

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

A.R.Appeal No. 4/2019/AAAR

Date: 26.07.2019

BEFORE THE BENCH OF

1. Thiru.M. AJIT KUMAR, MEMBER

2. Dr.T.V. SOMANATHAN, MEMBER

ORDER-in-Appeal No. AAAR/05/2019 (AR)

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section
101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.

2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only

(a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;

(b). On the concerned officer or the jurisdictional officer in respect of the applicant.

3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.

4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	Rajiv Gandhi Centre for Aquaculture, 3/197, Poompuhar Road, Karaaimedu Village, Sattanathapuram - 609109
GSTIN or User ID	33AAATR6368Q1ZT
Advance Ruling Order against which appeal is filed	Order No. 9/AAR/2019
Date of filing appeal	30.04.2019
Represented by	S/Shri. N.Viswanathan, R.Ravikumar
Jurisdictional Authority-Centre	Trichirapalli Commissionerate
Jurisdictional Authority -State	The Commercial Tax Officer, No.16A, sattanathan colony, Sirkazhi-609110
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- made vide challans No.SBIN19043300505655 dated 29.04.2019 & SBIN19043300513284 dated 30.04.2019

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

The subject appeal is filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by M/s. Rajiv Gandhi Centre for Aquaculture, 3/197, Poompuhar Road, Karaaimedu Village, Sattanathapuram-609 109, Sirkazhi Taluk, Nagapattinam District, Tamil Nadu (hereinafter referred to as 'the appellant'). The appellant is a Society registered under the Tamil Nadu Societies Registration Act and is functioning under the Marine Products Export Development Authority, Ministry of Commerce & Industry, Government of India. The appeal is filed against the Order No.9/AAR/2019 dated

23.01.2019 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The appellant has stated that presently their operations are carried out in Andaman & Nicobar Islands, Kerala and Andhra Pradesh in addition to Tamil Nadu and their operations could be extended to other states of India also. The main activities carried over by them are:

- (a) Research and Development for general public
- (b) Providing Consultancy Service with respect to Marine Service
- (c) Testing Services (All types of testing services) with respect to agriculture and marine products
- (d) Training the Farmers, Entrepreneurs, Self- help groups, Students, Hatchery owners etc.
- (e) Sale of Fish, Crab (all kinds of seeds)
- (f) Sale of Harvest- Fish
- (g) Sale of Artemia-Fish Feed (production and sales)

They are registered vide Registration No.33AAATR6368Q1ZT under GST. However, since they are registered under Section 12A of the Income Tax Act they entertained a view that none of the their above activities could be made liable for the payment of the GST and consequently they may not be required to be registered under GST law at all. They filed an Application (GST ARA-01) with the Tamil Nadu Advance Ruling Authority (hereinafter referred to as 'the learned TNARA') seeking advance ruling on the following questions:.

1. Considering the nature of transactions carried out by RGCA and various exemption notification(s) under GST Laws whether RGCA is required to register under GST Laws?
2. If no registration is required for RGCA, whether compulsory registration u/s 24 is required to be made against any of the provisions of Section 24?
3. If so, whether separate registration is to be taken from all the states where the offices of RGCA is situated? Explain the procedure to obtain registration
4. If registration is required to be made, what are the tax rates applicable to the transactions of RGCA?

5. Since RGCA-Head office is having GST Registration (Migrated from TNVAT) at Tamil Nadu only other various project sites are located at different states but doesn't having the GST registration so far, If they want to purchase materials through interstate from Mumbai to its one of the branch at Kerala, how the purchases of the materials to be made and what are the documents to be carried for the transport of such purchased goods under GST?

3.0 The Original Authority has ruled as follows:

1. The applicant, RGCA is liable to be registered under Section 22 of CGST and TNGST Act.
2. RGCA shall obtain registration in every such State or Union territory in which he is so liable.
3. The rate of tax for various supplies of goods and services supplied by RGCA are :
 - a. Fish seeds, prawn/shrimp seeds supplied by RGCA, classifiable under 0301, are exempt from CGST under Sl. No.18 of Notification No.2/2017-C.T. (Rate) dated 28.06.2017 as amended and from SGST under Sl. No.18 of Notification No.II(2)/CTR/532(d-5)/2017 vide G.O. (Ms) No. 63 dated 29.06.2017 as amended.
 - b. Live fish supplied by RGCA, classifiable under 0301, are exempt from CGST under Sl. No.19 of Notification No.2/2017-C.T. (Rate) dated 28.06.2017 as amended and from SGST under Sl. No.19 of Notification No.II(2)/CTR/532(d-5)/2017 vide G.O. (Ms) No. 63 dated 29.06.2017 as amended.
 - c. Artemia cysts supplied by RGCA, classifiable under 0511, are taxable at 2.5% CGST under Sl. No.21 of Notification No.1/2017-C.T. (Rate) dated 28.06.2017 as amended and at 2.5% SGST under Sl. No.21 of Notification No. II(2)/CTR/532(d-4)/2017 vide G.O. (Ms) No. 62 dated 29.06.2017 as amended.
 - d. Research and development activities of RGCA are towards breeding, developing new species, genetic testing of Seed and adults of diversified aquaculture species, Gene sequencing for confirmation of species, under SAC 9981,are taxable at 9% CGST under Sl no 18 of Notification No

11/2017 dt 28.06.2017 as amended and 9% SGST under Sl no 18 of Notification No .II(2)/CTR/532(d-14)/2017 vide G.O. (Ms) No. 72 dated 29.06.2017 as amended.

- e. Consultancy services of RGCA are towards nursery technology, cage farming hatching etc. which are support services for rearing of fish, crab, prawn , etc. and are directly related to operations ,classifiable under SAC 9986, are exempt from CGST under Sl no 54 of Notification No 12/2017 dt 28.06.2017 as amended and exempt from SGST under Sl no 54 of Notification No.II(2)/CTR/532(d-15)/2017 vide G.O. (Ms) No. 73 dated 29.06.2017 as amended
- f. testing for pathogens of soil, water, feed etc. and chemical analysis of water and soil and Gene sequencing of pathogens, classifiable under SAC 9983, by at 9% CGST under Sl no 21 of Notification No 11/2017 dt 28.06.2017 as amended and 9% SGST under Sl no 21 of Notification No .II(2)/CTR/532(d-14)/2017 vide G.O. (Ms) No. 72 dated 29.06.2017 as amended.
- g. training services of RGCA to farmers, hatcheries which are support services for rearing of fish ,crab, prawn , etc. and are agricultural extension services covered under SAC 9986 and hence are exempt from CGST under Sl no 54 of Notification No 12/2017 dt 28.06.2017 as amended and exempt from SGST under Sl no 54 of Notification No.II(2)/CTR/532(d-15)/2017 vide G.O. (Ms) No. 73 dated 29.06.2017 as amended
- h. The training activities of RGCA to students, academia who are not directly involved in rearing of fish, aquaculture etc. are covered under SAC 9992 and taxable at 9% CGST under Sl no 30 of Notification No 11/2017 dt 28.06.2017 as amended and 9% SGST under Sl no 30 of Notification No .II(2)/CTR/532(d-14)/2017 vide G.O. (Ms) No. 72 dated 29.06.2017 as amended.

4. The present appeal is against the ruling under Sl.No. 1, 3 (c), 3(d), 3(f), 3(h) and the stand taken by the ARA that no ruling is provided for the question relating to the document under which the purchases from other states are to be covered as not covered under Section 97(2) of the CGST Act.

5. Prima facie, the appellant submitted that they received the impugned order on 18.03.2019 and therefore there is a delay of 13 days in filing this memorandum of appeal in view of the provisions of Section 100 of the CGST Act, 2017. They filed a separate Petition praying for condonation of the above short delay in filing this appeal in terms of proviso to Section 100(2) of the said Act explaining the facts and circumstances which caused the delay in filing the appeal. They have stated that their clerical staff who received the impugned order did not bring the same immediately to the notice of the management without realising its importance and implication and incorrectly assuming that the appeal period is 60 days as in the case of Service Tax provisions and brought the fact of receipt of the said order to the notice of the appropriate higher officer only in the third week of April 2019 and as they being controlled by the government, they had to process the file to obtain necessary approval. They have further stated that they have a very fair chance to succeed in the appeal preferred by them. They have relied on the decision of Hon'ble Supreme Court of India in the case of Esha Bhattachajee Vs Managing Committee of Raghunathpur Nafar Academy and others[(2013) 12 SCC 649] wherein it is stated that such delay is required to be condoned in the interest of justice. They have prayed that this learned Appellate Advance Ruling Authority may be pleased to take this appeal on record condoning the short delay and render justice.

