

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

K.NANCY, B.COM., B.L. (HONS.),
M.S.HARSHA PRABHU, L.L.M.

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 has imported a 'sample' consignment of Instant Fat Filled Milk Powders. The following five categories of milk powders have been imported by the querist.

- i. INSTANT FAT FILLED MILK POWDER BS01
- ii. INSTANT FAT FILLED MILK POWDER BS03
- iii. INSTANT FAT FILLED MILK POWDER BB03
- iv. INSTANT FAT FILLED MILK POWDER V5
- v. INSTANT FAT FILLED MILK POWDER V11

2.2 The querist has made available ingredients composition for two categories i.e. Slimcow BS01 and Supercow BB03 and stated that the other categories also have similar composition. The querist has filed bill of entry with customs authorities for clearance of these goods by claiming classification for these goods under 1901 1090. It appears that the customs authorities have referred the matter for Animal Quarantine for Sanitary Permit and the querist also has applied for such permit in Form B which covers "an application for permit to import live-stock products for trading/marketing". It also appears that the querist has mentioned in the application that the goods are 'infant milk formula' products. Considering the above information, it is noticed that Animal Quarantine has informed the querist that since these are reported to be samples, the application is to be made in 'Form A' and further the Animal Quarantine authorities have informed the querist to clearly indicate whether the product is 'infant formula' or 'milk powder'. Under such circumstances, they have asked the querist to submit the necessary documents with a fresh application.

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3. Query :

In the above context, the querist seeks clarification regarding the classification and description of the goods and also wants to know whether Animal Quarantine permit is applicable or not.

4. Opinion :

- 4.1 From the information produced for Slimcow BS01 and Supercow BB03 powders, it is seen that these contain milk solids with added vegetable oils (palm oil). Supercow BB03 includes vitamins as well as corn syrup and Slimcow BS01 includes soy lecithin. The querist has also indicated that similar composition will apply for the other categories of milk powder mentioned above.
- 4.2 It is noticed that the product imported is a fat filled milk powder containing milk solids. In general, such milk powders are obtained by blending vegetable fat with high quality skimmed milk and then spray drying it. Fat filled milk powder can be an economical substitute for whole milk powder in many different applications, including dairy drinks, yoghurts, coffee and tea whiteners.
- 4.3 The Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011 contains the definition for "milk products". Sub-regulation 12 of Regulation 1.2 of the above regulations defines milk products in the following manner.

"Milk products" means the products obtained from milk such as cream, malai, curd, skimmed milk curd, chhanna, skimmed-milk chhanna, cheese, processed cheese, ice-cream, milk ices, condensed milk-sweetened and unsweetened, condensed skimmed milk-sweetened and unsweetened, milk powder, skimmed milk powder, partly skimmed milk powder, khoa, infant milk food, table butter and desi butter. Milk products shall not contain any substance not found in milk unless specified in the standards.

- 4.4 From the above definition, it can be seen that it includes milk powder. At the same time, in sub-section 12 above, it is clearly indicated that milk products shall not contain any substance not found in milk unless specified in the standards. What are included in milk products are given in Regulation 2.1.1(f). Here also, it is specifically indicated that the milk products shall not contain any substance not found in milk unless specified in these regulations. These regulations refer to 'reconstituted milk or milk product' and also 'recombined milk or milk product'.



Regulations 2.1.1(i) and 2.1.1(h) refer to the above in the following manner respectively.

- (i) "Reconstituted milk or milk product" means a product resulting from the addition of potable water to the dried or concentrated form of milk or milk products in the amount necessary to re-establish the appropriate water-to-solids ratio to achieve similar end product characteristics and appropriate milk product composition as per the standards for that product;
- (h) "Recombined milk or milk product" means a product resulting from the combination of milk fat and milk-solids-non-fat in their preserved forms with or without the addition of potable water to achieve similar end product characteristics and appropriate milk product composition as per the Standard for that product and in the case of recombined milk, the source of milk-solids-non-fat shall be dried or concentrated milks only;

