

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

Advance Ruling No. KAR ADRG 21 / 2019

Date : 26-08-2019

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Bharat Electronics Limited., Jalahalli, Bengaluru - 560013
2.	GSTIN or User ID	29AAACB5985C1ZL
3.	Date of filing of Form GST ARA-01	15.02.2018
4.	Represented by	Sri Shivadas, Advocate
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Bangalore North West Commissionerate, TTMC, Shivaji Nagar, Bengaluru.
6.	Jurisdictional Authority - State	LGSTO - 65, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- each under CGST Act and KGST Act vide CIN SBIN18022900053824 dated 09.02.2018

**ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS & SERVICES
TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS &
SERVICES TAX ACT, 2017**

1. M/s Bharat Electronics Ltd, (called as the 'Applicant' hereinafter), Jalahalli, Bengaluru - 560013, having GSTIN number 29AAACB5985C1ZL, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



2. The Applicant is a Public Sector Company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

Whether the various systems, sub-systems and onboard spares supplied by the applicant for use in the Warships, Vessels and Submarines meant for Indian Navy and Shipbuilders, attracts 5% GST?

3. The applicant furnishes some facts relevant to the stated activity:

- a. The applicant states that they are a Government of India Enterprise under the Ministry of Defence, seeking an advance ruling on the applicability of Sl.No. 252 of Schedule I of Notification No.1/2017- Central tax (Rate) and No. 1/2017 issued by the Government of Karnataka, both dated 29.06.2017, for the supplies effected or to be effected by them for construction of, or use in, vessels, warships and submarines meant for deployment in the Indian Navy.
- b. The applicant states that the present application is maintainable under section 97 of the KGST Act as the application is in respect of the applicability of a notification issued under the provisions of the GST Act.
- c. The applicant states that they are having manufacturing units at various places across India and are mainly engaged in the manufacture and supply of various defence related equipment/ machinery/ systems. The said goods are supplied to all the three forces guarding the frontiers of the country.
- d. The applicant states that the subject matter of the present application **relates to supplies effected against Purchase Orders received from various Ship Building Industries, namely, Mazagaon Dock Limited, Garden Reach Shipbuilders and Engineers, Hindustan Shipyard Limited, Larsen and Toubro etc., and directly to Indian Navy.**
- e. The Purchase orders or contracts are usually placed by the customers for supply of 'systems' such as Color Tactical Display systems, Missile System, Radar systems (for surveillance and threat alert, Navigation and attack, Weather surveillance).

Electro Optical Fire Control System, Gun Fire Control System, Optical Director System, etc. All such systems are meant for use 'ON BOARD SHIPS' of the Indian Navy. The Purchase Orders/ Contracts generally refer to the name of the Ship/ the project/ the yard or the respective Depot of Indian Navy. It is pertinent to note that each system by itself is not a separate product, but comprises of various parts/ assemblies. The applicant has provided an illustration of the contract that has been agreed upon by the applicant and the President of Republic of India, wherein the applicant is identified as the seller party and the Government of India is identified as the buyer party and the description of the item to be supplied is XXXX for in ships for a total value of Rs. 1,674.10 Crores. XXXX is a weapon control system designed to provide air defence with guns and the purpose of the equipment is to locate a hostile target by means of a radar, acting on search information and to track its approach with high accuracy, in order to obtain reliable target data. The tracking data are further processed and used to control the weapons by placing it into an exact ballistic firing position for eventual destruction of the target. The Price Breakup for the system set annexed to the purchase order read with technical specifications would show that the supply includes various items such as Tracker mount, Antenna, Radar Transmitter, Radar Receiver, TV Camera System, Thermal Imager, Gun Control Panel and Support systems, amongst other things.

