

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)
(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.		AD270821019321F
GSTIN Number, if any/ User-id		27AAECA9861A1ZR
Legal Name of Applicant		M/s OCEAN BLUE BOATING PRIVATE LIMITED
Registered Address/Address provided while obtaining user id		239, RUPAM BUILDING, 2ND FLOOR, P.D.MELLO ROAD, MUMBAI, Maharashtra 400001
Details of application		GST-ARA, Application No. 32 Dated 25.08.2021
Concerned officer		Div-II, Range IV, Commr-Mumbai South
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Wholesale Business, Retail Business
B	Description (in brief) (As per applicant)	M/s Ocean Blue Boating Pvt Ltd, the applicant are importing Marine Propulsion Engine (HSN Code 8407, 8408) & spare parts of marine propulsion engines (HSN Code 8409) & selling it locally for use as a part of fishing vessels, Police, Defense department, Patrol, flood relief & rescue department & ors. With regard to above supplies, applicant is charging 28% GST. Whether such marine engines and its parts supplied as a part of fishing vessels or supplied to Police, Defence department, Patrol, flood relief & rescue department is covered under the GST rate of 5 % (i.e. CGST 2.5 % and SGST 2.5%).
Issue/s on which advance ruling required		➤ Classification of any goods or services or both ➤ Applicability of a notification issued under the provisions of this Act
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 32/2021-22/B- 105 Mumbai, dt. 06/12/2021

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by **M/s OCEAN BLUE BOATING PRIVATE LIMITED**, the applicant, seeking an advance ruling in respect of the following questions.

- Whether GST rate of 5% can be charged on supply of marine engines of heading 8407 and heading 8408 and/or their spare parts of heading 8409 without considering its general tax**

rate as per the entry of schedule I, Sl. No. 252 of Notification No. 1/2017-Central Tax (Rate), Dated 28-06-2017, on the basis of its ultimate used as part of fishing vessel of heading 8902.

2. Whether GST rate of 5% can be charged on supply of marine engines of heading 8407 and heading 8408 and/or their spare parts of heading 8409 when it is supplied for use of defense purpose, patrolling purpose, flood relief and rescue operations being part of heading 8901, 8904, 8905, 8906, 8907.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT FACTS:

- 2.1 M/s Ocean Blue Boating Pvt Ltd, the applicant is in the business of Importing Marine Propulsion Engine under HSN Code 8407, 8408 & spare parts of marine propulsion engines under HSN Code 8409, supplying the same in local market for use as a part of fishing vessels, Police, Defense department, Patrol, flood relief & rescue department and others.

B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

- 2.2 The Marine engines falling under HSN 8407 and HSN 8408 used by the applicant are taxed at the rate of 28%. 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. The said product is also coming under marine engine category and used by fisherman in their fishing boats of HSN 8902.
- 2.3 These supplies under above HSN are also used by Police, Defense department, Patrol, flood relief & rescue department falling under HSN 8906.

Applicant Submission dated 12.10.2021:-

- 2.4 S.N. 252 of Schedule 1 (i.e. 2.5%) of Notification No 01/2017, covers part of goods under various HSN and following HSN are also included in the same-
- (i) 8902 (Fishing vessels; factory ships & other vessels for processing or preserving fishery products).
 - (ii) 8906 (Other vessels, including warships and lifeboats other than rowing boats)
- 2.5 Applicant supplies marine engines and spare parts of these engines to Fishermen (who use their boats for Fishing Operations) and Government Departments (who use their boats for Patrolling

and rescue operations). Hence, based on uses of applicant's engines and spare parts, it becomes part of goods covered under HSN 8902 and 8906. Resultantly, applicant's supply is covered under Entry 252 of Schedule I of Notification No 01/2017.

- 2.6 Further, a clarification was provided in Circular No 52/26/2018-GST regarding applicability of GST on Marine Engine. It was clarified that parts of fishing vessel covered under heading 8902, falling under **any chapter (Inclusive Definition)** also attracts GST rate of 5%, vide S. No. 252 of Schedule I of the Notification 01/2017- Central Tax (rate) dated 28.06.2017. Since the word "any chapter" includes Chapter 8408, it also includes the marine engines falling under chapter 8407. Hence, applicant's engines supplied to fishermen attract GST rate of 5%.

