

AUTHORITY FOR ADVANCE RULING, TAMILNADU
DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI -600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Ms. Manasa Gangotri Kata, I.R.S., Additional Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai -34
2. Thiru Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A.,
Joint Commissioner (ST) / Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

ORDER No. 25/ARA/2020 Dated 12.05.2020

GSTIN Number, if any / User id		33AAACS5514Q1Z5
Legal Name of Applicant		SGS India Private Limited.
Registered Address / Address provided while obtaining user id		28B/1 SP and 28B/2 SP, BNT connection building, Ambattur Industrial Estate, 2 nd Main Road, Ambattur, Chennai. 600 058.
Details of Application		Form GST ARA – 001 Application SI.No. 51 Dated 24.12.2019
Concerned Officer		State: The Assistant Commissioner Ambattur Industrial Estate Assessment Circle Centre: Chennai North ,Division: Ambattur
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Provision of services.
B	Description (in brief)	The applicant is a service provider engaged in providing various inspection, verification, testing and certification services in the agriculture and food production process in its laboratories set up in India.

Issue/s on which advance ruling required	Determination of classification of goods or services
Question(s) on which advance ruling is required	Whether the supply of “inspection and testing services” on fresh table grapes is classifiable under entry 9986 of Notification no.11/2017-Central Tax Rate) dated June 28 2017- “Support services to agriculture, forestry, fishing, animal husbandry” chargeable to NIL rate of tax and Entry 54(a) of exemption notification no.12/2017-Central Tax (rate) dated June 28,2017?

Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

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.

SGS India Private Limited, 28B/1 SP and 28B/2 SP, BNT connection building, Ambattur Industrial Estate (hereinafter called the ‘Applicant’) is registered under the GST Vide GSTIN 33AAACS5514Q1Z5. They are engaged in providing various inspection, verification, testing and certification services in the agriculture and food production process in its laboratories set up in India. They have sought Advance Ruling on the following question:

Whether the supply of “inspection and testing services” on fresh table grapes is classifiable under entry 9986 of Notification no.11/2017-Central Tax Rate) dated June 28 2017- “Support services to agriculture, forestry, fishing, animal husbandry” chargeable to NIL rate of tax and Entry 54(a) of exemption notification no.12/2017-Central Tax (rate) dated June 28,2017?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs. 5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that they are a company incorporated under Companies Act 1956 and have their registered corporate office at Maharashtra. They are primarily engaged in

the business of providing various support services including sampling, inspection, verification, testing and certification services (hereinafter referred to as 'inspection and testing service') on fresh table grapes and other agricultural produce. They have stated that the activity of sampling and testing are conducted under the governance and guidelines prescribed by APEDA established under the APEDA Act and the APEDA rules. By way of this testing the applicant identifies residues of chemicals in fresh table grapes and determine as to whether the grapes are of exportable quality or not for its customers who are Indian exporters/pack houses/farmers/importers (Foreign customers) (hereinafter referred to as exporter-customers). The applicant has also stated that the exporter-customers in India approach and contract with them for conducting the sampling and testing specific types of fresh table grapes grown/cultivated in India. They in turn approach the grape farms, draw samples, conducts test in their laboratory and issues certificates/ reports of analysis to its exporter customers. The exporter customer in turn would consider the analysis in the report and take decision on their export orders. They have stated that they have set up sampling units in the state of Maharashtra at Nasik, Sangli Pune and some other regions especially where majority of grape farms are located. They have also submitted that APEDA is the primary governing body which regulates the production and exports of fresh table grapes from India. APEDA provides a recognition/approval for laboratories performing inspection and testing activity on fresh table grapes in India and function in accordance with guidelines prescribed by APEDA. These laboratories are required to operate in accordance with the guidelines of APEDA. They have stated that there is no recognition criteria prescribed for sampling units by APEDA. The applicant has setup testing unit in Chennai, which has been given the required recognition/approval for carrying out inspection and testing activity on fresh table grapes. Further, the entire supply chain i.e. grape farms, laboratories and exporters are required to be registered with APEDA.