- f. The applicant submitted that apart from supply of the systems, the contract also requires BEL to provide services for installation, commissioning, Training including for rehosting of test programmes as indicated in the Annexures to the contract.
- g. The Applicant furnishes another illustration of a Purchase Order placed by Hindustan Shipyard Limited, on the applicant for supply of "Advance Composite Communication System" dated 15.09.2014 for a total consideration of Rs.51,00,81,780/-. The Advance Composite Communication System is an IP based integrated communication system designed to provide quick and reliable communication over VLF, HF bands onboard Naval Ships for facilitating ship to ship, ship to shore and ship to air communications. This contract entails supply of the systems along with services inter alia of development and engineering.



training. The applicant is also in charge of installation and commissioning of such systems by deputing their service engineers as per the requirements of the Buyer Party.

- h. The applicant submits that the various systems are to be integrally connected with each other for effective functioning of warships, Vessels and Submarines. For example, the Fire Control System and the Missile System are to stay interlinked with the radar system and the CTD system is essential for monitoring and handling all such systems.
- i. In the backdrop of the above factual and technically involved in supplies of various items required for use in a Warship, Vessels, and submarines for the purpose of discharging GST liability, the applicant is required to determine the classification of the subject supplies and the rate of tax applicable for the same.
- j. The applicant submits that in terms of section 2(30) of the CGST Act "*composite supply*" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply" and as per section 2(74) of the CGST Act "*a mixed supply*" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply." Admittedly, the supply of systems against each Purchase Order consists of a combination of goods and services with supply of goods apparently being the principal supply.
- k. The applicant submits that the entry 252 reads as under

S.No.	Chapter/Heading/Sub-Heading/ Tariff item	Description of Goods
252	Any Chapter	Parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907

It is also apposite to take into consideration the entries preceding the above in the same Schedule I to appreciate the

scheme of placing the given group of items falling under Chapter 89 in the 5% category:

S.No.	Chapter/ Heading/ Sub- Heading/ Tariff item	Description of Goods
246	8901	Cruise Ships, excursion boats, ferry-boats, cargo ships, barges and similar vessels for the transportation of persons or goods
247	8902	Fishing vessels; factory ships and other vessels for processing or preserving fishery products
248	8904	Tugs and pusher craft
249	8905	Light vessels, fire-floats, dredgers, floating cranes and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms
250	8906	Other vessels, including warships and lifeboats other than rowing boats
251	8907	Other floating structures (for example, rafts, tanks, coffer-dams, landing stages, buoys and beacons)

It can be noticed that Heading 8903 relating to "Yachts and other vessels for pleasure or sports; rowing boats and canoes" are kept out of the above list apparently considering the same as a luxury item.

1. The applicant submits that he is of the understanding that the subject supplies are covered by Sl.No.252 of Schedule I of Notification 1/2017- Central Tax (Rate) for the following reasons:-

- i. "Part of ships" do not have separate heading in the Tariff:

- a. Explanation (iii) to Notification No.1/2017-IGST provides that the "Tariff item", "sub-heading", "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975.

- b. Further, Explanation (iv) provides that the rules for the interpretation of the First Schedule to the Customs Tariff Act, 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.

c. Section XVII of the First Schedule to the Customs Tariff Act, 1975 relates to "Vehicles, Aircraft, Vessels and Associated Transport Equipment" including four chapters namely 86 (Railways), 87 (Vehicles other than Railways), 88 (Aircrafts) and 89 (Vessels)

d. While other three Chapters have separated heading for parts and accessories (8607, 8708, 8714, and 8803), Chapter 89 does not have a separate heading for parts and accessories. The headings in the Chapter, from 8901 to 8908, do not include sub-heading/ items for 'parts and accessories'

e. The above observation is reinforced by Note No. 3 to Section XVII which states that reference in Chapters 86 to 88 to parts or accessories do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. Notably, the note does not mention about Chapter 89 for the obvious reason that Chapter 89 has no reference to 'parts and accessories'.

f. On the other hand, Note No.2 in the Section provides that 'the expressions, 'parts' and 'parts and accessories' do not apply to the following articles, whether or not they are identifiable as for the goods of this Section':

(a)

(b) Parts of general use, as defined in Note 2 to Section XV. .