Submission of required clarification (Redrafted questions) dated 12.11.2021-

The redrafted Questions of the applicant are as under:-

- Q. a) Whether GST rate of 5% can be charged on supply of marine engines of heading 8407 and heading 8408 and/or their spare parts of heading 8409 without considering its general tax rate as per the entry of schedule I, Sl. No. 252 of Notification No. 1/2017-Central Tax (Rate), Dated 28-06-2017, on the basis of its ultimate used as part of fishing vessel of heading 8902.
- Q. b) Whether GST rate of 5% can be charged on supply of marine engines of heading 8407 and heading 8408 and/or their spare parts of heading 8409 when it is supplied for use of defense purpose, patrolling purpose, flood relief and rescue operations being part of heading 8901, 8904, 8905, 8906, 8907.

At the time of making supply to fishermen, applicant collects following documents:

1. Fisherman ID card Issue by Respective Agency.
2. Declaration (Format Attached).
3. Documents for confirmation nature of supply.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

Officer Submission dated 09.11.2021:-

- 3.1 The applicability of GST rate of 5% on marine engines of heading 8407 and 8408 and their spare parts of heading 8409 (being a part of fishing vessels of heading 8902), has already been clarified vide the Circular No. 52/26/2018-GST dated 09.08.2018.
- 3.2 Regarding the applicability of GST rate of 5% on supply of material and services in connection with the maintenance and repair of fishing vessels of the heading 8902, it is to state that, as the repair and maintenance is considered to be a composite supply (unless specified in the contract as "separately chargeable"), the taxability depends upon the "predominant element" of the supply. In the instant case the contracts made with the vendors need to be studied to determine

the 'predominant element' of supply. In case, service element is predominant, repair and maintenance services are liable to 18% of GST rate as per entry at Sl. No.25 of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017.

04. HEARING

- 4.1 Preliminary e-hearing in the matter was held on 28.09.2021. The Authorized representatives of the applicant, Shri. Ramawatar Sharma, CA and Shri Malav Shroff (Owner) were present. The Concerned officer Shri Sourabh Kumar, Superintendent, CGST & CX, Div-II, Range-IV, Mumbai South Commissionerate was also present.
- 4.2 The application was admitted and called for final e-hearing on 09.11.2021. The Authorized representative of the applicant, Shri. Pratik Sangavi and Shri. Malav Shroff, learned applicant were present. The Jurisdictional officer Shri. Sourabh Kumar, Superintendent, CGST & CX, Div-II, Range-IV, Mumbai South Commissionerate was also present.
- 4.3 We heard both the sides.

05. OBSERVATIONS AND FINDINGS:

- 5.1 We have perused the records on file, gone through the facts of the case, submissions made by the applicant as well as the department and have examined the matter in detail.
- 5.2 The applicant has submitted that they are importing Marine Propulsion Engines under HSN Code 8407, 8408 as well as spare parts of marine propulsion engines under HSN Code 8409 and are supplying the same for use as a part of fishing vessels, Police, Defense department, Patrol, flood relief & rescue department and others.
- 5.3.1 Applicant's first question is whether GST rate of 5% can be charged on supply of the impugned goods as per the entry of schedule I, Sr. No. 252 of Notification No. 1/2017-Central Tax (Rate), Dated 28-06-2017, on the basis of its ultimate use as part of fishing vessel of heading 8902. Thus, the first issue that is raised before us by the applicant is whether the said marine engine and parts which are used on a fishing vessel are forming parts of the said vessels and therefore chargeable to tax @ 5% under Sr.No.252 of Notification No.1/2017 Central Tax.
- 5.3.2 It is an admitted fact that, Marine Engine are imported by the applicant under HSN Code 8407/ 8408 of the Customs Tariff and spare parts of marine propulsion engines are imported under HSN Code 8409 of the Customs Tariff.
- 5.3.3 Fishing vessels are classified under Customs Tariff/GST Tariff Heading 8902. We have no doubt that marine engines relevant for use in fishing vessels would be a 'part' of such a fishing vessel. Sr. No. 252 of Notification No. 01/2017 – C.T (Rate) dated 28.06.2017 is as under:-

Schedule No.	Sr. No.	Chapter / Heading / Sub-heading / Tariff item	Description of goods	CGST / SGST Rate	IGST Rate
I	252	Any Chapter	Parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907	2.5%	5%

From the above table it is very clear that parts of goods of headings 8901, 8902, 8904 to 8907 are chargeable to CGST/SGST @ of 2.5% each.

