

F.No. 528/56/2017-STO(TU)
Government of India
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs

North Block, New Delhi

Dated: 25.05.2023

To,
Principal Chief Commissioners/ Chief Commissioners of Customs, Customs (Prev.),
Central Tax & Customs
Principal Directors General/Directors General under CBIC
Principal Commissioners/ Commissioners of Customs, Customs (Prev.)
Principal Addl. Directors General/Addl. Director General, under CBIC

Madam/ Sir,

Subject: Clarification on the classification of product DHA Algal oil – reg

References have been received in the Board highlighting the need to bring uniformity in classification of the imported product referred as Algal Oil or Algal Oil powder (oil encapsulated in powder) with varying DHA (Docosa Hexaenoic Acid) concentration, also described as DHA Algal Oil which is reported to be extracted from marine algae. The constituents in the product other than DHA, are impurities i.e. other fatty acids, free fatty acids, trans fatty acids, moisture, volatiles and metallic minerals; and ingredients such as sunflower lecithin, tocopherols, rosemary extract etc for the purpose of stabilization of the product. Being a rich source of DHA, it is reportedly used in health foods in microscopic quantities for fortification of the foods which is essential, especially for pregnant, lactating women and new borns. DHA Algal oil is micro encapsulated and made available in powdered form for increased stability and ease of transportation.

2. The issue was earlier raised in a Chief Commissioners of Customs Conference, held on 17th and 18th December, 2018 during which the different headings that were deliberated for purposes of classification were 1302, chapter 15 (1515/1516/1517/1518), 2106 and 2916.

3. Presently, the matter has been examined afresh on account of representations highlighting that non-uniformity persists, and in this regard, it is observed that -

- (a) to give effect to India's commitment to implement the World Customs Organization (WCO) Harmonised System of Nomenclature (HS) 2022 effective from 01.01.2022, amendments effective from 01.01.2022 were made to the First Schedule to the Customs Tariff Act, 1975 by the Finance Act, 2021 whereby in Section III, Chapter 15 and in the headings 1515, 1516, 1517 and 1518, "microbial fats and oils" were specifically mentioned. It makes for such product to be classified, depending upon the extent of processing/chemical modification, the edible or the inedible nature of the mixture or preparation of the product, in heading 1515, 1516, 1517 or 1518.

- (b) further, the Explanatory Notes with HS 2022 introduced to heading 1515 refer:

".....

Microbial fats and oils, also known as single cell oils (SCOs) are obtained by extracting lipids from oleaginous microorganisms such as fungi (including yeasts), bacteria and microalgae. These lipids contain a high percentage of triacylglycerols (TAGs), mainly of polyunsaturated fatty acids such as arachidonic acid and linoleic acid, which are liquid at room temperature.

.....

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For example.

(a) Arachidonic acid oil (ARA), obtained from the fungus...

(b) Schizochytrium oil, obtained from microalgae Schizochytrium sp, which may be used as an ingredient in food".

- (c) these Explanatory Notes for Chapter 15 also suggest for such product to be classified, depending upon the extent of processing, in heading 1515, 1516, 1517 or 1518.
- (d) prior to introduction of HS 2022, the record of discussions in the WCO HS Committee sessions on classification of microbial oils mention aspect of similarity to vegetable oils and application of rule 4 of General Rules for Interpretation (GIR) of Harmonised System. The WCO tables correlating entries between HS 2022 and the HS 2017 also indicate the previous product classification, depending upon the extent of processing made on the product, in heading 1515, 1516, 1517 or 1518.

4. Additionally, it is observed that –

- (a) vegetable fats and oils are more specifically covered under chapter 15 than as vegetable saps and extracts under heading 1302.
- (b) DHA Algal oil, is only one of the several components that make up a food supplement and is not a food preparation in itself; it is not put up in packaging with indications as specified in the Explanatory Notes to chapter 21; and the heading 2106 covers food preparations not elsewhere specified or included.
- (c) the product is not DHA itself, but an oil containing DHA and thus not a distinct chemical under the category of poly unsaturated fatty acids.

5. Accordingly, DHA Algal Oil falls in the category of microbial fats and oils.

6. Earlier, an issue had also arisen regarding DHA Algal Oil in oil form and in powdered form (oil micro encapsulated in powder). Even upon micro encapsulation of DHA Algal Oil for increased stability and ease of transportation, its essential character is reported to be the same and the latter is not rendered a food preparation as observed in para 4(b) above. It is clarified that DHA Algal Oil in oil form as well as in powder form (oil micro encapsulated in powder) are DHA Algal Oil.

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7. In light of the foregoing, the Board considers it necessary for the purpose of uniformity in classification, to clarify that depending on the characteristics or properties of the product when presented for assessment, extent of its chemical modification, the edible or the inedible nature of the mixture or preparation of the product, the product DHA Algal oil is classifiable under the appropriate sub-heading below either of the following headings 1515, 1516, 1517 or 1518, by application of General Rules for Interpretation (GIR) of Harmonised System.

8. Hindi version follows.



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