2.2 The Applicant has stated that before initiating the inspection and testing activity, they draw a service offer quotation to its customers for their approval. The quotation proposes the following:

- a) Description of goods and quantity for testing
- b) Place of inspection/ testing
- c) Scope of service
- d) Sampling Plan
- e) Method of testing
- f) Proposed fees and applicable taxes
- g) Miscellaneous charges
- h) Payment terms
- i) Reference to general conditions of service
- j) Offer acceptance details

After the exporter customer provide their approval the applicant initiates the sampling procedure from the farms in accordance with the method of sampling laid down by APEDA in the procedures for export of Fresh Table Grapes in file no. QCT-2013-14-000011, Trade Notice no. Apeda/Q/56/2018-19 dated October 10, 2018 (hereinafter referred to as 'Fresh Table Grapes export procedure'). The following is the procedure required to be followed by the applicant:

- A schedule for drawl of samples is obtained from the farmers/exporters well in advance so as to plan sampling arrangements.
- Samples, are drawn in the presence of the farmer and exporter's representative by an authorised representative of the applicant.
- After the samples are drawn the applicant maintains a record of the same and also upload details of in the GrapeNet (web based facility maintained/obtained by APEDA)
- Each sample drawn are packed separately in two corrugated cartons out of which one box is the laboratory sample and the other box is kept as counter sample (to be retained for test by National Referral Laboratory(NRL) in case of dispute)
- A sample slip is signed by the farmer/ exporter/exporter's representative and representative of the laboratory who has drawn the sample.

The applicant has stated that after the sampling of fresh table grapes is completed the samples are sent to the Chennai Laboratory for testing and a record for movement of such samples is maintained. In the laboratory each samples are numbered by indicating code numbers and testing of the samples are done in

accordance with recommended list of pesticides prescribed by APEDA in the fresh table grapes export procedure. A test report is issued 3 -5 days of the drawl of samples and completion of analysis to the exporter customer. A copy of the test report is provided to the client and it is also uploaded on the website facility maintained by APEDA i.e. GrapeNet also the certificate of AGMARK GRADING (Final random inspection) report is uploaded in GrapeNet.

2.3 The applicant has stated that after issue of test and inspection report they raise two types of tax invoices on the exporter-customers under the service description a) Laboratory testing/Analysis and b) final random inspection. They stated that they classified their services under the tariff heading 9983 covering services in the nature of **‘Other Professional, technical and business services’** and **chargeable to GST** at 18%. Further, they have issued invoices in accordance with Section 12(2) of IGST Act 2017, herein place of supply of service is determined as location of the service recipient. They have also stated that prior to June 30 2012, their testing services were not specifically defined/included under taxable service under Section 65(105) of Finance Act 1994 and they never discharged service tax on the same. However, w.e.f July 1st 2012, the inspection and testing service provided by them were specifically included in the negative list of services under Section 66D(d) of Finance Act, and hence the applicant continued to treat its output service as an exempt service, hence, no service tax was discharged on the service of ‘Laboratory testing’ however, service tax was discharged and collected on the service of ‘final random inspection’ at the rate of 14%. They have stated that they are under the belief that fresh table grapes are cultivation of vitis plants and is therefore an agricultural produce, consequent to which the process relating to inspection and testing is exempt from Service Tax. Hence the applicant neither discharged nor collected service tax on its output service.

2.4 The applicant on their interpretation of law in respect of the question raised by them, has stated that the Central Government vide Entry 24 under Notification no. 11/2017-Central Tax (Rate) dated June 28, 2017 provides exemption for “Support services to agriculture” and as per Explanation (i)(a) of the said entry, Support services means... “services by way of agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing”. The applicant has stated that to qualify for

exemption under the above category of service, it is necessary to satisfy the following conditions:

- a) Support services are agricultural operations including cultivation, harvesting, threshing, plant protection or **'testing'**
- b) Agricultural operations (e.g. testing) are directly related to production of any **'agricultural produce'**

The first condition to be satisfied is to determine as to whether the activity undertaken by them qualifies as an 'agricultural operation' or as a 'testing activity'. The scope and ambit of 'agricultural operations' or the 'testing activity' is not given under the CGST Act and they rely on Circular No.189/8/2015-Service Tax dated 26.11.2015 under Finance Act which provides scope of activities under Agricultural operations and testing activity as under:

- a) The exemption is not limited to the specified operations and the scope of coverage **is broad enough to cover any testing activity in agricultural operations** directly linked to production of agriculture produce. The benefit is therefore available to all other testing activity in relation to agriculture or agricultural produce