6. On merits of the case, they have furnished the following as grounds of this appeal:

- a. The learned TNARA ought to have noted that sustainable technologies mean the technologies which meet the needs of the present without compromising the need of future generations to meet their own needs and hence the sustainable technologies on one hand caters the need of the present without affecting the environment so that the environment is sustained and developed for the future generations and hence appellant's goal of providing sustainable technologies in aquaculture is only meant for preservation of environment. Had the learned TNARA noted the above, while not disputing that the appellant is registered as body as no-profit no loss basis under Section 12AA of the Income Tax Act, would have ruled that the appellant is eligible for the exemption provided under sl.no.1 of Notification

No.12/2017-CT (Rate) failure of which had resulted in the erroneous ruling being record in their case which requires to be modified.

- b. The learned TNARA ought to have noted that when they have not disputed thereby accepting that *Artemia* cysts are *artemia*, also called *brine shrimp*, is a species of crustacean and cysts are eggs of the shrimp from which larvae hatch which is in turn used as aquatic feed', the product is classifiable only under chapter 23 and such a classification cannot be denied by citing Note to Chapter 23 because the said Note is inclusive one as it does not exclude any animal feeding from heading 2309 but only includes the animal feeding obtained by processing vegetable or animal material to such an extent that they have lost the essential characteristics of the original material. In other words, heading 2309 includes not only the vegetable or animal material which have lost the essential characteristics in the process but also the vegetable or animal materials which have not lost the essential characteristics in the process as long as they are animal feed. Since, admittedly the impugned *Artemia* cysts is aquatic feed, the same is rightly classifiable under heading 2309. The learned TNARA ought to have noted and followed the decision of the Hon'ble Calcutta High Court in *Atherton Engineering Co. Pvt. Ltd. Vs. UOI* [2010 (256) ELT 358] holding that ' *I am of the opinion that if an embryo is within an egg and it is subsequently incubated in controlled temperature and under hydration, the larvae which are subsequently born do not assume the character of any different product but remain in nature and characteristics the same product or organism which is within the egg. Therefore, if the eggs did contain an embryo they could be classified as feeding materials for prawns and ought to have been so classified. These embryos may not be proper prawn feed at the time of importation but could become so, after incubation. Refusing to classify the product as prawn feed on this basis is not reasonable. In deducing the above principle, I have taken a lot of guidance from the case of 'Commissioner of Income-tax. v. Venkateshwara Hatcheries (P.) Ltd. reported in (1999) 2371TR 174 (S.C.) (Supra)'. Had the learned TNARA noted the above facts and followed the above decision of the Hon'ble Calcutta High Court, they ought to have seen*

that the impugned Artemia cysts are exempt from CGST vide sl.no.102 of Notification No.2/2017- CT (Rate) and from TNGST under the corresponding Notification as 'aquatic feed including shrimp feed and prawn feed'.

- c. The learned TNARA ought to have noted that the term agriculture covers not only cultivation of land and growing crops but includes animal husbandry, raising of livestock, etc. The very fact, Govt. of India, Ministry of Agriculture enacted Coastal Aquaculture Authority Act, 2005 and the Regulatory Authority was created under this Act, which deals with improvement of Aqua farmers in shrimp farming and fisheries. This confirms that aqua farming by farmers is integral part of agricultural production' as has been held by the Hon'ble Tribunal in Suryog Agro Poultry Products P. Ltd. Vs. CC [2015 (335) ELT 350] and the Hon'ble Supreme Court in Maheshwari Fish Seed Farm Vs. TNEB [(2004) 4 SCC 705], as approvingly quoted in [2007 (5) STR 1611], holding that '*A reading of the judgment shows a research by looking into several authorities, meaning assigned by dictionaries and finding out how the term is understood in common parlance. The Court held that the term 'agriculture' has been defined in various dictionaries both in the narrow sense and in the wider sense. In the narrow sense agriculture is the cultivation of the field. In the wider sense it comprises of all activities in relation to the land including horticulture, forestry, breeding and rearing of livestock, dairying, butter and cheese-making, husbandry etc.*', the TNARA would have noted that the activities of the appellant viz., (a) Research and development activities undertaken by the appellant are technology development for breeding and farming of new/alternative species with high commercial value viz. fish, prawn, shrimp, crab etc., (b) Testing services provided by the appellant in testing for pathogens of soil, water, feed etc. and chemical analysis of water and soil and (c) Testing services provided by the appellant in testing seed (babies) and adults of diversified aquaculture species viz., fish, prawn, crab etc. and gene sequencing of spices are eligible for exemption from GST vide entry No.54 of Notification No.12/2017-CT (Rate) covering the services relating to 'rearing of all forms of animals, except horse, for food' since the

above activities are undisputedly for rearing of live marine species like fish, prawn, shrimp and crab etc.

- d. The learned TNARA ought to have noted that the appellant training the students and academia by imparting theoretical training in best farming methods of diversified aquaculture species is for equipping them in dissemination of the training knowledge to the field level for use by the farmers, fishermen etc. in application of the scientific research and knowledge in aqua farming and hence the said training is eligible for the exemption provided vide sl.no. No.54 of Notification No.12/2017-CT (Rate) read with clause (f) thereto.
- e. The learned TNARA ought to have noted and followed the order of the Commissioner (Appeals), Guntur vide Order-in-Appeal No.GUN-EXCUS-000-0165-16-17 dt.30.01.2017, the appeal against which filed by the department was rejected by the Hon'ble CESTAT vide Final Order No. A/31014-31035/2018 dt.20.08.2018, holding that the appellant's ***'activity of research and development of aquatic farms and dissemination developed techniques to the field aptly falls under the scope of definition of 'agricultural extension' and thereby falls under negative list vide 66D(d)(vi) of the Act'*** and noting that the definition of the term 'agricultural extension' vide definition (c) in Notification No.12/2017-
- f. Had the learned TNARA seen the motto and activities the appellant as a whole instead of vivisecting the activities in the spirit of Section 8(a) of the CGST Act and the above Order-in-appeal of the learned Commissioner (Appeals) which has attained finality, they ought to have concluded keeping in view the motto and activities of the appellant, the fact the appellant is a Society registered for carrying out the policies and programs of the Government in marine products development and the fact that the appellant is registered as charitable organization registered under Section 12AA of the Income Tax Act running on no profit-no loss basis, that the appellant arc eligible for the exemption provided under Sl.no. I of Notification No.12/20 I 7-CT (Rate). The learned TNARA ought to have further noted

and followed the above Order in-appeal, which has attained finality, and consequently held that the appellant are not liable to pay GST under reverse charge mechanism (RCM) in respect of consultancy service received by them from abroad and consequently ought to have held that the appellant are not required to compulsorily register under Section 24 (1) (iii) of the CGST Act. The learned TNARA therefore ought to have noted that none of activities of the appellant including the ones which are ruled to be not liable to GST, the appellant are not liable to be registered under Section 23 of the GST Act in view of clause (a) of Section 23 ibid according to which the person engage exclusively in the business of supplying of goods or services or both that are not liable to tax wholly or wholly exempt is not liable to be registered.

The appellant prayed to set aside the impugned advance ruling passed by the Authority for Advance Ruling.

PERSONAL HEARING:

7. The Appellant was granted personal hearing as required under law before this Appellate Authority on 30th May 2019. The Authorized representative of the Appellant S/Shri. N. Viswanathan , Advocate ; R. Ravikumar, Advocate and Shri. D.Rajesh- AAM of the Appellant appeared for hearing. They handed out a written submission. The learned representatives reiterated the written submissions submitted along with the Appeal Application filed by them and that filed at the time of personal hearing. They undertook to furnish written submissions on the Research & Development activities and on the Commercial/ Non-Commercial nature of training undertaken by them. In the written submission inter-alia, they stated as follows:

- a. At the outset they pray that this Hon'ble Appellate Authority may be pleased to condone the delay of 13 days in filing the appeal in view of the true and factual reasons stated in the Petition seeking the Condonation of the said delay by following the judgment of the Hon'ble Supreme Court of India in the case of Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649].