(c) Articles of Chapter 82 (tools)

(d) . . .

(e) machines or apparatus of headings 8401 to 8479, or parts thereof; articles of heading 8481 or 8482

(f) Electrical machinery or equipment (Chapter 85) . .

(g) . . .

g. According to clause (m) of Note 1 in Section XVI (Machinery and Mechanical appliances; electrical equipment etc. covering Chapters 84 & 85), Section XVI does not cover Articles of Section XVII.

h. In as much as there is no specific reference to 'parts' or 'parts and accessories' in Chapter 89, the exclusion in Section Note 2 of Section XVII do not apply to 'parts' of goods falling under heading 8901 to 8908. Similarly, the exclusions from Section XVI in terms of Note 1 - clause (m) would also not apply to parts of boats, ships etc as there is no classification for the same in Section XVII.

i. Therefore, the applicant claims that whenever there is reference to 'parts' of ships, recourse has to be had to the General Rules of Interpretation of the Tariff and each individual component of each assembly has to be identified and classified in the appropriate heading in the Tariff and such exercise could lead to classification under Chapter 39 (plastics), Chapter 40 (rubber), Chapter 44(wood), Chapters 50 to 63 (textile articles) or Section XV (Base metals), Section XVI or Chapter 90 etc.

j. The applicant states that the explanatory notes to Harmonised System of Nomenclature (HSN) clarifies the above aspect as under:

"Contrary to the provisions related to the transport equipment falling in other Chapters of Section XVII, this Chapter excludes all separately presented parts (other than hulls) and accessories of vessels or floating structures, even if they are clearly identifiable as such. Such parts and accessories are classified in the appropriate headings elsewhere in the Nomenclature, for example:

(1) The parts and accessories specified in Note 2 to Section XVII

(2) Wooden oars and paddles (heading 44.21)



- (3) Ropes and Cables of Textile Materials (heading 56.07)
- (4) Sails (heading 6306)
- (5) Masts, hatchways, gangways, rails and bulkheads for ships or boats and parts of hulls, having the character of metal structures of heading 7308
- (6) Cables of iron or steel (heading 7312)
- (7) Anchors of iron or steel (heading 7316)
- (8) Propellers and paddle wheels (heading 8487)
- (9) Rudders (headings 4421, 7325, 7326, etc) and other steering or rudder equipment for ships or boats (heading 8479)

k. Hence, the classification of "parts" of ships, particularly when they are cleared in the form of assemblies/ systems as in the case of supplies to Shipyards / Indian Navy by the applicant is close to impossibility. Even if so done, it would be difficult to identify the 'principal' amongst the various goods to adopt the rate of tax as a composite supply or to determine the goods attracting the highest rate as mixed supply.

- ii. In the absence of separate heading of classification for parts of ships, the expression 'Any chapter' in Column 2 of the Schedule assumes significance.
 - a. The applicant submits that the Column 2 of the Schedules in the subject Notification(s) refers to Chapter/ Heading/ Sub-heading / Tariff item". Whereas for every S.No. the respective Chapter / Heading number has been mentioned, in respect of Sl.No.252, in the said Column 2 the expression "Any Chapter" is used which signifies that irrespective of classification of the particular product / item / goods, the rate of tax applicable would be 5% only.



