



सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण
CUSTOMS AUTHORITY FOR ADVANCE RULINGS
नवीन सीमाशुल्क भवन, बेलाई इस्टेट, मुंबई - ४०० ००१
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400 001
ई-मेल/E-MAIL: cus-advrulings.mum@gov.in

The 8th of July ,2022
Ruling No. CAAR/Mum/ARC/24/2022
In
Application No. CAAR/CUS/APPL/33/2022-O/o Commr-CAAR-MUMBAI

Name and address of the applicant : M/s BASF India Limited, The Capital, A wing,
1204-C, 12th Floor, Plot No. C-70, G Block,
Bandra Kurla Complex, Bandra East, Mumbai,
Maharashtra-400 051

Commissioner concerned : The Commissioner of Customs (III),
Import Air Cargo Complex, Sahar, Andheri
(East), Mumbai – 400099

The Principal Commissioner of Customs
(Chennai III), (Preventive Commissionerate),
Custom House, 60, Rajaji Salai, Chennai –
600001

The Principal Commissioner/ Commissioner
of Customs (Port), 15/1, Strand Road, Custom
House, Kolkata – 700001

The Principal Commissioner of Customs,
Nhava Sheva-I, Jawaharlal Nehru Customs
House, Nhava Sheva, Tal: Uran, Dist: Raigad,
Maharashtra – 400707

Present for the application : Sri T. Viswanathan and others

Present for the Department : None

Ruling

M/s. BASF India Limited (hereinafter referred to as "the applicant") is a private limited company registered in India under Companies Act, 1956.

2. The applicant is a leading transnational company in the chemical industry and is a part of the renowned BASF group, a global supplier of innovative feed additives for livestock, aquaculture and companion animals. Headquartered at Mumbai, the applicant has manufacturing facilities at Thane, Mangalore, Dahej and Ankleshwar. The applicant imports and trades in



various categories of products used in the preparation of animal feed supplements. One such group of products are vitamin premixes, imported from Applicant's parent company (BASF, Germany) and other third parties (related/un-related) for use in the manufacture of animal feed/supplements. Details of the vitamin premixes proposed to be imported by the applicant are as under: -

Table - I

Sr. No.	Product Name	Composition	Purpose, form of import & manner of usage
1	LUTA.CALPA N 98%	Active ingredient Minimum 98% Calcium D Pantothenate Inactive ingredient- Less than 2% water Formulation: Granulate	<ul style="list-style-type: none"> • It is an animal feed supplement required for protein, carbohydrate and fat metabolism in the body. • It is imported in the form of granules. • In the as imported form, the product is directly mixed into animal feed and given to the animals
2	LUTA.E 50	Vitamin E Acetate (DL - alpha tocopheryl acetate) min 50% Inactive ingredient-silicic acid 50% (an absorbent which acts as a carrier) Formulation: Powder	<ul style="list-style-type: none"> • It is a powder formulation to be used in animal feed in the form in which it is imported. • It is used for vitaminization of all kinds of feed. • It acts as an antioxidant which is required for cellular metabolism in the body of the animals. •The formulation has absorbate and with silica as the carrier forms a compound which is complex and Vitamin E cannot be extracted as independent component.
3	LUTA. 0A/D3 1000/200 PLUS	Vitamin A Acetate (retinyl acetate) min 1 miu IU/gm / Vitamin D3 (Cholecalciferol) 0.2 miu IU/gm, approx. 40.5% Inactive Ingredients: Gelatin & Glucose/Fructose (Organic matrix), Silica (Inorganic matrix), Phosphoric acid and disodium salt (preservatives), Butylhydroxytoluene(antioxidant s) and water. Formulation: Powder	<ul style="list-style-type: none"> • It is required for development, protection and re-generation of skin and mucosa. • It is a matrix of carbohydrates, gelatins and antioxidants. • It forms a compound which can't be reformulated to suit any other use and the product is used post importation, by directly mixing into animal feed. • It is suitable as a supplement for all types of animal feed. The Vitamin A: Vitamin D3 ratio of 5:1 permits the products to be used in all species of animals.
4	LUTAVIT A 1000 PLUS	Vitamin B2 (Riboflavin) min	<ul style="list-style-type: none"> • It is one of the most essential feed additive and acts as co