- b. They are a society registered under the Society Registration Act, duly registered and recognized as a charitable institution with no profit no loss basis. The appellant is an institution funded by the Marine Products Export Development Authority [MPEDA for short] under the Ministry of Commerce and is governed by an executive committee comprising of members from various ministries and Departments of both Central and State Governments including from MPEDA, MoC&I, ICAR, DBT, MoA and the various commissioners of fisheries of the AP, TN and Gujarat and the Directors of Fisheries of the state of Kerala, Tamil Nadu, Andaman Nicobar, UT of Puducherry, AP.
- c. Under the Finance Act, 1994 a dispute was raised by the Guntur Central Excise Commissionerate that they were liable to pay the service tax on the receipt of consultancy from the overseas entities which ultimately was settled in their favour by the Commissioner of Service Tax (Appeals) Guntur holding that the activities of R&D, testing etc., fall under the agricultural extension service and that they being registered under Sec. 12AA of the IT Act are eligible to the exemption. However, their claim that they are a governmental authority under the Finance Act, was rejected which is now pending by way of appeal before the Hon'ble CESTAT, Hyderabad. Prior to the introduction of the GST they were not liable to pay the VAT on any of their activities under the relevant VAT Acts. They, being a non-commercial entity, the charges billed by them on the agriculturist or students or academic were very minimal which does not even meet the expenses incurred by them for delivering the goods or services
- d. In the above Factual background, consequent to the introduction of new GST levy, they on being advised approached the Advance ruling authority mainly seeking to know whether they were required to register themselves with the authorities and if so what are the applicable rates for payment of the GST. The advance ruling authorities passed the impugned order dated 23.01.2019 merely by taking note of the activities of the appellant and the documents furnished by them without putting the legal issues before them passed the said order holding that for the following activities they are not eligible for the exemption and therefore liable to pay the appropriate CGST/SGST and accordingly have to

register themselves with the authorities. Their main grievance is that the authorities below have not properly taken into consideration and extended them the benefit of the exemption under serial no. 1 and 54 of notification no. 12/2017 (rates) and also failed to see that they did not carry on any commercial activity besides placing wrong interpretation of the provisions of the Customs Tariff schedule in classifying the Artemia cysts under heading 0511 exposing clear bias towards revenue as detailed below

- They are eligible for the exemption provided under sl.no.1 of Notification No.12/2017-CT (Rate) since they fulfill the required condition namely that they are registered as a body with no-profit no loss basis under Section 12AA of the Income Tax Act. The lower authority had rejected their claim only because their mission statement did not specifically declare the same is not proper or correct
- Artemia cysts which they process and prepare is a feed for the aquatic cultivated by them and is generally not sold by them except for a few occasional sales to few farmers involving amounts of less than Rs. 20 lakhs per annum. They undertake a series of process to prepare the feed and store in nitrogen filled boxes. These feeds have also to be used immediately on opening of the box and fed immediately for consumption by the shrimps cultivated by them, Thus the Artemia cysts processed by them is nothing but a animal feed classifiable only under Chapter 23 of CTA. The said classification denied by the advance ruling authority on the ground that it has not lost its essential character and that it is also not fit for human consumption defies all logic and legality. The reading of chapter heading 05.11 under which the authority below had classified the said item is totally inappropriate as it does not meet any of the requirements of the entries provided under heading 05.11 which basically covers waste and dead animals whereas the product in question is an item prepared exclusively as an animal feed. The authorities below failed to see that the heading 2309 includes not only the vegetable or animal material which have lost the essential characteristics in the process but also the vegetable or animal materials which have not lost the essential characteristics in the process as long as they are animal

feed. Since, admittedly the impugned Artermia cyst is aquatic feed, the same is rightly classifiable only under heading 2309. In this regard the appellant invite the attention of this respected appellate authority to the decision of the Hon'ble Calcutta High Court in the case of Atherton Engineering Co. Pvt. Ltd. Vs. UOI [2010 (256) ELT 358]. Earlier to the introduction of the GST these animal feeds were not subjected to the payment of VAT which should also warrant the reconsideration of the ruling given by the lower authorities Therefore, the impugned Artermia cysts are exempt from CGST vide sl.no.102 of Notification No.2/2017-CT (Rate) and from TNGST under the corresponding Notification as 'aquatic feed including shrimp feed and prawn feed'.

- o The term 'agriculture covers not only cultivation of land and growing crops but includes animal husbandry, raising of livestock, etc. Therefore, their activities viz., (a) Research and development activities undertaken by the appellant are technology development for breeding and farming of new/alternative species with high commercial value viz. fish, prawn, shrimp, crab etc., (b) Testing services provided by the appellant in testing for pathogens of soil, water, feed etc. and chemical analysis of water and soil and (c) Testing services provided by the appellant in testing seed (babies) and adults of diversified aquaculture species viz., fish, prawn, crab etc. and gene sequencing of species are eligible for exemption from GST vide entry No.54 of Notification No.12/2017-CT (Rate) covering the services relating to 'rearing of all forms of animals, except horse, for food' since the above activities are undisputedly for rearing of live marine species like fish, prawn, shrimp and crab etc. for food. The rejection of the benefit of the notification on part of their above activity on the ground that the same were not provided directly to certain service recipients is not reasonable or justified.
- o (a) testing services provided by the appellant in testing for pathogens of soil, water, feed etc. and chemical analysis of water and soil (b) Testing services provided by them in testing seed (babies) and adults of diversified aquaculture species viz. fish, prawn, crab etc. and gene sequencing of species and (c) Training the students and academia are

covered by the Order-in-Appeal No.GUN-EXCUS-000-0155-16-17 dt.30.01.2017 passed by the Commissioner (Appeals), Guntur since the appeal against which filed by the department was rejected by the Hon'ble CESTAT vide Final Order No. A/3101431035/201.8 dt.20.08.2018. Imparting of the training to trainers was in the interest of spreading the knowledge in the larger spectrum and more so the fact that they do not impart the training on a commercial basis that is for earning a profit all the more require this activity to be granted the exemption in terms of serial no. 1 of notification 12/2017 (rate) also.

- o if the motto and activities of the appellant is seen, understood and appreciated as a whole in the spirit of Section 8(a) of the CGST Act instead of vivisecting the activities and in the light of the above Order-in-appeal, the fact the appellant is a Society registered for carrying out the policies and program of the Government in marine products development and the fact that the appellant is registered as charitable organization registered under Section 12AA of the Income Tax Act running on no profit-no loss basis are appropriately considered and appreciated, it will be evident that the appellant are eligible for the exemption provided under sl.no.1 of Notification No.12/2017-CT (Rate) and appellant are not liable to pay GST under reverse charge mechanism (RCM) in respect of consultancy service received by them from abroad.

- e. In view of the above clear provisions of law in terms of which they are not liable to pay any GST on any of their activities, they are not liable to be registered under Section 23 of the GST Act since clause (a) of Section 23 excludes the person who is engaged exclusively in the business of supplying of goods or services or both that are not liable to tax wholly or wholly exempt from registration.

7.1 The appellant as undertook during the personal hearing furnished the additional written submissions supported by a brief note, copies of circulars and judgments. In the said submissions, they stated, inter-alia, that

a. **ARTEMIA CYST:** Heading 05.11 could only cover dead and waste items and not any live item and that such live items if not accepted to fall under chapter 23 has to necessarily go into chapter 3 of the schedule more particularly on account of the chapter note 1 (c) of chapter 3 of the Customs Tariff Act. It is therefore submitted that the item in dispute cannot at all be classified under 0511 of the Customs Tariff Schedule as ordered by the advance ruling authority. During the hearing it was pointed out to the appellant that the Hon'ble Supreme Court in the case of Atherton Engg P. Ltd., versus Commissioner reported in 2002 (144) E LTA 293 (SC) have approved the decision of the Mumbai Tribunal in the case of Commissioner versus Atherton Engg P. Ltd., reported in 2001 (129) E L T 502 (Tri. -Mum) holding that live Artemia cyst are classifiable under heading 05.11. However, subsequently on a reading of the said judgments it is noticed that the **decision of the Mumbai Bench of the Tribunal related to classification of packed Brine Shrimp Eggs requiring processing for conversion into larvae to become edible by prawns** whereas the product in dispute is one which stood already converted **and made ready for consumption by prawns as feed thus making it totally distinguishable to the facts of the case of the appellant. On the other hand, the observations** of the Mumbai Bench of the Tribunal confirming that after processing and conversion into larvae the eggs would become edible for prawns as feed by itself support the case of the appellant. The judgment of the Hon'ble Calcutta High Court reported in 2010 (256) E L T 358 (Cal) relied in support by the appellant is a later judgment which in fact considered the decision of the Mumbai Bench decision before making their observations as pointed out to direct the authorities to follow their observation and decide the case is more apt and squarely applicable to the case of the appellant on account of which the contrary finding **recorded by the advance ruling authority** touching the classification of the subject goods need to be vacated in the interest of justice

b. **RESEARCH & DEVELOPMENT (Reverse charge):** The advance ruling authority rejected their claim for benefit **of serial no. 54 of notification no. 12/2017 (rate) on the ground that** the services related to breeding and developing new species which is covered by **SAC 9981** liable to payment of the GST