- b. The applicant submitted that under Customs or in the earlier tax regime (i.e. under Central Excise) also, exemption to parts etc. of boats, ships is/was provided.
- c. Notification No. 12/2012-Cus dated 17.03.2012 contained the following entry:

469	Any Chapter	Raw materials and parts, for use in the manufacture of goods falling under heading 8901, 8902, 8904, 8905 (except sub-heading 8905 20) or 8906, in accordance with the provisions of section 65 of the Customs Act, 1962 (52 of 1962)	Nil	Nil	83
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- d. The above entry was inserted with effect from 24.11.2015. Further, the above Notification has since been superceded by Notification No. 50/2017 dated 30.06.2017; however the above exemption entry continues under Sl.No. 559 in the new Notification.
- e. Similarly, Notification No.12/2012-CE also exempted 'raw materials' and parts of ships etc. The relevant entry 306C, which was inserted by Notification No. 44/2015-CE dated 24.11.2015 reads as under

306C	Any Chapter	Raw materials and parts, for use in the manufacture of goods falling under heading / tariff item 8901, 8902, 8904 00 00, 8905 (except tariff item 8905 20 00) or 8906
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- f. Notification No. 64/95-CE included the following exemption

21	All goods	If, - (a) the said goods are supplied for use in construction of warships of the Indian Navy or Coast Guard; and (b) before clearance of the said goods, a certificate from an officer not below
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		the rank of a Rear Admiral of the Indian Navy or Coast Guard or Director General of Coast Guard or any other officer of the Indian Navy or Coast Guard equivalent to the Joint Secretary to the Government of India, to the effect that the said goods are intended for the said use, is produced to the proper officer.
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- g. Further, Notification No. 12/2012-Cus also had the following entry

459	Any Chapter	Capital goods and spares thereof, raw materials, parts, material handling equipment and consumables, for repairs of ocean going vessels by a ship repair unit.
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- h. Notification No.82/84-CE exempted all capital goods, components and raw materials falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and cleared for repair of goods falling under Heading No.s 8901, 8902, 8904 and 8905 (excluding floating or submersible drilling or production platforms) and 8906, by ship repair units from whole of excise duty.
- i. From the above, the applicant states that it can be seen that whenever exemption is provided to goods meant for ships, etc. falling under Chapter 89, either for manufacture of ships or for repairs or for specified purposes such as under by Indian Navy, such exemption has been provided to goods falling under any Chapter of the respective Tariff (Customs or Central Excise).
- j. The applicant has relied on the following decisions wherein it has been held that once the goods are supplied for specified use, such as construction of warship and have been certified to be so used by the Naval Authorities, the exemption is applicable irrespective of the classification of goods

- a. Brahmos Aerospace Pvt.Ltd v/s CC, CE&ST, Hyderabad II- 2014 (307) ELT 795- Tri
 - b. GE Industrial India Ltd v/s CCE, Cus & CE, Bangalore-1- 2016 (335) ELT 103 (Tri Bang)
- k. The applicant submitted that all the systems/ assemblies supplied / to be supplied by them are meant for use in warships, vessels and submarines as evidenced by the Purchase Orders. Hence, irrespective of the classification of the respective goods, the rate of tax applicable would be 5% in terms of Sl.No.252 of Schedule I.
- l. The applicant submits that the supplies of the applicant are used only for the purposes of National Defence and this being a priority sector, a beneficial interpretation of the entries would be in consonance to the legislative intent.
- iii. The expression "parts" in the entry has a wide application
- a. The applicant submitted that each of the systems are essential for the overall functioning of the Warships, Vessels and Submarines and therefore the expression "parts" in the subject entry of the Notification(s) should be construed to include all such systems / assemblies. To buttress this submission, reliance is placed on the following decisions in the context of Notifications / tariff entries under the Customs/ Central Excise law.
 - i. Mehra Brothers v. Joint Commercial Officer [1991(51) ELT 173 (SC)] - held that a part or accessory need not necessarily mean an item which is essential for the effective use of a vehicle but also would include any item which adds to the comfort or enjoyment of the vehicle.

"Having given our anxious consideration, with respect, we are of the considered view that the test laid down by the Karnataka High Court that the accessories as a part must contribute for

convenience or effectiveness in the use of the car as a whole is not a correct test. In our view the correct test would be whether the article or articles in question would be an adjunct or an accompaniment or an addition for the convenient use of another part of the vehicle or adds to the beauty, elegance or comfort for the use of the motor vehicle or a supplementary or secondary to the main or primary importance. Whether an article or part is an accessory cannot be decided with reference to its necessity to its effective use of the vehicle as a whole. General adaptability may be relevant but not by itself conclusive. . ."