		80% Inactive ingredients: Fermentation residues 20%	enzymes and helps in protein, fat and nucleic acid metabolism. • It is a specific feed grade formulation suitable for use in animal nutrition. • the product can be used as a supplement in animal feed.
5	CHOLINC.LSG	75% chloride soluble in water/solvent Formulation: Liquid	It acts as methyl group donor, which is necessary for formation of vital body substances, viz., creatinine & adrenalin. It is also necessary for fat metabolism. • It is an essential feed additive • Post importation, it can be used by directly mixing into animal feed in the proportion as prescribed.

3. The applicant made the following submissions: -

3.1. These products are for use in animal nutrition in the preparation of animal feeds. Each of these products provide different kinds of nutrients like Vitamin A, B2, D3, E and Calcium D. Post importation these products are used by mixing them directly in the animal feed in the proportion as prescribed. The products in question are not subject to further processing post importation. These products are exclusively for use for animals and have no other use, either as medicines or for the manufacture of medicines.

3.2. Further, their end-use is for being used only as animal feed preparations. The feed supplements are certified to be of animal grade only. The way the preparations are labelled, marketed and considered by the trade is for use only in preparation of animal feed. That these products can be used only for animal feed purpose has also been clarified by the Department of Animal Husbandry, Dairying and Fisheries. Clarifications have also been issued by the Drug Controller General(India) in this regard.

3.3. The global desk of the applicant has been classifying all the products mentioned in the preceding table as vitamin premixes under HS Code 29.36. However, as per the applicant's understanding, on account of the fact that the products in question are used for a very specific purpose i.e. preparation of animal feed, classification under heading 23.09 of the customs tariff as premix for animal feed is also a possibility. Further, the domestic industry is also classifying similar products under the heading 23.09 of the tariff.

3.4. This classification adopted by the domestic industry is also supported by the Circular No. 80/54/2018-GST, dated 31.12.2018 issued by Ministry of Finance, Department of Revenue (Tax Research Unit) to clarify the applicable GST rates and classification of certain products. In this circular, it has been stated that if the vitamin premixes are supplied in a form ready to be used in animal feed and are incapable of being used for other purposes then the same will be classified under heading 23.09. The relevant portion of the circular is as under: -

“ 5. *Applicable GST rate on Animal Feed Supplements/feed additives from drugs:*



5.1 Representations have been received seeking clarification regarding GST rate applicable on Animal Feed Supplements/feed additives from drugs. The dispute is in classification of Animal Feed Supplements/feed additives from drugs between tariff heading 2309 and 2936.

5.2 As per the HSN, 2309 inter alia covers vitamins and pro vitamins which improve digestion and, more generally, ensure that the animal makes good use of the feeds and safeguard its health. On the other hand, HS code 2936 covers vitamins and pro vitamins which are medicinal in nature and have much higher concentration of active substance.

5.4 Thus while deciding the classification of the products claimed to be animal feed supplements, it may be necessary to ensure that the said animal feed supplements are ordinarily or commonly known to the trade as products for a specific use, in animal feeding.

5.5 A product deserves classification chapter 29 (equally applicable to heading 2936), if it is an item of general use, e.g., a product is of specific use, say dietary supplement for human being product particularly suitable for a specific use rather than for general use. Vitamins and pro vitamins are normally covered under code heading 2936, but if they're prepared as food supplements in the form of tablets, etc. they would not be classification under this heading as the way they are presented, they are suitable for a specific use. Heading 2309 would cover items like feed supplements for animals that contain vitamins and other ingredients - such as cereals and proteins. These are covered in chapter 23 under heading code 2309, or antibiotic preparations used in animal feeding - for example a dried antibiotic mass on a carrier like cereal middling. The antibiotic content in these items is usually between 8% and 16%. Thus, HS code 2309 would cover only such product, which in the form supplied, are capable of specific use as food supplement for animals and not capable of any general use. If the vitamins, pro vitamins are supplied in a form in which they are capable of general use, i.e. in the form in which it could be used as inputs or raw materials for further processing, instead of being ready to use, then these would be classifiable under heading 2936."