@ 18% in terms of notification No. 11/2017 dated 28.06.2017. In this regard the contention of the appellant is that the said services are either covered by SAC 9986 as agriculture extension services since they offer the technology obtained to the cultivating farmers for their use or as services relating to cultivation of plants and rearing of all life forms requiring the same to be extended the benefit of notification no. 12/2017 (rates) dated 28.03.2017. The appellant in support of their above contention that the service are to be classified as agricultural extension service rely upon Order-in-Appeal No.GUN-EXCUS-000-0165-16-17 dt.30.01.2017 passed by the Commissioner (Appeals), Guntur in their own case and which order had attained finality by the dismissal of the appeal filed by the department consequent to the withdrawal of the appeal by the revenue, vide Final Order No A/31014-31035/2018 dt.20.08.2018. The definition of the term 'agricultural extension' vide definition (c) in Notification No.12/2017-CT (Rate) and vide Section 65B(4) of the Finance Act is in *pari materia* since both define the said term as ***'agricultural extension' means application of scientific research and knowledge to agricultural practices through farmer education or training'*** the ratio of the decision under the ***erstwhile provisions of the Finance Act has to be extended to the appellant***

C. TESTING SERVICES: (a) testing services provided by the appellant in testing for pathogens of soil, water, feed etc. and chemical analysis of water and soil (b) Testing services provided by the appellant in testing seed (babies) and adults of diversified aquaculture species viz. fish, prawn, crab etc. and gene sequencing of spices have been classified under SAC 998346 attracting GST @ 18% in terms of notification no. 11/2017 dated 28.06.2017 on the only ground that it does not fall within the ambit of the term support service not directly involving the fish farm, hatcheries or agriculture whereas the said authority ought to have considered the same as services relating to cultivation of plants and rearing of all life forms, considering that there is no requirement of direct or indirect use in the said provisions granting the exemption on services relating to rearing of all life forms. In any case and without prejudice the advance ruling authority ought not to have omitted to consider the benefit of the exemption on the above services as falling within

the ambit of the agricultural extension services considering that the testing services ultimately result in imparting knowledge to the farmers rearing or cultivating the shrimp or prawns

d. TRAINING SERVICES: considering SAC 999293 only covers **commercial** training and coaching services, which abundantly show that unless the activities is commercial in nature the same would not part-take the character of a taxable service to be made liable for the payment of the GST. The term "commercial" therefore assumes greater importance in the interpretation of the taxable entry. The settled position of law is that the term commercial means primarily involving profit as the motive. In fact the appellant submit that when service tax levy was imposed on commercial coaching and training services for the first time the dispute as to whether the imparting of the service by educational institutions charging fee from the students would attract the taxable entry was considered by the Madras Bench of the Tribunal in the case of Great Lakes institute of management Ltd., reported in 2008 (10) S T R 202 (Tri. -Chennai) in which the Tribunal after analyzing the various circulars and judgments including that of Supreme Court held that the mere charging of fee will not be an activity involving commerce unless there is a motive to earn profit. The Government on finding it to difficult to get over the said decision amended the entry relating to commercial training or coaching services through an explanation appended to section 65 (105) (ZZC) to hold that charging of fee would amount to commercial coaching and training. In the absence of any such explanation under the present law it is the respectful submission of the appellant that the above decision of the Tribunal has to apply in all four corners to the present taxable entry. They have relied upon the following judicial pronouncements and Board' circulars in support of their above contention

1. Circular no. 116/10/2009 ST dated 15.09.2009 (pare 2)
2. Circular no. 86/4/2006 ST dated 01.11.2006 (para 4)
3. 2017 (48) S T R 275 (TH. Del) (para 11) confirmed by Supreme Court

e.BENEFIT OF NOTIFICATION 12/2017 (SERIAL NO.1): entry no 1 of the notification permitting the benefit of the exemption to charitable Trust

registered under the IT Act defines the term Charitable activities to include among other things preservation of environment including water sheds, forest **and wild life**. The appellants feel it unnecessary to submit that the term including in any statutory provision has to be interpreted to mean such included items without reference to the main provision. Going by the above interpretation the appellant submits that the items dealt with by them having squarely fell within the ambit of the term wild life as defined under Sec. 2 (37) of the Wild Life Act, 1972 to mean includes the animal, **aquatic or land vegetation which forms part of any habitat**" it is the respectful submission of the appellant that their entire activity should be held to be exempted in terms of serial no. 1 of notification 12/2017 Central Taxes dated 28.06.2019. The appellant submit that even though they had made such a claim the advance ruling authority neither disputed the said claim nor dealt with the said question in rendering their advance ruling.

7.2 The appellant has furnished note on the Activities of RGCA-Artemia Project and Research and Development activities as under:

Activities of RGCA -Artemia Project: Artemia is a very good live food for Aquatic cultivable organisms. Adult artemia also called Artemia biomass is food for adult/ brooder fish and shrimps. Adult artemia are harvested from ponds when required. They are frozen and stored in -22 degree centigrade. This can also be dried as 'artemia flakes' and stored in polythene covers. Adult artemia size is 1 — 1.5 cm. Artemia lays cysts/ eggs after 13- 15days of maturation. This Artemia cyst can be preserved and kept for any no. of years, if it is packed in vacuum tin/nitrogen filled tins. Once tins are opened, the nitrogen might escape. The cyst may absorb atmospheric moisture and get soaked/ or get oxidized, hence, it should be used within limited period. The cyst size is 200-210 micron. One gram contains 2,60,000 — 3,10,000 nos. of cyst. Artemia cyst cannot be consumed with outer shell/chorion as such. It cannot be digested. The cysts are incubated in seawater with light and aeration. The Artemia tiny microscopic artemia nauplii comes out from cyst after 15 -20 hrs. Artemia nauplii is the feed for fish

& shrimp larvae. Artemia Nauplii size is 410-425 micron. These artemia nauplii come from / hatched out from Artemia cyst (1.e) Artemia eggs.

Research and Development activities: RGCA is actively involved in the development of various Sustainable Aquaculture Technologies that are bio secure, eco-friendly, traceable and with low carbon outputs, for seed production and grow out farming of various aquatic species, those having export potential in particular. RGCA is also developing a state-of-the-art technology transfer and training centre for disseminating the technologies developed at the various projects established at different locations in the country to the aquaculture industry in India. RGCA is governed by an **Executive Committee** comprising of members from offices of the MPEDA, MoC & I, ICAR, DBT, Commissioner of Fisheries from the states of Andhra Pradesh, Tamil Nadu & Gujarat; Director of Fisheries of Kerala, Tamil Nadu, Andaman & Nicobar Islands and the U.T of Pondicherry. Chairman MPEDA is the President RGCA. R&D activities of RGCA Entering into/ engaging experts/ consultants outside India who are having either Technology or experience in the field of Aquaculture to set up Aquaculture facilities in line with objectives of RGCA to disseminate such Technology throughout India. These engagements are in the nature of collaborative Agreements to bring best Technology available in any part of world of Aquaculture. RGCA by itself not engaged in any research but it has mission to make available latest technology and facility to the people of India. In principle RGCA do research for itself but no research and development services being provided to anyone. But, the Technology and experience gained by RGCA being disseminated throughout India by way of farmer Training and consultancy services, Further RGCA succeeded in research of one particular aspect for which patent had been applied and it is in progress. The Outcome of the said research is being taught to farmers and other needy aquaculture industry in India. Hence, no research and development services are supplied.

DISCUSSION:

8. We have carefully considered the various submissions made by the Appellant and the applicable statutory provisions. We find that the appellant is a society registered under the Tamil Nadu Societies Registration Act and functioning under the Marine Products Export Development Authority, Ministry of Commerce & Industry, Government of India. They are registered under Section 12AA of the Income Tax Act. Their operations are carried out in Andaman & Nicobar Islands, Kerala and Andhra Pradesh in addition to Tamil Nadu and their operations could be extended to other states of India also. The main activities carried over by them are:

- (a) Research and Development for general public
- (b) Providing Consultancy Service with respect to Marine Service
- (c) Testing Services (All types of testing services) with respect to agriculture and marine products
- (d) Training the Farmers, Entrepreneurs, Self- help groups, Students, Hatchery owners etc.
- (e) Sale of Fish, Crab (all kinds of seeds)
- (f) Sale of Harvest- Fish
- (g) Sale of Artemia-Fish Feed (production and sales)

They entertained a view that none of their above activities could be made liable for the payment of the GST and consequently they may not be required to be registered under GST law at all. They filed an Application (GST ARA-01) with the Tamil Nadu Advance Ruling Authority (hereinafter referred to as 'the learned TNARA') seeking advance ruling on the following questions:.