- ii. Pragati Silicones Private Limited v. CCE, Delhi [2001 (131) ELT 704 Tri, Delhi] – The Tribunal was considering the dispute whether 'plastic name plates' are parts of motor vehicles. The Tribunal had referred to Sarkar's 'Words, Phrases of Excise & Customs – Second Edition' – "part is an element of a sub-assembly, not normally useful by itself and not amenable to further disassembly for maintenance purpose" In common parlance parts are used in the manufacture of the final product and without which the final product cannot be conceived of and came to the conclusion that a motor vehicle is complete even without the 'plastic name plate' and hence negated the claim that the name plates are parts of vehicles.

The Hon'ble Supreme Court overruled the decision of the Tribunal and held that the 'plastic name plates' are to be classified under TSH 8708 or 84714 as 'parts and accessories of motor vehicles'. Admittedly the Supreme Court had come to the conclusion after detailed discussion on the term 'accessories'. But the Hon'ble Apex Court had made its mind clear by observing in Para 15 of the decision as under:

"In the light of the rival submissions made the counsel for the parties before us, we are required to

determine whether the Tribunal has correctly held that 'plastic name plates' do not fall within the purview of headings 87.08 and 87.14. As far as these two headings are concerned, it is possible to include two kinds of goods therein – those which are either 'parts' of motor vehicles or those which are 'accessories' of motor vehicles. While a case can be made for the inclusion of name plates in Chapter 87 as 'parts' as well as 'accessories' of motor vehicles, we are not examining the former category."

Again in Para 21, it has been observed that "Thus, even if there was any difficulty in the inclusion of the plastic name plates as 'parts' of the motor vehicles, they would most certainly have been covered by the broader term 'accessory'."

- b. In the case of systems supplied by the Applicants, the systems are a combination of parts as explained earlier, and are essential for the functioning of the warships, vessels and submarines and hence even as per the Tribunal's decision in Pragati Silicones, would qualify as parts of the ships.
 - c. The applicant has also placed reliance on the decision of the Hon'ble Tribunal in the case of Pelican Rubber Limited v. CCE, Hyderabad - 2011 (265) ELT 33 (Tri Bang).
 - d. The applicant submitted that in view of the judicial pronouncements, which though have been rendered in the context of Central Excise law, the fact that they enumerated the scope of 'part' of automobiles, which is broadly the subject matter in this application, it is submitted that the understanding of the applicant that the systems attract 5% GST only is appropriate.
- iv. The GST Notification is applicable so long as the goods are used in warships, vessels and submarines, whether for construction or repair or replacements:



- a. The applicant submitted that they are of the view that the rate of 5% GST in terms of Sl.No. 252 of Schedule I would apply whenever goods falling under any Chapter are supplied, either as individual parts / components or as system/ assemblies so long as they are meant for use in Warships (or other type of vessels falling under Heading 8901 etc.)
- b. The applicant also submitted that when the GST Notification is compared with the corresponding Customs / Central Excise Notifications mentioned earlier, it can be noticed that the GST Notification in general terms refers to 'parts of goods falling under 8901, 8902, 8904, 8905, 8906, 8907'.
- c. He submitted that whereas, the Customs / Central Excise Notifications (12/2012-Cus, 50/2017-Cus and 12/2012-CE) exempted 'raw materials and parts, for use in the manufacture of goods falling under 8901, 8902, 8904, 8905, 8906, 8907'. The expression 'for use in the manufacture of goods' is conspicuously absent from the GST Notification(s).
- d. Further, the applicant submits that, the Customs Notifications mentioned above also exempt Capital Goods and spares thereof, raw materials, parts, material handling equipment and consumables, for repairs of ocean going vessels (including warships) by a ship repair unit. Similar exemption from Central Excise duty was provided vide Notification No. 82/84-CE.
- e. Notification No.64/95 -CE Sl.No.21 - exempted all goods supplied for use in construction of warships of the Indian Navy or Coast Guard.
- f. Inasmuch as the GST Notifications, do not mention any specific purpose, as has been done in the Customs / Central Excise Notifications, it is the humble view of the Applicants that Sl.No.252 of Schedule I of the GST Notifications apply to all goods supplied independently or as an assembly / system for use in the ships, whether for manufacture / construction or for repairs etc.

