

	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
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BEFORE THE AUTHORITY OF: Shri. Sivaprasad.S, IRS &
: Shri. Senil A.K. Rajan.

Legal Name of the applicant	M/s. South Indian Federation of Fishermen Societies
GSTIN	32AACTS0090G1ZU
Address	TC 20/1936, Karamana, Thiruvananthapuram – 695002.
Advance Ruling sought for	<p>i) Applicability of GST rate of 5% on marine engines of heading 8407 and its spare parts without considering its general tax rate as per the entry of Schedule I, Sl.No.252 of GST Act dtd.28-06-2017, being the part of fishing vessel of heading 8902.</p> <p>ii) Whether GST is applicable for supply of materials and labour charges incurred during warranty period at free of cost on fishing vessels presented for repair works?</p> <p>iii) Applicability of GST rate of 5% on supply of materials and service charges in connection with the repairs and maintenance of fishing vessels of heading 8902 without considering its individual general tax rates as per the entry of Sch. No. I, Sl.No.252 of GST Act dtd.28-06-2017, being the part of fishing vessel of heading 8902.</p> <p>iv) The tax rate of puff insulated iceboxes produced by SIFFS and used by traditional fishermen at their fishing vessels for the purpose of reducing fish spoilage and maintaining good hygiene.</p> <p>v) The tax rate of marine engine of general heading 8407 when it is supplied to defence department, patrol, flood relief and rescue operations.</p>
Date of Personal Hearing	05.01.2021
Authorized Representative	Shri. John Bosco .A

ADVANCE RULING No. KER/102/2021 Dated 25-05-2021

M/s. South Indian Federation of Fishermen Societies [SIFFS] (**hereinafter referred to as the applicant**) is a non-Governmental Organization supporting the livelihood activities of small scale fishing communities in South India. The applicant is engaged in the business of supply of fishing boats [HSN 8902], iceboxes for fish preservation [HSN 3923] and marine engines [HSN 8407] to traditional small-scale fishermen communities at competitive prices. Fishing boats and iceboxes are manufactured by them while marine engines for fishing vessels are imported from outside India.

2. At the outset, the provisions of the Central Goods and Services Tax Act, 2017 (**hereinafter referred to as CGST Act**) and the Kerala State Goods and Services Tax Act, 2017 (**hereinafter referred to as KSGST Act**) are same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.

3. The applicant requested for advance ruling on the following;

1. *Applicability of GST rate of 5% on marine engines of heading 8407 and its spare parts without considering its general tax rate as per the entry of Schedule I, Sl.No.252 of GST Act dated 28-06-2017, being the part of fishing vessel of heading 8902.*

2. *Whether GST is applicable for supply of materials and labour charges incurred during warranty period at free of cost on fishing vessels presented for repair works?*

3. *Applicability of GST rate of 5% on supply of materials and service charges in connection with the repairs and maintenance of fishing vessels of heading 8902 without considering its individual general tax rates as per the entry of Sch. No.I, Sl.No.252 of GST Act dtd.28-06-2017, being the part of fishing vessel of heading 8902.*

4. *The tax rate of puff insulated iceboxes produced by SIFFS and used by traditional fishermen at their fishing vessels for the purpose of reducing fish spoilage and maintaining good hygiene.*

5. *The tax rate of marine engine of general heading 8407 when it is supplied to defence department, patrol, flood relief and rescue operations.*

4. Contentions of the Applicant:

4.1. The marine engines falling under HSN 8407 used by the applicant are taxed at the rate of 28% in spite of many changes in the GST rates of several items made by the GST Council over the period. In Circular No.52/26/2018-GST dated 09.08.2018 it is clarified that supply of marine engine falling under heading 8408 for fishing vessel attracts 5% GST. Their product is also coming under marine engine category and used by poor fishermen during fishing along with their fishing boats of HSN 8902.

4.2. They are also a manufacturer of fishing vessels and they are giving six months warranty on supply of fishing vessels. Under this warranty period, fishing vessels are repaired free of cost or otherwise they are not charging against the supply of goods and services during warranty period from the purchasers of fishing vessels.

