

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

J. RAGINI, B.A., B.L.,
K.NANCY, B.COM., B.L. (HONS.),
M.S.HARSHA PRABHU, L.L.M.
K.VIGNESHKUMAR, B.Sc., L.L.B.

CONSULTANTS:

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

OPINION

I. QUERIST:

M/s.The Waterbase Limited,
Thapar House,
37, Montieth Road (Red Cross Road),
Egmore, Chennai – 600 008.

II. FACTS:

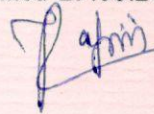
1. The querist is a manufacturer of Prawn Feeds etc. and their factory premises is located in Nellore. For this purpose, they have Animal Feed Manufacturing Machines and they import spare parts for such machinery as and when required.
2. It is informed that in respect of a consignment covered under Bill of Entry No.9323556 dated 29.06.2022 & 14 Other Bills of Entry, they imported Spares for Shrimp Feed Processing Machine. These were classified under heading 84369900. IGST was paid at 12%, in terms of Notification No.1//2017 dated 28.06.2017, Schedule II, Serial No.199.
3. It appears that the Custom House has later taken an objection based on audit investigation that only complete machineries covered under heading 8436 are eligible for IGST at 12% and not parts of such machineries. It is contended by the Customs that such parts will be covered under Serial No.453 of Schedule III of the above Notification and will attract 18% IGST on the ground that such parts are not specifically covered under any other entry in other Schedules.
4. As a result, the Customs authorities have asked the querist to pay a differential duty of Rs.11,18,451/- together with interest.

III. QUERY:

In the above context, the querist would like to know whether the Customs objection is sustainable and in order as per GST provisions.

IV. OPINION:

1. It may be noted that the items imported are Ring Die, Rotor, Electrical Pneumatic Cylinder type, Electrical Air Cylinder, Drive Wheel Assembly, Hammers (IMP), Sieve set, Sieve Frame, Hanging Thread, and these are parts of Shrimp Feed Processing Machine (vide Bill of entry No.9323556 dated 29.06.2022 & other 14 Bills of Entry).



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2. For better appreciation of the tariff classification, heading 8436 is reproduced below :

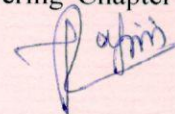
Tariff Item	Description of goods
(1)	(2)
8436	Other agricultural, horticultural, forestry, poultry Keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment ; poultry incubators and brooders
8436 10 00	- Machinery for preparing animal feeding stuffs - <i>Poultry-keeping machinery ; poultry incubator. and brooders</i>
8436 21 00	-- Poultry incubators and brooders
8436 29 00	-- Other
8436 80	- <i>Other machinery :</i>
8436 80 10	--- Germination plant fitted with mechanical and thermal equipment
8436 80 90	--- Other - <i>Parts :</i>
8436 91 00	-- Of poultry-keeping machinery or poultry incubators and brooders
8436 99 00	-- Other

Thus, while the machineries are covered upto heading 8436 80, parts are covered under heading 8436 91 00 and 8436 99 00. IGST Notification under question covers against Serial No.199 of Schedule II Heading 8436 with the following description:

“Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment ; poultry incubators and brooders”.

It is to be noted that as per the opening paragraph of the relevant Notification, the goods described in column 3 and falling within the tariff item, sub-heading or heading in the corresponding entry in column 2 will be eligible for the rates as specified in the different Schedules. For Serial No.199 appearing against Schedule II, the rate is 12%. It is to be noted that the description portion mentions only “machineries” and not their “parts”.

3. At the same time, there are some other entries where the main machine as well as parts are also included. For example, Serial No.196 covering Chapter Heading 8432 has the following description:



Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers [Parts [843290].

Similarly, Serial No.207A with heading 8710 reads as follows :

Tanks and other armoured fighting vehicles, motorized, whether or not fitted with weapons, and parts of such vehicles.

One more example is Serial No.228 with heading 9503 with the following description :

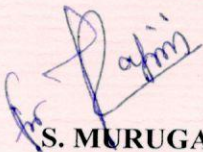
Toys like tricycles, scooters, pedal cars etc. (including parts and accessories thereof) [other than electronic toys]

4. From the above it may be noted that when the descriptive portion includes parts, then parts of Animal Feed Manufacturing Machines also can be given the same benefit of rate of tax. But serial No.199 does not mention parts in the description portion. In Explanation (iv) to the above Notification, the following is provided :

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

A combination of the above provisions and descriptions will clearly indicate that unless the descriptive portion in column 3 specifically includes parts, then benefit will not be available for parts of the goods mentioned in the descriptive portion. Since no other Schedule refers to this item, the residual entry of Serial No.453 of Schedule III which covers goods which are not specified in Schedules I, II, IV, V and VI will be applicable to such parts. The result of this is that the applicable rate will be 18%.

5. From the above analysis, it may be noticed that the stand taken by the Customs will be correct and accordingly, the item under reference will attract 18% and therefore, the querist can pay the differential duty involved with interest now itself before the Department issues any Demand Notice under Section 28 of Customs Act, 1962, so that penal proceedings are avoided. This option is mentioned in the last para of the consultative letter issued by the department.


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Jr/er

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.