In view of the above, the applicant has prayed to pass an order holding that the various systems supplied by the applicant for use in the warships, vessels and submarines to be deployed by the Indian Navy attract 5% IGST (or 2.5% CGST + 2.5% SGST depending on the Place of Supply) in terms of Sl.No. 252 of Schedule I of Notification No. 1/2017-Central Tax (Rate) / Integrated Tax (Rate) / KGST.

PERSONAL HEARING: / PROCEEDINGS HELD ON 21.02.2018.

4. Sri G Shivadass, Advocate, M/s Lakshmikumaran & Sridharan, Advocates and duly authorised representative of the applicant appeared for personal hearing proceedings held on 21.02.2018 & reiterated the facts narrated in their application and also submitted copies of relevant notifications etc., along with copies of certain case laws that they intend to rely upon.

5. FINDINGS & DISCUSSION:

5.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. G Shivadass, Advocate, M/s Lakshmikumaran & Sridharan, Advocates and authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

5.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

5.3 The Applicant seeks advance ruling in respect of the following question:

Whether the various systems, sub-systems and onboard spares supplied by the applicant for use in the Warships, Vessels and Submarines meant for Indian Navy and Shipbuilders, attracts 5% GST?

5.4 The applicant states that the subject matter of this application relates to supplies against purchase orders received from various ship building industries, namely Mazagon Docks Ltd, Garden Reach Shipbuilders and Engineers, Hindustan Shipyard Limited, L & T and



directly to Indian Navy. In this regard the applicant has submitted a copy of a contract entered between the applicant and JS & AM(MS), Ministry of Defence, in the name of the President of India and a purchase order from Hindustan Shipyard Limited. The application is examined with reference to this contract and the purchase order. The Applicant submitted that they are involved in supply of various systems & sub-systems and onboard spares for use in the warships, vessels and submarines meant for Indian Navy. Each system by itself is not a separate product, but comprises of various parts/assemblies. Further apart from supply of the systems, they also provide services of installation, commissioning, Training including rehosting of test programmes.

5.5 The Applicant submitted that they require to determine the classification of their supply to determine the appropriate rate of applicable GST. They further submit, quoting the definitions of "Composite Supply" defined under Section 2(30) of the CGST Act 2017 and that of "Mixed Supply" defined under Section 2(74) of the CGST Act 2017, that the supply of systems against each purchase order consists of combination of goods and services with supply of goods apparently being the principal supply. The applicant contends, in view of the above, that their supply is a composite supply & the principal supply is that of goods, which are parts of Warships, classified under 8906, covered under Sl.No.252 of Schedule I of Notification 1/2017-Central Tax (Rate) dated 28.06.2017 and hence attract 5% of GST.

5.6 In view of the above, the main issue before us to decide is whether the supplies made by the applicant qualify to be composite supplies wherein the goods being the principal supply and whether the said goods form parts of goods of heading 8906, the warships or not. It is a fact that Chapter 89.06 covers *Other Vessels, including warships and lifeboats other than rowing boats* and more specifically 8906.10 covers warships. We first consider the issue of composite supply.

5.7 In the contract entered between the applicant and JS & AM(MS), Ministry of Defence, in the name of the President of India, it is observed that the Contract was for the supply of 20 Fire Control Systems for IN Ships and accompanying accessories, services and documentation. The items were contracted to be delivered to the consignee's initial destination with the cost of standard packing, freight charges and transit insurance charges up to the consignee's initial destination to the Seller's Account.

