th February 2017 was Lycopene 10% CWD powder imported from China. A copy of the ruling is attached as annexure to this opinion. As per the details contained in that ruling the product under consideration was Lycopene 10% CWD powder said to contain 83% modified food starch, 10% lycopene, 5% water and 2% DL alpha tocopherol. Though the classification was claimed under 3203 in that case, the Trade Commission confirmed the classification under 2106.90.9898 of the US Customs Tariff.
- 4.6 It also may be noted that classification for such formulations finally needs to be confirmed after testing by customs with regard to the presence of the constituents and ingredients as claimed by the manufacturer.



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Disclaimer:- The above opinion is provided based on the information and documents made available to us by the queriest 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.