1. Considering the nature of transactions carried out by RGCA and various exemption notification(s) under GST Laws whether RGCA is required to register under GST Laws?
2. If no registration is required for RGCA, whether compulsory registration u/s 24 is required to be made against any of the provisions of Section 24?
3. If so, whether separate registration is to be taken from all the states where the offices of RGCA is situated? Explain the procedure to obtain registration

4. If registration is required to be made, what are the tax rates applicable to the transactions of RGCA?
5. Since RGCA-Head office is having GST Registration (Migrated from TNVAT) at Tamil Nadu only other various project sites are located at different states but doesn't having the GST registration so far, If they want to purchase materials through interstate from Mumbai to its one of the branch at Kerala, how the purchases of the materials to be made and what are the documents to be carried for the transport of such purchased goods under GST?

TNARA vide Order No.9/AAR/2019 dated 23.01.2019 passed the ruling on the application for advance ruling filed by the appellant as mentioned at Para 3.0 above. The appellant being aggrieved of rulings rendered in respect of Q.No. 1 above and Q.No. 4 in part, has filed this application. Therefore, the issues before us for determination are as follows:

1. Considering the nature of transactions carried out by RGCA and various exemption notification(s) under GST Laws whether RGCA is required to register under GST Laws?
2. Whether they are preserving the environment by preserving wildlife
3. Whether the Research and development activities imported by the appellant are not covered under 'Agricultural Extension service' and therefore exempted vide Entry No. 54 of Notification No. 12/2017-c.T.(Rate) dated 28.06.2017 as amended
4. Whether the 'testing services' undertaken by them are agricultural extension services considering that the testing services ultimately result in imparting knowledge to the farmers rearing or cultivating the shrimp or prawns and therefore exempted vide Entry No. 54 of Notification No. 12/2017-c.T.(Rate) dated 28.06.2017 as amended
5. Whether the training activities of RGCA to students, academia who are not directly involved in rearing of fish, aquaculture etc. are covered under SAC 9992 in as much as the SAC covers only 'commercial training' and these are also not 'Agricultural extension Services' and therefore exempted vide Entry No. 54 of Notification No. 12/2017-c.T.(Rate) dated 28.06.2017 as amended.
6. Whether Artemia Cyst is classifiable under CTH 05.11 under CTH 2309 or CTH 03

All these points boil down to two major issues;

- i) the authorities below have not properly taken into consideration and extended to them the benefit of the exemption under serial no. 1 and 54 of notification no. 12/2017 –C.T.(rate).
- ii) the classification of Artemia Cyst which done by the original Advance Ruling Authority under CTH 0511 is incorrect while they claim that it falls under CTH 2309 or CTH 03.

9. Prima facie, we find that the appeal is filed with a delay of 13 days. As per proviso to Section 100(2), the Appellate Authority if satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the appeal period of thirty days can allow it to be presented within a further period not exceeding thirty days. The appeal is filed within the further period of thirty days provided in the said proviso. The appellant has stated that clerical staff who received the impugned order did not bring the same immediately to the notice of the management without realizing its importance and implication and incorrectly assuming that the appeal period is 60 days as in the case of Service Tax provisions and therefore the delay. No date-wise explanations are provided. However, considering the fact that the appellant is a registered society by MPEDA, an autonomous body created by an Act of Parliament and following the decision of Hon'ble S.C. in the case of Indian Oil Corporation Ltd Vs. Subrata Borah Chowlek[2010(262)E.L.T. (S.C.)], we condone the delay and take the appeal for consideration.

10. We now come to the main grounds of appeal filed by the appellant and mentioned above ie

- i) the authorities below have not properly taken into consideration and extended to them the benefit of the exemption under serial no. 1 and 54 of notification no. 12/2017 –C.T.(rate).
- ii) the classification of Artemia Cyst done by the original Advance Ruling Authority under CTH 0511 is incorrect while they claim that it falls under CTH 2309 or CTH 03.

The appellant's claim with respect to the first issue is that;

- they are a society, registered under Section 12 AA of the Income Tax Act (recognized as a charitable institution), funded by MPEDA under Ministry of Commerce and their activities were exempted under VAT;
- Their activities are for 'preservation of environment' as 'sustainable technologies' which meant the technologies which meet the needs of the present without compromising the need of future generations to meet their own needs so that the environment is sustained and developed for the future generations and appellant's goal of providing sustainable technologies in aquaculture is only meant for preservation of environment.
- if the motto and activities of the appellant is seen, understood and appreciated as a whole in the spirit of Section 8(a) of the CGST Act instead of vivisecting the activities, it will be evident that the appellant are eligible for the exemption provided under sl.no.1 of Notification No.12/2017-CT (Rate).
- The lower authority had rejected their claim only because their mission statement did not specifically declare the same is not proper or correct

They have taken support of certain judgments with respect to their claim against their second point of appeal. We consider the issues sequentially below.

I. The authorities below have not properly taken into consideration and extended to them the benefit of the exemption under serial no. 1 and 54 of notification no. 12/2017 -C.T.(rate).

10.1 Sl.No.1 of Notification No.12/2017-C.T. (Rate) dated 28.06.2017 exempts 'Services by an entity registered under Section 12AA of the Income Tax Act, 1961 by way of charitable activities'

"charitable activities" has been defined in Para 2(r) of the said Notification, as under (relevant entries):-

(r) "charitable activities" means activities relating to –

(iv) preservation of environment including watershed, forests and wildlife;

We find that the Constitution Bench of the Hon'ble Supreme Court in the case of **Commissioner of Customs(Import) Mumbai Vs. M/s. Dilip Kumar And Co.& others in C.A. No.3327 of 2007[2018 (361) E.L.T. 577 (S.C.)]**, has dealt with the question

What is the interpretative rule to be applied while interpreting a tax exemption provision/notification, when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?

The Apex Court after a detailed analysis of various decision of the Apex Court in the context of interpretation of exemption has held that

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

In **Commissioner of Central Excise, Trichy vs. Rukmani Pakkwell Traders [(2004) 11 SCC 801]**, the Apex court held :

"It is settled law that exemption notifications have to be strictly construed. They must be interpreted on their own wording. Wordings of some other notification are of no benefit in construing a particular notification" (emphasis added)

Again in **Hari Khemu Gawali v. Deputy Commissioner of Police, Bombay and another [AIR 1956 SC 559]**, a Constitution Bench of the Apex Court stated:

"It has been repeatedly said by this Court that it is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts which may not be in pari materia."

In the light of the above it would not be proper to transplant the provisions of one Act, which has a different object and purposes, into another Act for determining the scope of the exemption pertaining to "charitable activities". Even in the letter C No 7162E(49)TRY 2001-2002 dated 12/04/2002 of the Commissioner of Income Tax II, Trichy, submitted by the Appellant in support of their cause, it is stated the registration of the Trust under section 12AA of the Income Tax Act "does not

Page | 24

automatically mean that its income will be exempt u/s 11 & 12 of the Act, which will be examined independently by the Assessing Officer.” Hence the term “charitable activities” figuring in serial number 1 of the notification, has to be understood only as per the plain meaning of the term as defined in Para 2(r) of Notification No.12/2017-C.T. (Rate) dated 28.06.2017, and is confined to activities relating to the preservation of environment including watershed, forests and wildlife. None of the activities undertaken by them and listed at para 8 above were found related to the preservation of environment including watershed, forests and wildlife, by the lower authority. We examine the issue.

10.2 The appellant is of the opinion that they are preserving the environment by preserving wildlife and have tried to understand the meaning of ‘wild life’ appearing at Para 2(r) of Notification No.12/2017-C.T. (Rate) by relying on the definition of ‘Wild life’ under Sec. 2 (37) of the Wild Life Act, 1972 which states “wild life’ includes any animal, aquatic or land vegetation which forms part of any habitat’, The appellant has claimed that their entire activities are to be seen as done in relation to develop sustained technology for preserving the environment. This attempt to understand the provisions of an exemption notification under one Act with reference to a definition found in another other Act which is not in pari-materia, is as discussed with case laws above, not a correct approach. When a term is not defined in a statute or exemption notification, it has to be understood as per its natural meaning. In **Indo International Industries v. Commissioner of Sales Tax. U. P., [1981] 3 SCR 294** the Apex Court held that *"it is well settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expression used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted."* The normal usage of the term ‘wild life’ is in relation to wild animals, ie animals that live independently of people, in natural conditions.