5. Contentions of the Jurisdictional Officer:

5.1. The jurisdictional officer submitted that; (i) the parts suitable for use solely or participating with engine of heading 8407 is liable to GST at the rate of 28%; (ii) GST is not applicable on warranty supplies as the supply is free of cost; (iii) Maintenance and repair is a composite supply involving goods and services and hence the rate of tax applicable to predominant supply may be adopted; (iv) The puff insulated ice boxes fall under HSN 3923 and is liable to GST at the rate of 18%; (v) Marine engine falling under HSN 8407 supplied to defence, patrol, flood relief and rescue operations attract GST at the rate of 28%.

6. Personal Hearing:

The applicant was granted opportunity for personal hearing on 05.01.2021. Shri. John Bosco.A, Finance Executive represented the applicant. He reiterated the

contentions made in the application and requested to issue the ruling on the basis of the submissions made in the application.

7. Discussion and Conclusion:

7.1. The matter was examined in detail. The issues to be decided by the authority are;

1. The rate of GST applicable to marine engines falling under Customs Tariff Heading 8407 and its spare parts when supplied for use as part of fishing vessels.
2. Whether GST is applicable for the free supply of materials and labour incurred during repair works within warranty period to the fishing vessels supplied by them.
3. Whether GST rate of 5% can be applied for supply of materials and service for maintenance or repair works of fishing vessels of Heading 8902.
4. The rate of GST applicable for Puff insulated iceboxes manufactured by the applicant and used in fishing vessels for the purpose of reducing fish spoilage and maintaining good hygiene.
5. The rate of GST applicable to marine engines of Heading 8407 when it is supplied to defence department, patrol, flood relief and rescue operations.

7.2. Regarding the 1st issue it is an admitted fact that the marine engines imported by the applicant are classified under Customs Tariff Heading 8407 21 00 – Outboard motors – Marine Propulsion engines – Spark-ignition reciprocating or rotary internal combustion piston engines and attracts GST at the rate of 28% as per entry at SI No. 114 of Schedule IV of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017. Fishing vessels, factory ships and other vessels for processing or preserving fishery products fall under Customs Tariff Heading 8902 and is liable to GST at the rate of 5% as per entry at SI No. 247 of Schedule I of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017. However, as per entry at SI No. 252 of Schedule I of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017 parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907 falling under any chapter of the Customs Tariff attracts GST at the rate of 5 %. Therefore, if the marine engines are supplied for use as part of fishing vessel falling under Customs Tariff Heading 8902, then the marine engine as part of fishing vessel will only attract GST at the rate of 5% as per the entry at SI No. 252 of Schedule I of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017. Further, we find that the question raised before us is already clarified by the CBIC by Circular

No.52/26/2018 - GST dated 09.08.2018. The relevant Para 10 of the circular reads as follows;

“10.1 Applicability of GST on marine engine: Reference has been received seeking clarification regarding GST rates on Marine Engine. The fishing vessels are classifiable under heading 8902, and attract GST @ 5%, as per S. No. 247 of Schedule I of the notification No. 01/2017-Central Tax (rate) dated 28.06.2017. Further, parts of goods of heading 8902, falling under any chapter also attracts GST rate of 5%, vide S. No. 252 of Schedule I of the said notification. The Marine engine for fishing vessel falling under Tariff item 8408 10 93 of the Customs Tariff Act, 1975 would attract a GST rate of 5% by virtue of S. No. 252 of Schedule I of the notification No. 01/2017-Central Tax (rate) dated 28.06.2017.

10.2 Therefore, it is clarified that the supplies of marine engine for fishing vessel (being a part of the fishing vessel), falling under tariff item 8408 10 93 attracts 5% GST.”

7.3. Therefore, the marine engine and its spare parts supplied for use in fishing vessels falling under Customs Tariff Heading 8902 shall attract GST at the rate of 5% [2.5%-CGST + 2.5% SGST] as per entry at SI No. 252 of Schedule I of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017. If it is supplied for use other than as parts of fishing vessels as stated above, GST at the rate applicable under the respective Customs Tariff Headings in which they are classified, will apply.