5.3.4 This authority has already held in the case of M/s MAN Energy Solutions India Private Limited that Marine diesel engine, and parts thereof will be covered under Sr. No. 252 of Notification No. 1/2017-C.T.(Rate), dated 28-6-2017, only when used in the manufacture of goods falling under 8901, 8902, 8904, 8905, 8906, 8907 and items which do not conform to “parts of marine diesel engines” will not be covered under the said Sr. No. 252 of Notification No. 1/2017-C.T.(Rate), dated 28-6-2017.

5.3.5 We have no reason to deviate from this view and accordingly hold that in the subject case, the marine engine and parts thereof attract 5% GST under Sr. No. 252 of Notification No. 1/2017-C.T.(Rate), dated 28-06-2017, if supplied to fishing vessels.

5.3.6 Further, the said issue has also been clarified vide the Circular No. 52/26/2018-GST dated 09.08.2018 (also applicable to the instant case), the same is cited as under:

"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 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 1093 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."

5.3.7 However, if the impugned goods are supplied for use other than for fishing vessels and goods covered under 8901, 8904, 8905, 8906 and 8907, in such a case GST at the rate applicable under the respective GST Tariff Heading under which they are classified, will apply. Further, goods which do not conform to “parts of marine engines” will not be covered under the said Sr. No. 252 of Notification No. 1/2017-C.T.(Rate), dated 28-6-2017.

- 5.4 The second question raised by the applicant is whether GST rate of 5% can be charged on supply of marine engines of heading 8407 and heading 8408 and/or their spare parts of heading 8409 when it is supplied for use of defense purpose, patrolling purpose, flood relief and rescue operations being part of heading 8901, 8904, 8905, 8906, 8907.
- 5.4.1 During the course of the personal hearing the applicant submitted that the second question pertains to supplies made for ships/vessels used for defense purpose, patrolling purpose, flood relief and rescue operations.
- 5.4.2 The reasoning given by this authority in respect of question number 1 above also applies to this question and therefore we hold that Marine engine, and parts thereof will be covered under Sr. No. 252 of Notification No. 1/2017-C.T.(Rate), dated 28-6-2017, when used in the manufacture of goods falling under 8901, 8902, 8904, 8905, 8906, 8907. Items which do not conform to “parts of marine engines” will not be covered under the said Sr. No. 252 of Notification No. 1/2017-C.T.(Rate), dated 28-6-2017.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1: - Whether GST rate of 5% can be charged on supply of marine engines of heading 8407 and heading 8408 and/or their spare parts of heading 8409 without considering its general tax rate as per the entry of schedule I, Sl. No. 252 of Notification No. 1/2017-Central Tax (Rate), dated 28-06-2017, on the basis of its ultimate used as part of fishing vessel of heading 8902.

Answer: - Marine engine of heading 8407 and heading 8408, and parts thereof of heading 8409 will be covered under Sr. No. 252 of Notification No. 1/2017-C.T.(Rate), dated 28-6-2017, when used in fishing vessels falling under HSN 8902 of the GST Tariff, as in the subject case. Goods which do not conform to “parts of marine engines” will not be covered under the said Sr. No. 252 of Notification No. 1/2017-C.T.(Rate), dated 28-6-2017

Question 2: Whether GST rate of 5% can be charged on supply of marine engines of heading 8407 and heading 8408 and/or their spare parts of heading 8409 when it is supplied for use of defense purpose, patrolling purpose, flood relief and rescue operations being part of heading 8901, 8904, 8905, 8906, 8907.

Answer: - GST rate of 5% can be charged on supply of marine engines of heading 8407 and heading 8408 and/or their spare parts of heading 8409 covered under Sr. No. 252 of Notification No. 1/2017-C.T.(Rate), dated 28-6-2017 only when it is supplied for use in ships/vessels covered under headings 8901, 8902, 8904, 8905, 8906, 8907 of the GST Tariff, which may be used for defense purpose, patrolling purpose, flood relief and rescue operations. However, Goods which do not conform to “parts of marine engines” will not be covered under the said Sr. No. 252 of Notification No. 1/2017-C.T.(Rate), dated 28-6-2017




RAJIV MAGOO
(MEMBER)


T. R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.