Testing activity

- b) Testing and certification can be done as per the Act and rules made there under
- c) Testing cannot stand in isolation of certification and other ancillary activities
- d) Testing cannot be random, somebody has to register for testing
- e) If the certificate is not received and seeds are not tagged, testing is irrelevant. Therefore, all processes are a part of the composite process and cannot be separated from testing
- f) All testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of 'testing'

The applicant has stated that, in the present case, the activity performed by them is essentially monitoring/ reporting the presence of various agrochemicals (as listed in Annexure-9 of the export procedure of the APEDA Act) per kilogram of Fresh Table Grapes and is covered within the scope and ambit of 'agricultural operations' and 'testing activity'. Applying the above, the process of testing sampled quantity of Fresh Table Grapes, is conducted in the following manner:

- a) The laboratory is registered and approved with APEDA;
- b) The sampling and testing of Fresh Table Grapes is conducted in accordance with standards/ guidelines prescribed by the APEDA under the APEDA Act and APEDA Rules; and

- c) A certificate is issued in the format prescribed by the APEDA under the APEDA Act and APEDA Rules

Thus, they have stated that they fulfil all the conditions for an activity to qualify as an agricultural operation or testing activity as per the above Circular. The applicant has stated that the second condition to satisfy is whether fresh table grapes qualify as an 'agricultural produce'. They have referred to the Ruling GST ARA -30/2017-18/B-38 dated May 23,2018 by the Hon'ble Authority of Advance Ruling Maharashtra in the case of Nutan Warehousing Company private limited, wherein the authority has identified three ingredients in the definition of agricultural produce under clause 2(d) of the Notification No. 12/2017-Central Tax (Rate) dated 28.6.2017. These three ingredients are listed as under:

- a) The produce must emerge from **cultivation of plants** or rearing of all life forms of animals.
- b) Either no further processing is done or such processing is done as is usually done by a cultivator or producer of the said produce.
- c) The process undertaken does not alter its essential characteristics but makes it marketable for primary market.

The applicant has submitted that Fresh Table Grapes originate from cultivation of vitis plant whereas cultivation and harvesting of vitis plant is known as viticulture which is also a branch of horticulture. As Fresh Table Grapes are produced from vitis plant, the first condition that the produce must be out of cultivation of plants is satisfied.; it does not perform any further processing to the extent that testing residue levels of agrochemicals does not amount to any activity of further processing so as to make an agricultural produce marketable or saleable in the primary market. They receive service orders from their exporter- customer on a need basis. The testing activity is conducted under the instructions and sole discretion of the farmer or the exporter-customer and is not a related, ancillary or conditional activity to production, cultivation and harvesting of Fresh Table Grapes. Also, the shape, size, form, etc. of Fresh Table Grapes both before and after testing activity remains the same. The testing activity is conducted on a sampled quantity and not on the entire produce from the farms whereas a process is something which is performed on the entire produce and not just on the sampled quantity. The definition of agriculture produce refers to processing effected by cultivator or the producer and not laboratories. In view of this, condition (b) and (c) does not apply to activities performed by them. The scope of 'agricultural produce' includes

any produce out of cultivation of plants for food, fibre, fuel, raw material or other similar products. This essentially widens the scope to include all forms of produce arising out of cultivation of plants. To this end, since Fresh Table Grapes arises out of cultivation of vitis plant and can be used as food, raw material (for production of wines), etc., it is to be considered as an agricultural produce in view of definition provided under the Notification no. 11/2017-Central Tax (Rate) dated June 28, 2017.

2.5 They have also referred to GST Circular No.16/16/2017-GST dated 15th November 2017 wherein the scope of activities covered under agricultural produce are clarified. The applicant has stated that the above circular has not specifically dealt with agricultural produce coverage of fruits as an agricultural produce. They have further stated that the scope of agricultural produce had developed and evolved during the service tax regime and was further widened with its transitioning under GST. As per the applicant's view analysing and understanding the intention of legislature towards inclusion of fruits within the purview of Agricultural produce is imperative in order to substantiate the facts in the present case. They have also referred to clause 65(B) and Section 66D(iii) of Order No.1/2002 & 1/2012 -Service Tax and has stated that fresh table grapes being fruits are considered as agricultural produce. They have further relied on the definition in various dictionary and law lexicon and the following judgements to claim that cultivation of fruits would fall under the definition of agricultural produce:

- The Hon'ble Ahmedabad Tribunal in the case of CCE & ST Ahmedabad -III vs Murlidhar Horticulture Pvt Ltd reported in 2019 (3) TMI 1435
- The Hon'ble Calcutta High Court in case of Sheikh Hidayat Ali vs Kumar Kalanand Singh 1913(17) CLJ 411
- Advance Ruling Authority Rajasthan in the case of Shubhlaxmi Cold storage and Ice Factory Limited -Ruling No.RAJ/AAR/2018-19/18 dated September 15, 2017.