7.4. The second issue to be decided is the applicability of GST on the supply of materials and labour during repair works within warranty period to the fishing vessels supplied by the applicant. Warranty is a promise or guarantee made by a seller of the goods or a provider of services contemporaneously with and as a part of the contract of sale or service or both although collateral to the express object of the contract about the characteristics or quality of the goods or services or both. It can serve to help the purchaser or the recipient of goods or services or both to secure the conforming goods / services or provides remedy for breach of the agreement by the supplier. In the event of breach the law provides the injured party the right to damages or repairs or replacement of the goods. The consideration received for the original supply includes the consideration for promise to repair or replace. Hence separate consideration is not

charged for warranty repairs / replacement. The supply of goods and services for warranty repairs / replacement is incidental to the original supply and the value of supply made earlier includes the charges for the warranty supply also. Therefore, the supply of goods or services or both during warranty period without consideration in discharge of the warranty obligation is not liable to GST. However, if any additional consideration is received in respect of such supplies of goods or services or both it will be liable to GST at the rate applicable for the goods / services as per the rate schedule.

7.5. The third issue to be decided is the applicability of the GST on the repair or maintenance work of fishing vessels falling under Customs Tariff Heading 8902 wherein supply of spare parts and service (labour) is involved. The activity of rendering repair or maintenance services of fishing vessels / boats etc involve supply of both goods / spare parts and services in conjunction and as naturally bundled in the ordinary course of business and is hence a composite supply. Unless the contract specifies that the goods and services supplied are to be separately charged, the nature of supply remains a composite supply. The principal supply however depends on the dominant element of the composite supply. Though in the process of maintenance or repair of fishing vessels there is supply of goods / spare parts, there is no transfer of title in the goods / spare parts as such and hence the supply of goods / spare parts are ancillary to the repair or maintenance of the fishing vessels. Hence the predominant element of the supply is not the transfer of title in goods / spare parts but that of service of repair or maintenance and the supply of goods / spare parts being ancillary / incidental to the activity of repair or maintenance it is appropriately classifiable under Heading 9987 – 998714 – Maintenance and repair of transport machinery and equipment under the Scheme of Classification of Services notified as Annexure to Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 and is liable to GST at the rate of 18% [9%-CGST + 9%-SGST] as per SI No. 25 (ii) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

7.6. However, it is seen that the CBIC in Circular No. 47/21/2018 – GST dated 08.06.2018 has clarified as follows;

“2. How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST?”

2.1 The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case.

2.2 Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.”

7.7. The applicant has neither produced any copy of the contract / agreement for supply of repair or maintenance service of fishing vessels nor any copy of the invoice issued for such supply. Therefore, it is not possible to ascertain the nature of the supply of repair or maintenance services rendered by the applicant as to whether it is a composite supply or it provides for the supply of spare parts and services (labour) as distinct and separately identifiable supplies. However, in view of the above clarification of the CBIC in cases where contract of supply of repair or maintenance specifies that the spare parts and services are to be separately charged and the value of such spare parts and services supplied are shown separately, the spare parts and the services shall attract GST respectively at the rates applicable to such spare parts and service as per the GST rate schedule as the supply of the spare parts and repair service are distinct and separately identifiable. In such cases the spare parts being supplied for use as part of fishing vessels will attract GST at the rate of 5% [2.5%-CGST + 2.5%-SGST] as per entry at SI No. 252 of Schedule I of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017 and the services will be liable to GST at the rate of 18% [9%-CGST + 9%-SGST] as per SI No. 25 (ii) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

7.8. The fourth issue to be decided is the classification and rate of GST applicable to puff insulated iceboxes produced by the applicant and used in fishing vessels for reducing fish spoilage. The puff insulated ice boxes are appropriately classifiable under Customs Tariff Heading 3923 10 30 – Articles for the conveyance or packing of goods, made of plastics – Boxes, cases, crates and similar articles – Insulated ware. The articles falling under Customs Tariff Head 3923 are liable to GST at the rate of 18% [9%-CGST + 9%- SGST] as per entry at SI No. 108 of Schedule III of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017. The ice box is used in the fishing vessels for storage of fish to reduce spoilage and to maintain freshness of fish during conveyance.

The product cannot be considered as a part of fishing vessel falling under Customs Tariff Heading 8902 and hence is not eligible for the concessional rate of GST as per entry at SI No. 252 of Schedule I of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017.

