**OPINION**

**1.** **QUERIST:**

M/s. The Waterbase Limited,

“Thapar House”,

37, Red Cross Road (Montieth Road),

Egmore,

Chennai – 600 008.

**2. FACTS:**

 Querist regularly procures/imports various ingredients/preparations for manufacture of aquatic feed. In respect of certain items, in the recent Budget presented to Parliament in February 2023, government has reduced import duties (basic customs duty) subject to certain conditions. The querist has reported that following are the concessions announced for the various items mentioned below.

**Description of Goods**                   **From**     **To**

Fish Meal                                       15%      5%

Krill Meal                                       15%      5%

Fish Lipid Oil                                 30%     15%

Algal Prime (Flour)                        30%     15%

Mineral & Vitamin Premixes        15%       5%

**3. QUERY:**

In the above context, querist seeks clarification on the following.

i. What is condition 9 and what are the qualifying conditions for IGCR?

1. Does IGCR apply only to manufacturer? Who is a manufacturer as per the rules?

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iii. What is the process of IGCR to avail concessional duty?

iv. If a trader imports the goods, can they avail concessional duty, if they eventually sell only to a manufacturer?

v. If a trader imports the goods and files Bill of Entry for Warehousing, can a different manufacturer file Bill of Entry for Home Consumption for the same cargo and avail concessional duty?

1. If between filing Bill of Entry for Warehousing and filing Bill of Entry for Home Consumption, there is a change in BCD, what rate of BCD will effectively apply?

**4. OPINION:**

4.1 It is to be noted that for availing concessional duty, in terms of amendments made as per Notification No.2/2023-Customs dated 01.02.2023, one of the conditions prescribed is compliance with the procedure as outlined in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022. A copy of these rules as notified in terms of Notification No.74/2022-Customs (N.T.) dated 09.09.2022 is attached as **Annexure-I** to this opinion. This notification prescribes a specific procedure to be followed by the importer when he wants to import goods and avail concessional duty in terms of exemption notifications. It is necessary that in respect of the goods which are imported and intended for manufacture of finished goods for which the customs notification specifies the procedure to be followed as prescribed under the above rules, then such a procedure needs to be followed.

4.2 A perusal of the above rules will clearly indicate that it will be applicable to a manufacturer who imports the goods for his own manufacturing activity. It also provides for sending of the goods to job workers in the course of manufacture. Apart from that, the goods can be supplied by the importer to an end use recipient for the purpose of specified end use. “Specified end use” is defined in the above rules under 3(m) as follows:

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*“specified end use” means dealing with the goods imported in a manner specified in the notification and includes supply to the intended person and the term “end use recipient” shall be construed accordingly.*

 Thus, it is not necessary that the person who imports himself should manufacture or process the goods imported goods to avail the concessional duty. He can supply these goods to the end use recipient for specified end use subject to following the procedure prescribed in the above rules. Rule 9 of the above rules explains in detail the procedure to be followed in such cases. For the purpose of clarity, Rule 9 is extracted in its entirety as mentioned below:

*“****9.*** *Procedure for supplying imported goods to the end use recipient.– (1) The importer shall maintain a record of the goods supplied to the end use recipient during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.*

*(2) The importer shall send the goods under an invoice or wherever applicable, through an electronic way bill, as specified in the Central Goods and Services Tax Act, 2017 (12 of 2017), mentioning the description and quantity of the goods.*

*(3) In case of supply for replenishment or Export against supply, the end use recipient shall,-*

*i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;*

*ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;*

*iii. produce the relevant details to the importer for fulfilment of the benefit under the notification;”*

4.3 To clarify the rules, the CBIC also has issued a Circular No.18/2022-Customs dated 10.09.2022. This circular provides clarification in respect of various aspects of the rules including time period for utilisation of the imported goods, the details of bond and bank guarantee to be provided etc. A copy of this circular is attached as **Annexure-II** to this opinion.

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4.4 By taking into account the procedure prescribed in the rules and the clarifications provided in the circular, following are the answers for the questions raised by the querist.

i. The procedure set out in Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 is to be followed by the importer as well as the end use recipient (the querist). In case these are procured from an importer for the specified use (manufacture of aquatic feed) the conditions to be complied with are explained in the above rules and the circular.

ii. It applies to importers who supply the goods for specified end use to end use recipients also. Thus, a trader can import these goods and by complying with the procedure set out in the rules, can supply them to the end use recipient for the specified end use.

iii. The procedure is prescribed in detail in the rules. In particular, the importer/trader should comply with Rules 4, 5, 6 and 9. Clarifications with regard to unutilized or defective goods are provided in Rule 10.

iv. Yes. The procedure to be followed by a trader importing the goods and for supplying them to the end use recipient is outlined in Rule 9. He should comply with these conditions, apart from complying with the procedure set out in Rule 4.

v. A trader who keeps the goods in the Customs bonded warehouse can sell the goods to another prospective buyer while the goods are in Customs bond and which are yet to be cleared out of Customs control. In such a situation, details of the sale transactions need to be given to Customs and the buyer need to provide a fresh warehouse bond/guarantee with regard to payment of duty and other charges for the goods transferred to him and remaining in the warehouse. Thereafter, the buyer (in the present case the querist) can clear the goods by filing bill of entry for home consumption (ex-bond bill of entry) in their name. In such a case, the clearance will be by the querist as manufacturer and the procedure set out in the above rules will be applicable to them in their capacity as manufacturer.

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vi. In terms of Section 15 of Customs Act for the goods warehoused under Customs bond, the rate of duty will be the rate applicable on the date the bill of entry is filed for clearance of such goods for home consumption. As such, if the rate of duty changes after warehousing the goods, then, the rate applicable on the date of filing of the bill of entry for clearance of the goods from the warehouse will only apply and not the earlier rate of duty prevalent at the time of warehousing the goods.

**S. MURUGAPPAN**

Attached: as above.

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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.

**BY E-MAIL / COURIER**

**File No.38/2023-Opinion**

23.02.2023

M/s. The Waterbase Limited,

“Thapar House”,

37, Red Cross Road (Montieth Road),

Egmore,

Chennai – 600 008.

Attn.: Mr. Ashok Kalyanam Vice President - Supply Chain

E-mail Id.: ashok.kalyanam@waterbaseindia.com

Sir,

**Sub.: Import of goods under Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.**

1. In connection with the above, find attached the following.

(a) Opinion.

(b) Our Bill towards professional charges.

2. Should you need any further clarification in this regard, please feel free to contact us. Kindly arrange for payment of the attached bill.

Yours faithfully,

**S. MURUGAPPAN**

Attached: as above.

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