2.6 The applicant has stated that they have classified their services under the Heading 9983- 'Other professional, technical & business services' and discharged GST at 18%. However, the export-customers of the applicant have viewed that services provided by the applicant would merit classification under "SAC 998619- Other Support services to agriculture, hunting, forestry and fishing" and are exempt vide entry 54(a) of exemption Notification 12/2017CT(Rate) dated 28 June

2017. The applicant is also of the same view and they have sought the authority of Advance ruling to clarify the same.

3.1 The applicant was given an opportunity to be personally heard on 28.01.2020. The applicant appeared before the authority and gave a written submission. They stated that they do testing service to exporters to test residue of pesticides, metals etc. as per norms of APEDA. They stated that in Service Tax regime, initially seed testing was exempt and later in 2013 testing in relation to agricultural production and all agricultural produce was exempted under Service Tax Notification. They stated that the same language was used in Notification under GST in Notification 12/2017. They stated that there are 2 competing classification and 9983 of which they are classified under SAC 9986 and they are support service to agriculture even though they provide the said service to exporters after production.

3.2 In the written submissions, the applicant has drawn reference from the erstwhile service tax provisions and the United Nations Central Product Classification(UNCPC) issued by the United Nations Statistical Commission. They have stated that the list of services, its classification and the relevant explanatory notes laid down in the UNCPC are also adopted under the GST law with slight modifications. They have stated that they have applied the above provisions strictly to the extent that the prima facie condition for claiming exemption is the testing activity being performed in relation to “agricultural produce”. They have further stated that under GST law, the testing activity in relation to agricultural produce has been granted exemption from levy of GST under Entry No. 54 of exemption Notification No. 12/2017-C.T.(Rate) dated 28th June 2017 which is exactly similar to that included under Section 66D(d)(i) of the Finance Act and hence this testing service in relation to agricultural produce, provided by them would merit exemption from levy of GST also. The applicant has relied on the following decisions of various fora

- Hon'ble Supreme Court in the case of District Mining Officer Vs. Tata Iron and Steel Co. [(2001)7 SCC 358]
- Prakash and Ors Vs. Phulavati and Ors [(2016) 2 SCC 36]
- R.M.D. Chamar baugwalla and Anr Vs. Union of India and Anr [AIR 1957 SC 628]

- Anandji Haridas and Company Private Limited Vs. Engineering Mazdoor Sangh and Anr. [(1975) 3 SCC 862]
- Kartar Singh Vs. State of Punjab [(1994) 3 SCC 569]
- Bhatia International Vs. Bulk Trading S.A. and Anr. [(2002) 4 SCC 105]

and stated that the settled principle in law is that a tax exemption statute or notification needs to be strictly interpreted, when words are clear, unambiguous and only one meaning can be inferred and in case the provision is open to more than one meaning, the interpretation which represents the intention of legislature is to be chosen. They claim that the intention of the legislature was clear in terms of granting exemption to testing service in relation to agricultural produce and the applicant be allowed to classify the service under 998619. They have further submitted the scheme of classification under SAC 9983 and SAC 9986 and claimed that the activity of testing performed by them is specific to agricultural produce and hence would not be covered under 998346 however the testing activity of the applicant would merit coverage under ‘Other Support Services’ and classifiable under SAC 9986.