3.5. Considering the difference in views of the applicant's global desk, and the practice followed by the domestic Industry, the applicant has filed the present application to seek clarification on the classification of these products.

4. The applicant, in their CAAR-1 form, declared that they intend to import the impugned goods from the seaports of Nhava Sheva, Mumbai, Chennai and Kolkata and Air Cargo Complex, Mumbai. Their application, therefore, was forwarded to all the jurisdictional commissioners of customs for comments. However, no reply has been received, though reminders have also been sent.

5. The application along with the other 4 applications of the applicant was listed for hearing on 01.06.2022. Sh. T. Vishwanathan and others appeared on behalf of the applicant. No one appeared on behalf of the commissioners of customs. Sh. Vishwanathan explained the technical/safety data sheets, manufacturing process, composition, and product labels of each item for which advance ruling has been sought. The applicant also submitted a compilation containing, inter-alia, notifications/circulars, cross-rulings, case laws, etc. My attention was specifically drawn to the decisions of the Hon'ble Tribunal in the case of Lalchand Bhimraj & Tetragon Chemie and the CBIC circular of 26.03.1996. Sh. Vishwanathan gave assurance to submit detailed compositions along with a manufacturing flow chart of the products.

6. I have considered all the materials placed before me in respect of the subject products. I have gone through the submissions made by the applicant during the personal hearing. No reply



has been received from any jurisdictional commissioner. Therefore, I proceed to pronounce my ruling on the basis of information available on record as well as information gathered from other reliable sources.

6.1. The applicant imports and trades in various categories of products used in the preparation of animal feed supplements. One such group of products are vitamin premixes, imported from the applicant's parent company in Germany and other third parties for use in the manufacture of animal feed/supplements. While the applicant wants to classify the products under heading 2309, their global desk classifies them under heading 2936. Therefore, they have sought a clarification on the classification through the present application.

6.2. As per the rule 1 of the General Rules of Interpretation, the classification of goods shall be determined according to the terms of the headings and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of rule 1 and if the headings and legal notes do not otherwise require rules 2 through 6 may be applied in order.

6.3. The applicant has argued in favour of the classification entry 2903 for all the products under consideration. HSN explanatory notes to heading 2309 includes preparations for use in making the complete feeds or supplementary feeds. Elaborating on these preparations, the notes further state that "These preparations, known in trade as "premixes", are, generally speaking, compound compositions consisting of a number of substances (sometimes called additives) the nature and proportions of which vary according to the animal production required. These substances are of three types : (1) Those which improve digestion and, more generally, ensure that the animal makes good use of the feeds and safeguard its health : vitamins or provitamins, amino-acids, antibiotics, coccidiostats, trace elements, emulsifiers, flavourings and appetisers, etc. (2) Those designed to preserve the feeding stuffs (particularly the fatty components) until consumption by the animal : stabilisers, anti-oxidants, etc.(3) Those which serve as carriers and which may consist either of one or more organic nutritive substances (manioc or soya flour or meal, middlings, yeast, various residues of the food industries, etc.) or of inorganic substances (e.g., magnesite, chalk, kaolin, salt, phosphates). The concentration of the substances described in (1) above and the nature of the carrier are determined so as to ensure, in particular, homogeneous dispersion and mixing of these substances in the compound feeds to which the preparations are added". Therefore, these preparations may contain vitamins, however, they are accompanied by a carrier/s to ensure homogeneity. In other words, if the feed additive is mixed with an animal grade carrier then it would be classifiable under heading 2309.