- 4.5 Notification dated 07.07.2001 issued by the Government of India, Ministry of Agriculture, Department of Animal Husbandry and Dairying stipulates that live-stock products including milk and milk products are permitted import only against a sanitary import permit to be issued by the above department. In this connection, the Central Board of Indirect Taxes and Customs also has issued an Instruction No.06/2020-Customs dated 20.05.2020 regarding compulsory veterinary certificate for milk and milk products.
- 4.6 However, in the present case, by taking into account the process of manufacture of the present milk powder by addition of vegetable fats and vitamins, it is doubtful whether the products will still come under the definition and scope of "milk products" as mentioned in the regulations. In the case of Slimcow BS01, it is seen that milk-solids will be in the range of 70-80% and vegetable oil i.e., palm oil will be in the range of 20-25% and soy lecithin also is one of the ingredients in the above product. In the case of Supercow BB03 powder, milk-solids constitute only 40-50% and vegetable oil is to the extent of 32-36%, corn syrup is also present to the extent of 15-25%. Apart from the above, other ingredients present are vitamins and soy lecithin.
- 4.7 It may be noted that Chapter 4 of the First Schedule to the Customs Tariff Act covers various dairy products. In chapter note 4 to Chapter 4 of the First Schedule to the Customs Tariff Act the following is stated.



- “(a) products obtained from whey, containing by weight more than 95% lactose, expressed as anhydrous lactose calculated on the dry matter (heading 1702);
- (b) products obtained from milk by replacing one or more of its natural constituents (for example, butyric fats) by another substance (for example, oleic fats) (heading 1901 or 2106); or
- (c) albumins (including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter) (heading 3502) or globulin (heading 3504).”

From 4(b), it can be seen that products obtained from milk by replacing one or more of its natural constituents by another substance (for example, oleic fats) will go out of Chapter 4 and will fall under Chapter 19 or Chapter 21. Heading 1901 specifically covers food preparations of goods of headings 0401 to 0404 not containing cocoa or containing less than 5% by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included.

- 4.8 In the HSN Explanatory Notes under Chapter 4 the following is stated with regard to the coverage of goods under that chapter.

“The products mentioned at Items (A) to (E) above may contain, in addition to natural milk constituents (e.g., milk enriched in vitamins or mineral salts), small quantities of stabilising agents which serve to maintain the natural consistency of the product during transport in liquid state (disodium phosphate, trisodium citrate and calcium chloride, for instance) as well as very small quantities of anti-oxidants or of vitamins not normally found in the product. Certain of these products may also contain small quantities of chemicals (e.g., sodium bicarbonate) necessary for their processing; products in the form of powder or granules may contain anticaking agents (for example, phospholipids, amorphous silicon dioxide).

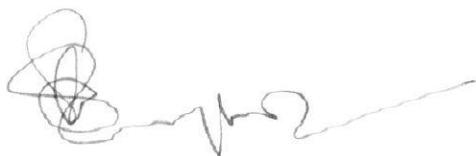
For the purposes of Note 4 (b) to this Chapter the expression “butyric fats” means milk fats and the expression “oleic fats” means fats other than milk fats, in particular vegetable fats (e.g., olive oil).’

A copy of the relevant extract is attached as **Annexure-I** to this opinion

- 4.9 From the above it can be very clearly seen that products obtained from milk by replacing one or more of its natural constituents by another substance viz. vegetable fat will be out of chapter 4 and consequently, it is appropriately covered under heading “1901” as “other food

preparations". The Explanatory Notes to HSN under heading 19.01 specifically state that the food preparations falling under this heading can be distinguished from the products of headings 04.01 to 04.04, in that they contain, in addition to natural milk constituents, other ingredients not permitted in the products of those headings and the example given is milk preparation obtained by replacing one or more constituents of milk by another substance. The extract of the relevant Explanatory Notes is attached as **Annexure-II**.

- 4.10 From the above, it can be seen that the instant fat filled milk powder is a food preparation containing milk-solids and excluded from the scope of 'dairy products' from chapter 4 by operation of the exclusion clause. It also is not an 'infant formula'. Consequently, in our opinion, sanitary permit by treating these as 'milk products' may not be required for these goods. On the other hand, since these will come within the definition of "food", the provisions contained in Food Safety and Standards Act 2006 should be applicable.
5. It is to be noted that this opinion is based on the composition details furnished by the querist and such details may need confirmation by customs authorities by lab testing of representative samples.



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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.