3.3 The applicant vide their letter dated 04.02.2020 furnished another Written submission, wherein, inter-alia, they stated that

- the Hon’ble Members of the captioned Authority for Advance Ruling on examining their submissions during the personal hearing, *prima facie* expressed a view that the testing activity of the Applicant is **not directly related to production** of any agricultural produce. The Hon’ble Members offered a view that testing is an activity which is performed post-production of the crop and not during or before production of the crop. It was also put forward that exemption under the CGST Act has been granted only to pre-production activities and not post-production activities.
- since definition of “agricultural operations” is not defined under the CGST law, they draw reference from the judgement of Hon’ble Supreme Court in the case of **Commissioner of Income Tax, Calcutta v. Raja Benoy Kumar Sahas Roy AIR 1957 SC 768**, which analysis the scope of “agriculture” and “agriculture operations” (particularly para 95 to 103) and stated that the bottom line that emerges from the above judgement is that “*agricultural operations*” are to be divided in two parts as under:

(A) **Basic operations** – These are to include the activity of tilling of the land, sowing of the seeds, planting and similar operations. These activities are nothing but cultivation activities and would require the expenditure of human skill and labour upon the land itself

(B) **Subsequent operations** – Whereas these activities essentially include operations to be performed after the produce sprouts from the land, e.g., weeding, tending, pruning, cutting, harvesting, digging the soil around the growth, removal of undesirable undergrowths and all operations which foster the growth and preserve the same not only from insects and pests but also from depredation from outside and hence rendering the produce fit for the market

- the principles which emerge from the case of **C.I.T. v. Benoy Kumar (supra)**, has been laid down by the Hon'ble Supreme Court in the case of **Maheshwari Fish Seed Farm v. T. Nadu Electricity Board and Ors. AIR 2004 SC 2341**. (Para 10 of the order)
- The Hon'ble High Court of Uttarakhand in **Commissioner Central Excise and Customs and Ors. v. Dujodwala Resins and Terpenes Ltd. and Ors.** Special Appeal Nos. 227 of 2011, 236, 237, 275, 276 & 354 of 2013, also interpreted the term 'agricultural production' as below:
"72. "Agriculture production" is a common and widely recognized phrase. Illustrations of Agriculture production are many. For instance horticulture production where systematic activity is carried on to produce fruits for commercial purposes, such as apple orchards. Another instance is of rubber plantations. Even in meat processing industries, production of meat is from live animals, and no new substance comes into existence."
- Similar view was also upheld in **Taurus Earthmovers Pvt. Ltd. v. State Of Karnataka (2007) 10 VST 224**, wherein Hon'ble Karnataka High Court held that the "basic operations" are in the nature of tilling of the land, sowing of the seeds, planting and similar operations on the land whereas certain "other operations" are required to be performed for "harvesting" and rendering the produce fit for the market.
- From the above precedents laid down by the Hon'ble Supreme Court, it is very clear that "agricultural operations" as a whole, consists of basic operations as well as subsequent operations performed in conjunction with each other on the agricultural produce. Whereas basic operation is the activity of cultivation and subsequent operations are activities of harvesting,

threshing, plant protection or testing, etc, which essentially enhances the produce and makes it fit for market.

- In the present case, the language employed under Entry 54 of the CGST Exemption notification no. 12/2017 is “**agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing**”. As established above, “cultivation” is the basic operation whereas “harvesting”, etc are subsequent operations. Both these activities merit inclusion under agricultural operations and hence the scope of agricultural operations is wide enough to cover both these activities.
- In view of above, it can be safely assumed that the intention of legislature, while granting this exemption, was not to create any distinction between “basic or subsequent operations” or “pre or post production activities”. It grants exemption to agricultural operations as a whole which essentially includes both basic and subsequent operations.
- Further to address the confusion between pre and post-production activities, the Applicant draws reference to the principle laid down by the Hon’ble Supreme Court in para 10 of **Maheshwari Fish Seed Farm (supra)** wherein it has been held as under:

.....There are however **other operations** which have got to be resorted to by the agriculturist and which are absolutely necessary for the purpose of effectively raising the produce from the land. **They are operations to be performed after the produce sprouts from the land.** The latter would all be agricultural operations when taken in conjunction with the basic operations above described, and it would be futile to urge that they are not agricultural operations at all

- In the above findings, the Hon’ble Supreme Court has categorically recorded that only cultivation is the basic operation whereas harvesting, pruning, cutting, etc. are other operations are to be performed after the cultivation activity is completed. In this sense, only the cultivation activity would be treated as pre-production activity whereas other activities such as harvesting, threshing, testing, etc. would all be treated as post-production activity. Hence, the coverage for exemption has been extended to both activities. In view of this, assuming only the testing activity of the Applicant as post-production activity and harvesting, threshing, etc as pre-production activity and denying exemption on that

basis, is not tenable in law and does not advance the scope of the exemption provided by the Government.