5.8 Composite supply has been defined under sub-section (30) of section 2 of the CGST Act 2017 and is as under:

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

5.9 It is seen that the price is inclusive of the packing charges, freight charges and transit insurance charges and are includible in the price. The contract includes services like Installation and Commissioning, Training and rehosting test programmes. Hence the entire contract is a composite supply of supply, installation, commissioning, training and rehosting the test programmes with the principal supply being the supply of Fire Control Systems. It also includes the service to be provided during the warranty period. In the instant case the Applicant supplies the goods such as Fire Control Systems, Radar Systems etc., and also provides the services of the installation, commissioning, Training etc.. The equipments/systems supplied by the applicant are custom made for warships and hence the applicant alone is qualified to install and commission them and also to train the recipients. Therefore the two supplies that of supply of goods and supply of related services, are taxable as well as naturally bundled and hence qualify as a Composite Supply. The principal supply is undoubtedly that of goods i.e. the systems.

5.10 Further Section 8 of CGST Act 2017 deals with the tax liability in case of a composite supply and states as under:

8. Tax liability on composite and mixed supplies:

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b)

In view of the above, since the principal supply is supply of goods i.e. fire control systems, the entire composite supply need to be treated as the supply of goods fire control systems.

5.11 The applicant has also provided a copy of another project done for Hindustan Shipyard Limited, Vishakhapatnam for the supply of Advanced



Composite Communication System (ACCS). The applicant has also provided the list of supplies in which the project descriptions are provided and some of the systems are as under:-

- (a) Display system Tactical CTD
- (b) Detonator Assembly
- (c) Electro Optic System
- (d) Electro Optic Gun Fire Control System
- (e) Optical Director System
- (f) Radar Surveillance Systems

The Applicant, in this context also supplies aforesaid systems i.e. goods and also provides services of installation, commissioning etc., of the said goods and hence the supply qualifies to be a composite supply and the goods being the principal supply and thereby the said composite supply attracts the rate of GST applicable to the principal supply.

5.12 The second issue in the instant case is whether the systems and assemblies (goods), supplied by the applicant qualify to be classified as "parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907" or not.

5.13 In respect of Tariff Headings and determination of Classification, Explanations (iii) and (iv) appended to the Notification No. 01/2017-Central Tax (Rate), dated 28.06.2017 are relevant. The said explanations are reproduced below for case of reference.

(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(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.

Accordingly we make a reference to the Section Notes and Chapter Notes of the relevant Chapters of the Customs Tariff and also the corresponding Explanatory Notes.

5.14 Section XVII of the Customs Tariff deals with the **Vehicles, Aircraft, Vessels and associated Transport Equipment**, covering the chapters 86 to 89. Further Chapter 89 covers **Ships, boats and floating structures**. Tariff Heading 89.06 covers **Other Vessels, including**

warships and lifeboats other than rowing boats. The **warships** are specifically covered under Tariff Heading 8906 1000. Further **"Parts of goods of heading 8901,8902,8904,8905, 8906 and 8907"** falling under any chapter are subject to 5% of IGST (2.5% of CGST and 2.5% of SGST) in terms of serial number 252 of Schedule I of Notification No.01/2017-Integrated Tax (Rate) & Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017. Therefore the applicant contends that their supply i.e. the goods qualify to be parts of ships and vessels and hence are taxable at 5% IGST.

5.15 Chapter 89 falls under Section XVII of the Customs Tariff and hence the relevant Section Notes are applicable to the instant case. Section Note 3 to Section XVII of Customs Tariff stipulates that *"References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory"*. It is pertinent to mention here that the said Section Note does not refer to Chapter 89, which does not have any entry for parts.

