**BY E-MAIL / COURIER**

**File No.79/2024-Opinion**

23.04.2024

M/s. K.P.Manish Global Ingredients Pvt. Ltd.,

No.41, Raghunayakulu Street,

Park Town,

Chennai – 600 003.

Attn.: Mr. Janardhanan <import@kpmanish.com>

**Mobile: 9942195740**

C.C.: <pdj@kpmanish.com>

**Sub.: Classification of Whey Protein Concentrate.**

Dear Jana,

1. In connection with the above, please 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 me. Kindly arrange for payment of the bill.

Regards,

Murugappan

Attached: as above.

sm/ss

**OPINION**

**1. QUERIST:**

M/s. K.P. Manish Global Ingredients Pvt. Ltd.,

No.41, Raghunayakulu Street,

Park Town,

Chennai – 600 003.

**2. FACTS:**

2.1 Querist is a regular importer of Whey Protein Concentrates. According to them, these have 80% and more protein content and accordingly, these are being classified by them under heading 3502 2000. The self-assessments made by them are being accepted and goods allowed clearance by the customs authorities.

2.2 It appears that in an audit conducted by the customs audit team which has come to their premises for conducting premise-based audit, classification for these goods has been suggested under heading 2106 1000 as ‘protein concentrates’.

**3. QUERY:**

In the above context, the querist would like to know the appropriate classification for the whey protein concentrates being imported by them. In this regard, sample bills of entry along with invoices as well as analysis certificates for the whey protein concentrates supplied by different suppliers from U.S.A. and Australia have been provided by the querist.

**4. OPINION:**

# 4.1 It is noticed that the classification claimed by the querist is under heading 3502. This heading reads as follows:

**35.02 - Albumins (including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter), albuminates and other albumin derivatives.**

Under this heading, at eight-digit level, 3502 2000 covers Milk albumin, including concentrates of two or more whey proteins.

4.2 Heading **21.06** covers **“Food preparations not elsewhere specified or included”**. At eight-digit level under this heading, 2106 1000 covers protein concentrates and textured protein substances.

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4.3 Heading 35.02 covers “**Albumins including concentrates of two or more whey proteins**”. The relevant Explanatory Notes to the above HSN reads as follows:

*“(1)* ***Albumins*** *are animal or vegetable proteins. The former are the more important and include egg white (ovalbumin), blood albumin (serum albumin), milk albumin (lactalbumin) and fish albumin. Unlike casein, they are soluble in water as well as in alkalis and the solutions coagulate on heating.*

***The heading also includes whey protein concentrates which contain two or more whey proteins and have a whey protein content of more than 80% by weight, calculated on the dry matter.*** *The whey protein content is calculated by multiplying the nitrogen content by a conversion factor of 6.38. Whey protein concentrates containing 80% or less by weight of whey proteins, calculated on the dry matter, are classified in* ***heading 04.04****.*

*Albumins are usually in the form of viscous liquids, transparent yellow flakes or amorphous white, reddish or yellowish powders.*

*They are used in the preparation of glues, foodstuffs, pharmaceutical products, for leather finishing, for treating textiles or paper (especially photographic papers), for clarification of wine or other beverages, etc.”*

4.4 From the Wikipedia article on “Albumin” it can be seen that it is a family of globular proteins. The article reads as follows:

*Albumin is a family of globular proteins, the most common of which are the serum albumins. All of the proteins of the albumin family are water-soluble, moderately soluble in concentrated salt solutions, and experience heat denaturation. Albumins are commonly found in blood plasma and differ from other blood proteins in that they are not glycosylated. Substances containing albumins are called albuminoids.*

The article further describes “Other albumin types” as mentioned below:

*A few other proteins are also sometimes called albumins. They are not in the same family as vertebrate albumins:*

* *Ovalbumin is a storage protein in egg white (albumen). It is a serpin.*
* *Lactalbumin, or whey protein, is a protein fraction of milk. It is mainly Beta-lactoglobulin, although serum albumin also comprises a small part of it.*
* *Some plant seeds, including hemp, encode "2S albumins". These are named for their egg-like coagulation property.*

A copy of the article is attached as **Annexure-1** to this opinion.

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4.5 From the above, it can be seen that whey protein is a type of albumin i.e. Lactalbumin, which is a protein fraction of milk.

4.6 According to Wikipedia ‘whey protein is a mixture of proteins isolated from whey, the liquid material created as a byproduct of cheese production. The proteins consist of alpha-lactalbumin, beta-lactoglobulin, serum albumin and immunoglobulins.’

4.7 The Commodity Fact Sheet for Whey Protein Concentrate appearing in the official website of United States government provides the following general information about whey protein concentrate.

*Whey protein concentrate (WPC) is a family of dry dairy ingredients used to add concentrated whey protein to food products. WPC is produced by removing a certain percentage of non-protein constituents from pasteurized whey derived from cheese processing. The finished WPC products available for food aid are WPC34, which contains more than 34 percent whey protein, and WPC80, which contains more than 80 percent protein. WPC is processed by physical separation techniques such as precipitation, filtration or dialysis. WPC must be pasteurized and manufactured in the U.S. from cow’s milk that was produced in the U.S.*

*WPC is a dairy ingredient that can be used to enrich the protein content and quality of processed food products including emergency food products A-20, A-28 and A-29, ready-to-use supplementary and therapeutic foods (RUSF, RUTF) and other nutritional supplements. It can be used for applications involving food product development to enhance protein content.*

A copy of the relevant extract from the website is attached as **Annexure-2** to this opinion.

4.8 On the other hand, it may be seen that heading 2106 is a residuary heading for other food preparations though protein concentrates are mentioned under 2106 10. The main heading covers food preparations not elsewhere specified and therefore any product which is mentioned specifically in other headings will not come within the purview of heading 2106. It is to be noted that whey protein which is a type of albumin is specifically covered under heading 3502 and therefore by operation of the proviso to heading 2106, such whey proteins cannot be brought under heading 2106.

4.9 Apart from the above, it can be seen that with regard to protein concentrates under 2106, the HSN Explanatory notes read as follows:

*“Protein hydrolysates consisting mainly of a mixture of amino-acids and sodium chloride, used in food preparations (e.g., for flavouring); protein concentrates obtained by the elimination of certain constituents of defatted soya-bean flour, used for**protein-enrichment of food preparations; soya-bean flour and other protein substances, textured. However, the heading* ***excludes*** *non-textured defatted soya-bean flour, whether or not fit for human consumption* ***(heading 23.04)*** *and protein isolates* ***(heading 35.04)****.”*

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4.10 Thus, it can be seen that the protein concentrates and textured proteins falling within heading 2106 are completely different type of protein concentrates and have nothing to do with ‘albumin’.

4.11 In view of the above, in our view, the appropriate classification for whey concentrates with 80% and above protein content will be under heading “**3502 2000**” only.

**S. MURUGAPPAN**

sm/ss

**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.