4. The applicant is under the administrative supervision of State and the State Jurisdictional authority in their written submission has stated that the applicant has submitted that there are two competing clarifications SAC9983 and SAC9986 and they are support services to agriculture.

5. The Central Tax Authorities has furnished the following comments on the questions raised by the applicant their application.

i. Notification 12/2017 -CT(R) dated 28.06.2017, exempts services falling under Heading 9986, related to production of agricultural produce; supply of farm labour; and operations which do not alter the essential characteristics of agricultural produce, but make it only marketable for primary market, whereas in the present case the applicant is not inclined to any such direct production activity. From the physical document and invoices furnished by the applicant it is seen that inspection and certification services rendered by the applicant are post production testing/grading operations meant for export market to the European union. Also the applicant could not be described as a committee or board or a commission agent for sale or purchase of agricultural produce to claim exemption under sub-clause(g)

ii. Also as per the explanatory notes to Heading 998611 support services to crop production includes services directly in relation to agricultural production activities such as seed production, crop production, pest control, provision of agricultural machinery and post harvest crop services such as preparation of crops for primary market. But in the instant case the activity of the applicant is meant for export market which cannot be equated with primary market.

iii. Further, the applicant has placed reliance on the Board's Circular No.189/8/215 -Service Tax dated 26.11.2015, wherein the Board has clarified on testing and ancillary activities to testing of seeds, whereas the testing done by the applicant is on grapes not seeds. Hence, they have viewed that the activity undertaken by the applicant could not merit exemption under Notification 12/2017 CT(Rate) dated 28.06.2017

6. We have carefully examined the submissions made by the applicant in the application, during personal hearing and after and the comments furnished by the State and Central Jurisdictional authority. The applicant has stated to be primarily engaged in the business of providing various support services including sampling, inspection, verification, testing and certification services on fresh table grapes and other agricultural produce. The applicant has sought ruling on

Whether the supply of "inspection and testing services" on fresh table grapes is classifiable under entry 9986 of Notification no.11/2017-Central Tax Rate) dated June 28 2017- "Support services to agriculture, forestry, fishing, animal husbandry" chargeable to NIL rate of tax and Entry 54(a) of exemption notification no.12/2017-Central Tax (rate) dated June 28,2017?

7.1 The facts of the case as furnished by the applicant is that the applicant's exporter-customers in India, approach and contract with them for conducting sampling and testing of specific types of fresh table grapes grown/cultivated in India. The applicant approach the grape farms, draw samples, conducts test in their laboratory and issues certificates/reports of analysis to their exporter customers, who would consider the analysis in the report and take decision on their export orders. The applicant has stated to have sampling units in the State of Maharashtra at Nasik, Sangli Pune, etc It is stated that APEDA is the primary governing body which regulates the production and exports of Fresh Table Grapes from India.; APEDA provides a recognition/ approval to laboratories performing inspection and testing activity on Fresh Table Grapes in India.; These laboratories are required to operate and function in accordance with guidelines prescribed by the APEDA.; there is no recognition criteria prescribed for sampling units by the APEDA; To this extent, they have set up testing unit in Chennai, which has been given the required recognition/ approval for carrying out inspection and testing activity on Fresh Table Grapes. Apart from this, each of the grape farms which intends to export directly or supply fresh Grapes to exporters, are also required to be registered with the APEDA. Even the exporter-customer's/ pack houses are also required to be registered with APEDA without which these exporters would not be able to undertake exports. To this end, the entire supply chain i.e. the grape farms, laboratories and exporters are all required to be registered with the APEDA. After the exporter-customer provide their approval, they initiate the sampling procedure from the farms in accordance with the method of sampling laid down by the APEDA in the procedures for export of Fresh Table Grapes in file no. QCT-2013-14-