Page | 25

Shrimp farming and fisheries, cannot be considered as animals that live independently of people, in natural conditions. Their existence is to the contrary dependent on people and in artificially created conditions. Even the definition of 'wild life' as per the Wild Life Act, includes any animal etc which forms part of any 'habitat'. Habitat refers to the natural surroundings in which an animal or plant usually lives, which is not so in this case. Here the shrimp are reared in a totally artificial surrounding. Apart from saying that the society is providing sustainable technologies in aquaculture, the appellant has not established their claim for having their activities covered under the preservation of environment including watershed, forests and wildlife. When an exemption notification is based on end use, the mission statement of the assessee seeking to avail the exemption, can certainly be referred to for the purpose of ascertaining their activities and the object and purpose for which they are functioning. It is seen that the appellant who are the R& D arm of MPEDA, and whose mission is to undertake research, give consultancy and technical services to the farmers, entrepreneurs, and scale up the technologies developed, etc. after assuring the commercial viability of aqua products undertakes various activities to attain the aim of the society, do not conduct activities covered under the preservation of environment including watershed, forests and wildlife. From the activities undertaken by them, we find that the appellant imports R & D technologies, uses the same for augmenting the export potential of the aqua products, which is the main aim of the formation of the appellant. All the training, testing, supply of seeds, fish, etc are done for a charge and are commercial in nature. Preservation of the environment is not their stated objective. The activities undertaken by the appellant is of diverse nature ranging from sensitizing farmers/ entrepreneurs; training students/academia; undertaking testing for pathogens, quality of farms; supply of fish seeds; artemia Cyst(processed) for fish feed; etc.. The exemption provided at Sl.No. 1 of Notification No. 12/2017-C.T.(Rate) exempts payment of GST only in respect of services provided by way of 'Charitable activities' relating to 'Preservation of environment including watershed, forests and wildlife' (entry related to the proceedings in hand) and the construction of the exemption is not to provide exemption to all the activities undertaken by an entity registered under Section 12A of the Income tax Act, which is involved in activities relating to 'Preservation of environment'.

10.3 The appellant has while making their claim for exemption under Sl.No.1 of Notification No.12/2017-C.T. (Rate), also claimed that all the activities undertaken by them are to be seen in totality and their supply to be construed as a 'Composite Supply' under Section 8(a) of the GST Acts. Section 8(a) of the GST Acts is as under:

8. 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;

The plain reading of the above provision clearly indicates that the said provision is applicable in cases where two or more supplies are bundled naturally and supplied together. In the case at hand, from the submission made before us, we find that the import of R & D technology, supply of testing /training services, supply of harvest fish, fish seeds, artemia, etc are stand alone supplies to a spectra of recipients from aqua farmers, entrepreneurs, students, academia, etc and therefore definitely the supplies are not covered under the provisions of Section 8(a) above.

10.4 From the above findings we conclude that the appellant who are the R& D arm of MPEDA, whose mission is to undertake research, give consultancy and technical services to the farmers, entrepreneurs, and scale up the technologies developed, etc. after assuring the commercial viability of aqua products undertakes various activities to attain the aim of the society. By the construction of the exemption, it is clear and unambiguous that the exemption, is applicable only to 'Services relating to Preservation of environment' when provided by an entity registered under Section 12AA of Income Tax Act and not to the entire activities of such entity. Therefore, we hold that the appellant as an entity in entirety is not exempted from payment of GST or in other words, the exemption under Sl.No. 1 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 is not applicable to all the supplies made by the appellant and therefore the appellant is required to get registered under GST Laws subject to them making taxable supplies and other conditions Spelt under Section 23 of GST Acts.

11. The next issue before us, pertaining to the above notification, is whether the Research and development activities imported by the appellant is covered under 'agricultural extension service-SAC 9986' and exempted vide Entry No. 54 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 as amended. It is stated that R&D activities of RGCA entering into/ engaging experts/ consultants outside India who are having either Technology or experience in the field of Aquaculture to set up Aquaculture facilities in line with objectives of RGCA to disseminate such Technology throughout India. These engagements are in the nature of collaborative Agreements to bring best Technology available in any part of world of Aquaculture. The appellant in support of their above contention that the service are to be classified as agricultural extension service rely upon Order-in-Appeal No.GUN-EXCUS-000-0165-16-17 dt.30.01.2017 passed by the Commissioner (Appeals), Guntur in their own case and which order they claim to have attained finality by the dismissal of the appeal filed by the department consequent to the withdrawal of the appeal by the revenue, vide Final Order No A/31014-31035/2018 dt.20.08.2018.

11.1 'Agricultural extension service' is defined under Notification No. 12/2017 as follows:

(c) "agricultural extension" means application of scientific research and knowledge to agricultural practices through farmer education or training

By the definition, it is evident that only application of scientific research and knowledge to agricultural practices through farmer education or training is considered as 'agricultural extension service' and exempted vide the said entry. Research and development imported by the appellant are technology development for breeding and farming of new/alternative species with high commercial value Viz. fish, prawn, shrimp, crab etc. SAC 998114 covers the activities. They do not involve farmer education and training. As given in the preface of the Explanatory notes, more specific description to be preferred to general one. SAC 998114 is as follows:

*998114 Research and experimental development services in agricultural sciences
This service code includes basic and applied research services and experimental development services related to agricultural techniques, fruit culture, forestry, stock breeding, fisheries, etc.*

The R & D imported by the appellant are of those detailed under this SAC. Therefore, their activities are not covered under the Entry No. 54 of Notfn. No. 12/2017 which covers 'Support services to agriculture, hunting, forestry, fishing, mining. SAC-9986'.

11.2 Further, with regard to the decision of Commissioner (Appeals) relied upon by the appellant, it is seen that the said decision has not been accepted by the department and an appeal has been filed before CESTAT. The same was subsequently withdrawn on monetary limits as per the litigation handling policy of the department. It appears that the withdrawal is due to change in the Monetary limits for filing appeals under section 35 R made applicable to Service Tax and therefore do not have reference value. Section 35R is given as under for ease of reference:

Appeal not to be filed in certain cases. SECTION [35R. *The Central Board of Excise and Customs may, from time to time, — (1) issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Central Excise Officer under the provisions of this Chapter.*

(2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Central Excise Officer has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Central Excise Officer from filing appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Central Excise Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central Excise Officer has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

(4) The Commissioner (Appeals) or the Appellate Tribunal or Court hearing such appeal, application, revision or reference shall have regard to the circumstances under which appeal, application, revision or reference was not filed by the Central Excise Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

(5) Every order or instruction or direction issued by the Central Board of Excise and Customs on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing of appeal, application, revision or reference shall be deemed to have

been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.(emphasis supplied)

The entry at sl.No. 54 of the Notification no. 12/2017-CT (Rate) dated 28.06.2017, do not apply to the 'Research and development activities' imported by the appellant as held by the lower authority.

12. The next issue for consideration is whether the 'testing services' undertaken by them are agricultural extension services considering that the testing services ultimately result in imparting knowledge to the farmers rearing or cultivating the shrimp or prawns and therefore exempted vide Entry No. 54 of Notification No. 12/2017-c.T.(Rate) dated 28.06.2017 as amended. It is stated that testing services provided by the appellant in testing for pathogens of soil, water, feed etc. and chemical analysis of water and soil; seed (babies) and adults of diversified aquaculture species viz. fish, prawn, crab etc. and gene sequencing of spices have been classified under SAC 998346 by the lower authority on the only ground that it does not fall within the ambit of the term support service not directly involving the fish farm, hatcheries or agriculture. The appellant contends that the same is to be considered as services relating to cultivation of plants and rearing of all life forms, considering that there is no requirement of direct or indirect use in the said provisions granting the exemption on services relating to rearing of all life forms. They further state that in any case and without prejudice the advance ruling authority ought not to have omitted to consider the benefit of the exemption on the above services as falling within the ambit of the agricultural extension services considering that the testing services ultimately result in imparting knowledge to the farmers rearing or cultivating the shrimp or prawns. The appellant has stated that 'Agriculture' is defined in various ways and in wider sense, it covers all the activities of the appellant

12.1 Entry No.54 of Notification No. 12/2017-CT (Rate). is specific and the same is given as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
54	Heading 9986	Services relating to cultivation of plants	Nil	Nil
		<p>and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of—</p> <p>(a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;</p> <p>(b) supply of farm labour;</p> <p>(c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;</p> <p>(d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;</p> <p>(e) loading, unloading, packing, storage or warehousing of agricultural produce;</p> <p>(f) agricultural extension services;</p> <p>(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.</p>		

The wordings of the notification are clear and unambiguous. It states that the Services relating to (1) Cultivation of Plants (2) rearing of all life forms of animals except the rearing of horses for –food, fibre, fuel, raw material or (3) other similar

products or (4) agricultural produce ; by way of (f) agricultural extension service (entry related to the case at hand), which are 'support services to agriculture, hunting, forestry, fishing, mining.. SAC-9986' are covered in the said entry. Also, 'agricultural extension service' has been defined in the notification to mean *application of scientific research and knowledge to agricultural practices through farmer education or training*. Testing activities undertaken by the appellant definitely do not fall under the 'agricultural extension service' as the same as per definition in the notification is limited to application of research and knowledge through farmer education or training, whereas the testing done by the appellant does not involve farmer education or training. The testing done by them is a service to the farmers for a consideration. Therefore, in this count also we do not find any ground to interfere with the order of the lower authority.