7.9. The fifth issue to be decided is the rate of GST applicable to marine engine falling under Customs Tariff Heading 8407 when it is supplied to Defence department, patrol, flood relief and rescue operations. The vessels used by the Defence and other agencies for patrol, relief and rescue operations fall under Customs Tariff Heading 8906 – Other vessels including warships and lifeboats other than rowing boats. As per entry at SI No. 252 of Schedule I of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017 parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907 falling under any chapter of the Customs Tariff attracts GST at the rate of 5 %. Therefore if the marine engines are supplied for use as part of vessel falling under Customs Tariff Heading 8906, which are used by the Department of Defence and other agencies for patrol, relief and rescue operations then the marine engine as part of such vessel will only attract GST at the rate of 5% as per the above entry.

In view of the observations stated above, the following rulings are issued;

RULING

1. Applicability of GST rate of 5% on marine engines of heading 8407 and its spare parts without considering its general tax rate as per the entry of Schedule I, SI.No.252 of GST Act dtd.28-06-2017, being the part of fishing vessel of heading 8902.

The marine engine and its spare parts supplied for use in vessels falling under Customs Tariff Heading 8902 shall attract GST at the rate of 5% [2.5%-CGST + 2.5% SGST] as per entry at SI No. 252 of Schedule I of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017. If it is supplied for use other than as parts of fishing vessels as stated above GST at the rate applicable under the respective Customs Tariff Headings in which they are classified will apply.

2. Whether GST is applicable for supply of materials and labour charges incurred during warranty period at free of cost on fishing vessels presented for repair works?

The supply of goods or services or both during warranty period without consideration in discharge of the warranty obligation is not liable to GST. However, if any additional consideration is received in respect of such supplies of goods or services or both it will be liable to GST at the rate applicable for the goods / services as per the rate schedule.

3. Applicability of GST rate of 5% on supply of materials and service charges in connection with the repairs and maintenance of fishing vessels of Heading 8902 without considering its individual general tax rates as per the entry of sch. No.I, SI.No.252 of GST Act dtd.28-06-2017, being the part of fishing vessel of heading 8902.

The supply of maintenance and repair service of fishing vessels is classifiable under SAC 998714 and is liable to GST at the rate of 18% [9%-CGST + 9%-SGST] as per SI No. 25 (ii) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

However, where the contract of supply of repair or maintenance specifies that the spare parts and services are to be separately charged and the value of such spare parts and services supplied are shown separately the spare parts and the services shall attract GST respectively at the rates applicable to such spare parts and service as per the GST rate schedule. In such cases the spare parts being supplied for use as part of fishing vessels will attract GST at the rate of 5% [2.5%-CGST + 2.5% SGST] as per entry at SI No. 252 of Schedule I of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017 and the services will be liable to GST at the rate of 18% [9%-CGST + 9%-SGST] as per SI No. 25 (ii) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

4. The tax rate of puff insulated iceboxes produced by SIFFS and used by traditional fishermen at their fishing vessels for the purpose of reducing fish spoilage and maintaining good hygiene.

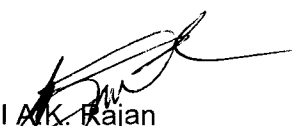
The product falls under Customs Tariff Head 3923 and is liable to GST at the rate of 18% [9%-CGST + 9%- SGST] as per entry at SI No. 108 of Schedule III of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017.

5. The tax rate of marine engine of general heading 8407 when it is supplied to Defence department, patrol, flood relief and rescue operations.

The marine engine that falls under Customs Tariff Heading 8407 when supplied for use as part of vessels falling under Customs Tariff Heading 8906: Other vessels, including warships (which aptly covers vessels for Defence and other agencies used for patrol, relief and rescue operations) shall attract GST at the rate of 5% [2.5%-CGST + 2.5% SGST] as per entry at SI No. 252 of Schedule I of Notification No.01/2017 Central Tax (Rate) dated 28.06.2017.



Sivaprasad.S
Joint Commissioner of Central Tax
Member



Senil A.K. Rajan
Additional Commissioner of State Tax
Member

To,

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Copy to;

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