

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 :**

- 2.1 Querist regularly imports Instantized L-Leucine Powder, Instantized L-Isoleucine Powder and Instantized L-Valine Powder.
- 2.2 It is reported that for making these products as instantized powders, a small percentage of Lecithin is added. For the three products the ingredients statements made available by the querist read as follows:

Instantized L-Leucine Powder SF

Ingredients	Typical Value
L-Leucine	99.7%
Lecithin	0.3%

Instantized L-Isoleucine Powder SF

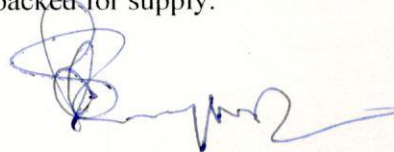
Ingredients	Typical Value
L-Isoleucine	99.7%
Lecithin	0.3%

Instantized L-Valine Powder SF

Ingredients	Typical Value
L-Valine	99.7%
Lecithin	0.3%

- 2.3 The querist also has made available a manufacturing chart from the supplier INNOBIO Corporation Limited as to the process of production of these goods. As per this chart, to the basic product, i.e. L-Leucine, L-Isoleucine and L-Valine, Lecithin is added and then homogenization takes place. After the mix is homogenised, it is dried, sieved and then packed for supply.

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3. **Query :**

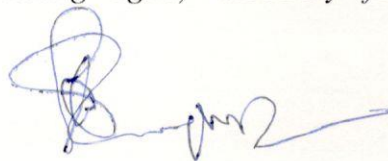
On the basis of the above facts, the querist would like to know the appropriate classification for these goods.

4. **Opinion :**

4.1 The basic products as such, may fall under Chapter 39 as "organic chemicals" i.e. L-Leucine, L-Isoleucine and L-Valine. However, in the instant case, Lecithin is added and then homogenization takes place and the products are supplied. It is seen that these goods are used as dietary supplements. Chapter 29 covers 'organic chemicals' and heading 2922 covers "Oxygen-function amino-compounds". At the same time, it is to be noted that the scope of this chapter is restricted to separate chemically defined organic compounds, whether or not containing impurities. Chapter Note (1) to Chapter 29 of the First Schedule to the Customs Tariff Act reads as follows:

*"1. Except where the context otherwise requires, the headings of this Chapter **apply only to :***

- (a) **separate chemically defined organic compounds**, whether or not containing impurities;*
- (b) mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (Chapter 27);*
- (c) the products of headings 2936 to 2939 or the sugar ethers, sugar acetals and sugar esters, and their salts, of heading 2940, or the products of heading 2941, whether or not chemically defined;*
- (d) the products mentioned in (a), (b) or (c) above dissolved in water;*
- (e) the products mentioned in (a), (b) or (c) above dissolved in other solvents provided that the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport and that the solvent does not render the product particularly suitable for specific use rather than for general use;*
- (f) the products mentioned in (a), (b), (c), (d) or (e) above with an added stabiliser (including an anti-caking agent) necessary for their preservation or transport;*



- (g) *the products mentioned in (a), (b), (c), (d), (e) or (f) above with an added anti-dusting agent or a colouring or odoriferous substance added to facilitate their identification or for safety reasons, provided that the additions do not render the product particularly suitable for specific use rather than for general use;*
- (h) *the following products, diluted to standard strengths, for the production of azo dye: diazonium salts, couplers used for these salts and diazotisable amines and their salts."*

4.2 In the HSN Explanatory Notes to Chapter 29, it is clearly stated that as a general rule, the chapter is restricted to separate chemically defined compounds, subject to the provisions of Note 1 to that chapter. Now, chemically defined compounds are explained in the following manner in the HSN Explanatory Notes.

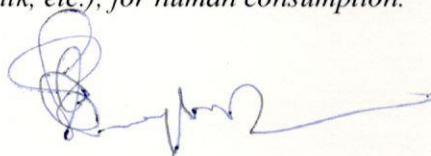
"A separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram. In a crystal lattice, the molecular species corresponds to the repeating unit cell.

Separate chemically defined compounds containing other substances deliberately added during or after their manufacture (including purification) are excluded from this Chapter. Accordingly, a product consisting of saccharin mixed with lactose, for example, to render the product suitable for use as a sweetening agent is excluded (see Explanatory Note to heading 29.25)."

4.3 In the present case, it is very clear that to the chemical products i.e. L-Leucine, L-Isoleucine and L-Valine, Lecithin is added **deliberately** and a homogenised product is prepared. It is seen that such combinations are used as dietary supplements.

4.4 Under such circumstances, these goods cannot be classified under Chapter 29 and therefore, the appropriate classification for these will be as "food preparations not elsewhere specified or included" under heading "2106". At eight-digit level the product will get covered under heading "2106 9099". As per the Explanatory Notes to Chapter 21, it can be seen that preparations which are intended to be used either directly or after processing for human consumption are also covered under Chapter 21. The Explanatory Notes read as follows:

"(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.



(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38).

4.5 In the light of the above, in our view, the appropriate classification for these goods will be under Heading "2106 9099".



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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.