6.3.1. As per the exclusion list provided in explanatory notes, vitamins are excluded from the said heading under conditions mentioned below:

(e) Vitamins, whether or not chemically defined or intermixed, whether or not put up in any solvent or stabilised by the addition of antioxidants or anticaking agents, by adsorption on a substrate or by applying a protective coating of, for example, gelatin, waxes, fats, etc., provided that the quantity of such additives, substrate or coating does not exceed that required for preservation or transport and provided that such additives, substrates or coating do not alter the character of the vitamins and do not render them particularly suitable for specific use rather than for general use (heading 29.36).

6.4. The HSN Explanatory notes to chapter heading 2936 states that constituents of natural vitamins can be used in animal feed. The relevant extracts are as follows:

"29.36 - Provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, and intermixtures of the foregoing, whether or not in any solvent (+).

Vitamins are active agents, usually of complex chemical composition, which are obtained from outside sources and are essential for the proper functioning of



human or other animal organisms. They cannot be synthesised by the human body and must therefore be obtained in final or nearly final form (provitamins) from outside sources. They are effective in relatively minute amounts and may be regarded as exogenous biocatalysts, their absence or deficiency giving rise to metabolic disturbances or "deficiency diseases".

This heading includes:

(a) Provitamins and vitamins, whether natural or reproduced by synthesis, and derivatives thereof used primarily as vitamins.

(b) Concentrates of natural vitamins (e.g., of vitamin A or of vitamin D); these are enriched forms of these vitamins. These concentrates may be used as such (e.g., for adding to animal feeding stuffs), or they may be worked up for the isolation of the vitamin.

(c) Intermixtures of vitamins, of provitamins or of concentrates, such as, for instance, natural concentrates of vitamins A and D in various proportions, to which an additional quantity of vitamin A or D has been added subsequently.

(d) The above products diluted in any solvent (e.g., ethyl oleate, propane-1,2-diol, cthanediol, vegetable oils). The products of this heading may be stabilised for the purposes of preservation or transport: by adding anti-oxidants, by adding anti-caking agents (e.g., carbohydrates), by coating with appropriate substance (e.g., gelatin, waxes or tats), whether or not lacticised, or by adsorbing on appropriate substances (e.g., silicic acid).

provided that the quantity added or the processing in no case exceeds that necessary for their preservation or transport and that the addition or processing does not alter the character of the basic product and render it particularly suitable for specific use rather than for general use.

6.5. While chapter 29 talks about separate chemically defined compounds, the explanatory notes to HSN provides for products which remain classified in chapter 29, even when they are not separate chemically defined compounds There are certain exceptions to the rule that chapter 29 is limited to separate chemically defined compounds. These exceptions include provitamins and vitamins (including concentrates and intermixtures), whether or not in a solvent.

6.6. I further find that chapter heading 2309 is in the nature of a residuary heading as chapter note I to chapter 23 says that the heading 2309 includes products of a kind not elsewhere specified or included, where as chapter sub-heading 2936 is a specific heading for vitamins and pro vitamins. As per the Rule 3 (a) of General Interpretation Rules, the specific heading shall prevail over the general heading. In this regard, the Hon'ble Supreme Court in the case of DUNLOP INDIA LTD & MADRAS RUBBER FACTORY LTD Vs UNION OF INDIA AND OTHERS reported in 2002-TIOL-647-SC-CUS-LB, has held as follows:

"When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause"

6.7. The applicant has placed reliance on the order of the larger bench of the Hon'ble Tribunal in the case of Tetragon Chemie reported at 2001 (138) E.L.T. 414 (Tri. -LB) which was upheld by the Hon'ble Supreme Court as reported at 2001 (132) E.L.T. 525(S.C). However, the products in the present case (i.e. vitamins of high concentration which would be used in animal feed) is different from that of Tetragon Chemie (i.e. premixes of vitamins along with other constituents which was already in the final form of animal feed supplement). The Hon'ble Supreme Court, in the case of CCE, Calcutta vs. Alnoori Tobacco Products reported at 2004-TIOL-85-SC-CX, held that:



"13. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

14. The following words of Lord Denning in the matter of applying precedents have become locus classicus:


"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

6.8. Further, the Hon'ble High Court of Allahabad in the case of Sonam International, reported at 2012 (275) E.L.T. 326 (All.), held that vitamins of high concentration used for manufacture of animal feed will be classified under 2936. Admittedly all the products in this case has high concentration of vitamins ranging from 40% to 98%.