5.16 Further, Explanatory Notes to Section XVII at **General (III) Parts & Accessories** provides that *Chapter 89 makes no provision for parts (other than hulls) or accessories of ships, boats or floating structures. Such parts and accessories, even if identifiable as being for ships etc., are therefore classified in other Chapters in their respective headings.* Therefore it remains to be decided that whether the systems/ sub-systems/ equipment being supplied by the applicant qualify to be parts of the goods of headings 8901, 8902, 8904, 8905, 8906, 8907.

5.17 In view of the above, it could be inferred from para 5.16 supra that chapter 89 does not have a provision for parts or accessories and hence any, system / sub-system or article or product by whatever name it is called, that is fitted to the ship or boat or a floating structure becomes either part or accessory of the said ship, irrespective of its classification. In the instant case the Applicant at para 5 of Annexure A to the application clearly admitted that all the systems being supplied by them are meant for use "ON BOARD SHIPS" of the Indian Navy and hence it can be construed that all the supplies are meant for warships, falling under Chapter 8906. Therefore it implies, as admitted by the applicant, that all the supplies are meant for the goods of headings 8901, 8902, 8904, 8905, 8906, 8907 but not meant for goods of headings 8903, 8908.



5.18 Further HSN explanatory notes at Tariff Heading 89.06 specifies the articles / goods covered under the said heading. It specifies that the Tariff Heading 8906.10 covers Warships and heading 8906 covers all kinds of warships which include

(a) *Ships designed for warfare, fitted with various offensive weapons and defensive weapons and incorporating protective shields against projectiles (e.g. armour-plating or multiple watertight bulkheads), or with underwater devices (anti-magnetic mine-detectors). They are generally also fitted with detection and listening devices such as radar, sonar, infra-red detection apparatus and scrambling equipment for radio transmission.*

Ships of this category may be distinguished from merchant ships by their greater speed and manoeuvrability, by the size of the crew, by bigger fuel tanks and by special magazines, for transport and use of ammunition at sea.

(b) *Certain specially fitted ships which do not carry weapons or armour-plating but yet are recognizable as wholly or mainly for use in warfare, such as landing craft or certain fleet auxiliaries (for transporting ammunition or mines, etc.), troop-ships.*

(c) *Submarines*

5.19 Therefore, it is clearly evident from the above that the warships are required to be fitted with certain systems / sub-systems such as radar, sonar etc.,. In the instant case, the applicant claims that they are supplying the systems such as Color Tactical Display system, Radar system (for surveillance and threat alert, Navigation and attack, Weather surveillance), Missile system, Electro Optical Fire Control system, Gun Fire Control system, Optical Director system etc., meant for use "On Board Ships" of the India Navy, under agreement. In view of the above these systems are meant for Ships and vessels more specifically warships covered under chapter 8906 1000, without which the warships cannot function in required, proper and effective manner. Therefore it can be considered that these systems are essential parts / accessories for effective functioning of the warship. Therefore these systems, parts of the said systems as described in the sample contract and the purchase order become parts of warships covered under the Heading 8906.

5.20 It is pertinent to mention here that serial number 252 of Schedule I of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 is applicable only to goods which qualify to be parts of goods of headings 8901, 8902, 8904, 8905, 8906 and 8907. This implies that any goods in the nature of consumables and raw materials, which do not answer the specific requirement of being parts of warships, would not fall under the said serial number 252 of Schedule I of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017.

6. In view of the foregoing, we pass the following

R U L I N G

Various systems, sub-systems and onboard spares supplied by the applicant for use in the Warships, Vessels and Submarines meant for Indian Navy and Shipbuilders (excluding consumables and raw materials) are appropriately covered under sl.no.252 of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017, and accordingly attracts 5% GST.


(Harish Dharnia)
Member


(Dr.Ravi Prasad.M.P.)
Member

Place : Bengaluru,

Date : 26-08-2019

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore North West Commissionerate, TTMC, Shivaji Nagar, Bengaluru (Jurisdictional Office)

The Asst. Commissioner, LGSTO-65, Bengaluru

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