13. The final issue before us is whether the training activities undertaken by RGCA to students, academia who are not directly involved in rearing of fish, aquaculture etc. are covered under SAC 9992 and liable to GST as held by the Original Authority and these are also not 'Agricultural extension Services' and therefore exempted vide Entry No. 54 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 as amended.

13.1 As detailed supra, it is clear that 'Agricultural extension services' is limited to application of research and knowledge through farmer education or training. The activity of the appellant, under consideration is extending training to student, academia, self-help group, etc for a consideration. In as much as the training is not extended directly to the farmers, the activity is not an 'agricultural extension service'. Therefore, the appellant are not eligible for the benefit of exemption under Sl.No. 54 of Notification no. 12/2017-C.T.(Rate) dated 28.06.2017 as amended.

13.2 From the submissions before us, we observe that the appellant in their application before the Original Authority under Q.No. 4 have sought the tax rates applicable to their transactions, if the activity is taxable. The original authority has classified the activities and has answered the applicable rate of tax. The original authority has held that the training activities under consideration, is classifiable under SAC 9992, more specifically under '999293- Commercial training and coaching

'services' and has ruled the applicable rate of tax. Before, considering the contention of the appellant that the activity undertaken by them do not merit the specific six-digit classification under SAC 999293, we would like to consider the structure of classification under GST, related to the Section heading 9992 and decide whether there is a necessity to go for specific 'Service Description' or 'Group' based classification to answer the question raised by the appellant in the application, i.e., the applicable rate of tax on the transaction, if held taxable.

13.3 We find that the 'Education Services' coded under SAC 9992, covers the entire range of 'Education, training, imparting of skill etc. and Group 99929 covers 'Other education and training services and educational support services'. The Group 99929 as given in the Annexure to Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 is as below:

Annexure: Scheme of Classification of Services			
S.No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
596	Group 99929		Other education and training services and educational support services
597		999291	Cultural education services
598		999292	Sports and recreation education services
599		999293	Commercial training and coaching services
600		999294	Other education and training services nowhere else classified
601		999295	services involving conduct of examination for admission to educational institutions
602		999299	Other educational support services

From the above schema, it is evident that the group 99929 covers 'Cultural education Services', 'sports and recreation education services', 'Commercial training and coaching services', 'Other education and training services nowhere else classified'. It is pertinent to note that, the tax rate applicable for the education Services is provided for the Section Heading 9992, i.e., a single tax rate is prescribed for the entire section, SAC 9992 vide Sl.No. 30 of Notification No 11/2017-C.T.(Rate) dt 28.06.2017 as amended and 9% SGST under Sl no 30 of Notification No. II(2)/CTR/532(d-

14)/2017 vide G.O.(Ms)No.72 dated 29.06.2017 as amended. The exemptions pertaining to the SAC 9992 are provided for the Section Heading 9992, at Sl.No. 58,66 to 72 based on the description of the service activities vide Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 and Notification No. II(2)/CTR/532(d-14)/2017 vide G.O. (Ms.) No. 73 dated 29.06.2017 as amended. In the above legal frame work, we do not find the necessity to go for classifying the supply undertaken by the appellant to 'six-digit level' which was not the question raised by the appellant in the original application. We find that only two things are to be addressed –

1. Whether the activity is covered under the Section Code 9992? and

2. Whether the activity is exempted by the service description?

13.4 In the case at hand, it is not disputed that the training extended by the appellant to student, academia, etc for a charge, is the activity of training /imparting the skill in aquaculture. The entire spectra of Education (Primary, Secondary, Higher), Specialized education, Other education and training services are covered under SAC 9992. Even if the activity of the appellant is considered as not covered under the specific heading “999293-Commercial Training and Coaching” the activity, is still classifiable under the same heading 9992 in SAC 999294 as “other Education and Training Service nowhere else classified” and the supply is taxable to GST at the appropriate rates. In as much as it is decided that the training extended to students, academia, self-help group, etc for a charge is supply of services grouped under the Service Group-99929 and the Rate Notification specifies the rate based on the Section Head(SAC 9992), we do not find any further need to ponder on the classification of the activity as the same was not a part of their specific request for an advance ruling originally and therefore do not do so. In view of the above discussions, we find that the rate of tax ruled by the Original authority on the activity of training extended to student, academia, etc by the appellant to be covered under the SAC 9992 and taxable at 9% CGST under Sl no 30 of Notification No 11/2017 dt 28.06.2017 as amended and 9% SGST under Sl no 30 of Notification No .II(2)/CTR/532(d-14)/2017 vide G.O. (Ms) No. 72 dated 29.06.2017 as amended holds and do not need any interference.

II) Classification of 'Artemia Cyst' under CTH 0511 or under CTH 2309 or CTH 03.

14. The second issue to be decided relates to the classification of Artemia Cyst which was classified by the original authority under CTH 0511, while it is claimed to fall under CTH 2309 or CTH 03 by the Appellant. From the write-up furnished by the appellant, it is seen that Artemia is a very good live food for Aquatic cultivable organisms. Adult artemia also called Artemia biomass is food for adult/ brooder fish and shrimps. Adult artemia are harvested from ponds when required, are frozen and stored in -22 degree centigrade. This can also be dried as 'artemia flakes' and stored in polythene covers. Artemia lays cysts/ eggs after 13- 15days of maturation which can be preserved and kept for any no. of years, if it is packed in vacuum tin/nitrogen filled tins. Artemia cyst cannot be consumed with outer shell/chorion as such. The cysts are incubated in seawater with light and aeration. The Artemia tiny microscopic artemia nauplii comes out from cyst after 15 -20 hrs. Artemia nauplii is the feed for fish & shrimp larvae. Artemia Nauplii size is 410-425 micron. These artemia nauplii come from / hatched out from Artemia cyst (i.e) Artemia eggs. In the case at hand, the appellant supply Artemia cyst.

14.1 Chapter Note to Chapter 3 of the Customs Tariff states as follows:

1. This Chapter does not cover :

(a); (b).....;

(c) fish (including livers, roes and milt thereof) or crustaceans, molluscs or other aquatic invertebrates, dead and unfit or unsuitable for human consumption by reason of either their species or their condition(Chapter 5); flours, meals or pellets of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption (heading 2301);

and Tariff head 0306, which covers crustaceans also covers only those which are fit for human consumption. The relevant entry is as below:

0306

CRUSTACEANS, WHETHER IN SHELL OR NOT, LIVE, FRESH, CHILLED, FROZEN, DRIED, SALTED OR IN BRINE; SMOKED CRUSTACEANS, WHETHER IN SHELL OR NOT, WHETHER OR NOT COOKED BEFORE OR DURING THE SMOKING PROCESS; CRUSTACEANS, IN SHELL, COOKED BY STEAMING OR BY BOILING IN WATER, WHETHER OR NOT CHILLED, FROZEN, DRIED, SALTED OR IN BRINE; FLOURS, MEALS AND PELLETS OF CRUSTACEANS, FIT FOR HUMAN CONSUMPTION

In the instant case the product though a crustacean, is not fit for human consumption therefore do not fall under this CTH, as per the description of the tariff heading. The other competing Tariff head claimed by the appellant is CTH 2309. Chapter Note to chapter 23 reads as follows:

Heading 2309 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing.(emphasis supplied)

To be classified under CTH 2309, the product should not be specified elsewhere, should be obtained by processing animal materials to such an extent that the essential characteristics of the original material is lost in the processing. From the note furnished, it is seen that artemia biomass the product supplied by the appellant when incubated in seawater with light and aeration tiny artemia Nauplii comes out from cyst which is the feed for fish. In the process of transformation of artemia cyst/biomass to artemia Nauplii, the essential characteristics of the original material is not lost in as much as the frozen embryo is hatched in hatcheries under certain conditions to have live nauplii, the feed. Following the chapter note as above, the artemia cyst/ biomass is not classifiable under CTH 2309. The CTH 0511, under which the original authority has classified the product reads as below:

0511	ANIMAL PRODUCTS NOT ELSEWHERE SPECIFIED OR INCLUDED; DEAD ANIMALS OF CHAPTER 1 OR 3, UNFIT FOR HUMAN CONSUMPTION			
0511 10 00	- Bovine semen	kg.	30%	-
	- Other :			
0511 91	-- Products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3 :			
0511 91 10	--- Fish nails	kg.	30%	-
0511 91 20	--- Fish tails	kg.	30%	-
0511 91 30	--- Other fish waste	kg.	30%	-
0511 91 90	--- Other	kg.	30%	-
0511 99	-- Other :			

The General Explanatory Notes(HSN) to Chapter 5 states as follows;

GENERAL

This Chapter covers a variety of materials of animal origin, unworked or having undergone a simple process of preparation, which are not normally used as food (**except** certain blood, guts, bladders and stomachs of animals) and which are not dealt with in other Chapters of the Nomenclature.