6.9. Even though, the applicant in their application has stated that these products which they are importing are going to be used in the manufacture of animal feed, as discussed in the preceding paragraphs, vitamin products intended for use in animal feed preparations are not excluded from the ambit of the chapter 29. Therefore, when confronted with a specific classification entry vis-à-vis a residuary classification entry, one must favour the specific entry. In fact, that the mandate of rule 3A of the General Rules of Interpretation of Customs Tariff.

7. On the basis of the above findings, I rule that the products in this case viz. LUTA.CALPA N 98%, LUTA.E 50, LUTA. 0A/D3 1000/200 PLUS, LUTAVIT A 1000 PLUS, CHOLINC.LSG would merit classification under heading 2936 of the first schedule to the Customs Tariff Act,1975.


(M.R. MOHANTY)
Customs Authority for Advance Rulings,
Mumbai



This copy is certified to be a true copy of the ruling and is sent to: -

1. M/s BASF India Limited, The Capital, A wing, 1204-C, 12th Floor, Plot No. C-70, G Block, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra-400 051
Email: ganesh.borge@basf.com, Mumbai.customs@lakshmisri.com ;
2. The Commissioner of Customs (III), Import Air Cargo Complex, Sahar, Andheri (East), Mumbai – 400099 Email: import.acc@gov.in
3. The Principal Commissioner of Customs (Chennai III), (Preventive Commissionerate), Custom House, 60, Rajaji Salai, Chennai – 600001 Email: principalcommissionerchennai3@gmail.com
4. The Principal Commissioner/ Commissioner of Customs (Port), 15/1, Strand Road, Custom House, Kolkata – 700001 Email: prcommr-port-cuskol@gov.in
5. The Principal Commissioner of Customs, Nhava Sheva-I, Jawaharlal Nehru Customs House, Nhava Sheva, Tal: Uran, Dist: Raigad, Maharashtra – 400707 Email: commr-nsl@gov.in
6. The Customs Authority for Advance Rulings, 5th Floor, NDMC Building, Yashwant Place, Satya Marg, Chanakyapuri, New Delhi-110021. Email: cus-advrulings.del@gov.in
7. The Principal Chief Commissioner of Customs, Mumbai Customs Zone-I, Ballard Estate, Mumbai -400001. Email: ccu-cusmum1@nic.in
8. The Chief Commissioner (AR), Customs Excise & Service Tax Appellate Tribunal (CESTAT), West Block-2, Wing-2, R.K. Puram, New Delhi - 110066. Email: cdrcestat123@gmail.com, ccar.cestat-delhi@gov.in
9. The Commissioner (Legal), CBIC Offices, Legal/CX.8A, Cell, 5th floor, Hudco Vishala Building, C-Wing, Bhikaji Cama Place, R. K. Puram, New Delhi – 110066. Email: anishgupta.irs@gov.in, commr.legal-cbec@nic.in
10. The Member (Customs), Central Board of Indirect Taxes, North Block, New Delhi-110001 Email: mem.cus-cbec@nic.in
11. The Webmaster, Central Boards of Indirect Taxes & Customs. Email: webmaster.cbec@icegate.gov.in

✓ 12. Guard file.

(Handwritten signature)
8/7/2022

(P. Vinitha Sekhar)
Secretary/Additional Commissioner,
Customs Authority for Advance
Rulings,
Mumbai