Also the tariff heading noted to Chapter 0511 is as follows:

05.11 - Animal products not elsewhere specified or included; dead animals of Chapter 1 or 3, unfit for human consumption.

0511.10 - Bovine semen

- Other :

0511.91 -- Products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3

0511.99 -- Other

This heading includes :

(1) Animal semen.

.....

(5) Inedible fish eggs, roes and milt.

These comprise :

- (i) Fertile eggs for hatching, recognisable by the presence of black spots which are the embryonic eyes.
- (ii) Salted roes (e.g., of cod or mackerel) used as fishing bait. These can be distinguished from caviar substitutes (**heading 16.04**) by their strong disagreeable odour and because they are usually packed in bulk.

The heading **excludes** edible roes and milt (**Chapter 3**).

On a joint reading of the above notes from HSN and applying the same to the case at hand, the artemia are fertilized eggs for hatching, which is very much covered under CTH 0511 and we do not find any reason to deviate from the ruling of the lower authority on this.

14.2 The appellant has relied on the decision in the case of Atherton Engg P. Ltd Vs. Commissioner [2010(256) ELT 358(Cal.)], wherein the Hon'ble High Court while setting aside the order of Tribunal dated 02.03.2006[2007 (208) E.L.T. 464 (Tri.-

Kolkata)] with a direction to Commissioner of Customs to rehear and re-decide the matter, has opined that

‘ if the eggs did contain an embryo they could be classified as feeding materials for prawns and ought to have been so classified. These embryos may not be proper prawn feed at the time of importation but could become so, after incubation. Refusing to classify the product as prawn feed on this bases is not reasonable.....’

The above decision relied on by the appellant was perused. It is seen that the appeal arose of the decision of CESTAT, Eastern Bench dated 02.03.2006 in CDM- 70, 71 & 77/2003 [2007 (208) E.L.T. 464 (Tri.-Kolkata), wherein the point of contention for consideration of the Third Member is:

“Whether the duty is required to be confirmed against the appellants and the penalties reduced as held by the Learned Member (Technical), or the matter is required to be remanded to the Commissioner as held by the learned Member (Judicial)”

Earlier, CESTAT, Eastern Bench in the case of Atherton Engg. Co. (P) Ltd Vs. C.C.(Airport & administration), Kolkata in Appeal No. CDM/70,71&77/2003 [2006(197) E.L.T. 428 (Tri.-Kolkata)], has dealt with the classification of ‘Artemia Cyst’. The Tribunal vide Order of Member (Technical), has analysed in detail the proper classification of Artemia Cyst based on the HSN, Chapter Notes of Customs Tariff and has also considered the decision of Apex Court in the case of said assessee [2002 (144) E.L.T. A 293 (S.C.)] and has held that the said product is classifiable under CTH 0511.99. Member (Judicial) while agreeing with the classification has remanded to the commissioner to consider the fact of imposition of personal penalties upon them in the light of the outcome of his on the availability of the Notification No. 163/94-cus, which was not raised before the Commissioner. Thereupon, the issue has been referred to the Third Member for the following:

“Whether the duty is required to be confirmed against the appellants and the penalties reduced as held by the Learned member (Technical) or the matter is required to be remanded to the Commissioner as held by the Learned Member (Judicial)”

The Member (Judicial), before whom, the said question was referred, has held the notification referred to was rescinded on 23rd July 1996 while the period involved is from October 1998 to February 2001 and therefore, the matter is not required to be remanded to the commissioner as held by Member (Judicial). With regard to the penalties, after

intervention of the Hon'ble High Court at Calcutta in writ Petition No. 2013 of 2005, has decided that the matter does not require remanding for reconsideration and has set aside the penalties. According vide the Final Order dated 02.03.2006 [2007(208) E.L.T. 464 (Tri.-Kolkata), the demand of duty is confirmed and the penalties imposed are set aside. The decision of High Court at Kolkatta referred to by the appellant is against this Order wherein the Hon'ble High Court has remanded the issue to re-hear and re-decide the case.

14.3 During the hearing it was pointed out to the appellant that the Hon'ble Supreme Court in the case of Atherton Engg P. Ltd., versus Commissioner reported in 2002 (144) E LTA 293 (SC) have approved the decision of the Mumbai Tribunal in the case of Commissioner versus Atherton Engg P. Ltd., reported in 2001 (129) E L T 502 (Tri. -Mum) holding that live Artemia cyst are classifiable under heading 05.11. The appellant in their further submissions has stated that on a reading of the said judgments it is noticed that **the decision of the Mumbai Bench of the Tribunal related to classification of packed Brine Shrimp Eggs requiring processing for conversion into larvae to become edible by prawns whereas** the product in dispute is one which stood already converted **and made ready for consumption by prawns as feed thus making it totally distinguishable to the facts of the case of the appellant.** This averment appears to be factually not correct. From the note furnished on the Artemia Project, it is seen that Cysts and biomass are harvested, processed, Packed and traded. It is stated that artemia cyst cannot be consumed with outer shell/chorion as such; cyst are incubated in sea water with light and aeration; tiny microscopic artemia nauplii comes out from cyst after 15-20 hrs and this nauplii is the feed for fish.

14.4 The appellant has stated that the judgment of the Hon'ble Calcutta High Court reported in 2010 (256) E L T 358 (Cal) relied in support by the appellant is a later judgment which in fact considered the decision of the Mumbai Bench decision before making their observations as pointed out to direct the authorities to follow their observation and decide the case is more apt and squarely applicable to the case of the appellant on account of which the contrary finding recorded by the advance ruling authority touching the classification of the subject goods need to be vacated in the interest of justice. This contention of the appellant also does not have any merit for

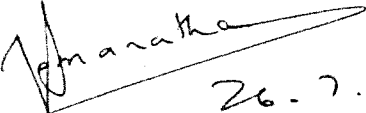
the following reasons. Classification of goods once finalized by the Apex Court is to be applied to the said product as long as there is no change in the tariff entry/facts of the case. Further, with the advent of GST, the 'Exemption & Effective Basic and Additional Customs Duty for specified goods falling under Chapters 1 to 98' are provided vide Notification no. 50/2017-Cus dated 30.06.2017. In the said notification, 'Artemia cyst' at S.No 13 is said to fall under CTH 0511 91, while Artemia at Sl.No. 14 is classified under 05119911. Going by the entries in the notification, it is abundantly clear that artemia cyst/biomass is squarely classifiable under CTH 0511 only. We find that the lower authority has made the correct classification and we do not find any reason to interfere with the ruling.

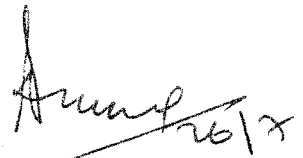
15. Before concluding it is to be stated that the counsel for the appellant in his written submissions dated 30/05/2019 at para 4 has cast aspersions when he alleged 'clear bias towards revenue' by the authorities below. It is found that the allegation is baseless and uncalled for. It is hoped that better counsel would prevail in future and decorum of language will be maintained.

16. In view of the above we, pass the following Order:

ORDER

For reasons discussed above, we do not find any reason to interfere with the Order of the Advance Ruling Authority in this matter. The subject appeal is disposed of accordingly.


26.7.19
(T.V.SOMANATHAN)
Commissioner of Commercial Tax
Tamilnadu /Member AAAR


(M. AJIT KUMAR)
Pr.Chief Commissioner of GST & Excise
Chennai Zone/Member AAAR

To

Rajiv Gandhi Centre for Aquaculture,
3/197, Poompuhar Road, Karaimedu Village,
Sattanathapuram - 609109 //By SPAD//

Copy to

1. Additional Chief Secretary/Commissioner of Commercial Taxes, II Floor,
Ezhilagam, Chepauk, Chennai-5.
2. The Principal Chief Commissioner of GST & Central Excise, 26/1,
Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
3. Office of The Authority for Advance ruling,
No.1, Greams Road,
PAPJM Building, Chennai – 06.
4. The Commissioner of GST & Central Excise, Trichy Commissionerate
No.1,, Williams Road, Cantonment,
Trichy 620 001.
5. The Commercial Tax Officer,
No.16A, sattanathan colony, Sirkazhi-609110
6. Master File/ Spare-2.