000011, Trade Notice no. Apeda/Q/56/2018-19 dated October 10, 2018. On receipt at the laboratory, each sample are numbered by indicating code numbers and testing of these samples conducted in accordance with recommended list of pesticides prescribed by APEDA in Annexure-9 of the Fresh Table Grapes export procedure and a test report is issued 3-5 days of the drawal of samples. The copy of the test report and Certificate of Agmark Grading (Final Random Inspection) report is uploaded on the Grape Net, the web-based facility/portal maintained by and under APEDA. After the issuance of test and Inspection report, the applicant raises two types of Invoices on the exporter-customer under the service description of (a) Laboratory testing /Analysis and (b) final Random Inspection. The applicant has stated that they had classified their services under heading 9983- 'Other professional, technical and business services' and charged GST @ 18%. It is further stated that, in the pre-GST regime, under Service Tax for the period effective 01.07.2012, no service tax was discharged on the service of 'laboratory testing' however service tax was discharged and collected on the service of 'Final random inspection' at the rate of 14%. The applicant has stated that the scope of service in relation to agricultural produce has been widened under the CGST Act and is unsure to continue the above tax position and has classified its services under the Heading 9983 - 'Other professional, technical and business services' and discharged GST at the rate of 18%. As a result of such change in tax position, the exporter-customers of the Applicant have expressed protest that the services provided by the Applicant continue to remain exempt in view of its coverage under Entry 54(a) of Exemption Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017.

7.2 On analysis, the following are observed:

- Trade Notice No: Apeda/Q/56/2018-19 dated 10th October 2018 of Agricultural and Processed Food Products Export Development Authority(APEDA) provides the 'Procedures for Export of Fresh Table Grapes to the European Union'
- The procedure in its scope states that the procedure is applicable to all the stake holders including farmers, producers and exporters, recognized labs authorized for sampling, analysis and grading, etc. In short the entire supply chain from the plot of Vitis cultivation to the exporter are traced by registration in case of export of grapes.

- Under 'Method of sampling from grape farms/plots', the laboratories authorized for Grape Net dated 08.01.2018 is given as Annexure-6. These authorized laboratories are to draw sample from the farm/plot and the samples of grapes, soil and water are to be drawn and the sampling to be done as per the procedure under Annexure 7. **The applicant is not one of the authorized laboratory listed under Annexure 6**
- The procedure for issue of Certificate of Agmark Grading(CAG) and Phyto Sanitary Certificate(PSC) are provided at Sl.No.7 and the procedure for grant of certificate of Agmark Grading is set out in Annexure-11, wherein under "II. Procedure for obtaining Certificate of Agmark Grading (CAG) for export of grapes to EU Countries", the list of offices of Directorate of Marketing & Inspection(DMI) [Appendix-i] and list of Approved Laboratories approved by DMI for the grading and marking of fruits and vegetables for export[Appendix-(ii)] are provided. **It is seen that the applicant is a laboratory approved by DMI for the Grading and marking of fruits.** Sampling Plan is given under Annexure-D and the 'Inspection Report for Grapes' is given under 'Annexure-E'

From the above, it is evident that when NRL has authorized certain laboratories to undertake testing of soil, water, from the plot/farm along with the grown grapes in such plot, DMI has authorized laboratories for the Grading and marking of fruits. APEDA ensures registration of all the stake holders and traces the events in the 'Grape Net'. In the case at hand, the applicant Laboratory is an approved laboratory by the Directorate of Marketing & Inspection (DMI) and undertakes testing for 'Agmark Grading' and 'Final Inspection'. The applicant is not authorized to undertake testing of soil, water, farm/plot where the cultivation is undertaken but is authorized to sample and grade the cultivated grapes based on physical attributes for issuance of 'Certificate of Agmark grading'. It is seen from the test reports submitted by the applicant, they conduct test to detect residue of various chemicals, pesticides etc. The recommended chemicals for which testing is to be done is specified in Annexure - 9 of APEDA trade Notice. Thus the 'testing' undertaken by the applicant is to detect residue of various chemicals in the cultivated grapes and can also be to grade the cultivated grapes as per the 'Criteria for Grade designation' given in Schedule-II of 'Fruits and Vegetables Grading and Marking Rules, 2004'. Further, it is seen that 'Fruits and Vegetables Grading and Marketing Rules 2004', apply to commercial varieties of Fruits and Vegetables; Rule 7 of the said rule states that

'Fruits and Vegetables may be graded and marked as per buyer requirements for exports provided the minimum requirements specified in the relevant schedule are met';

and Rule 8 states that:

'For domestic trade, Fruits and Vegetables shall comply with the residue levels of heavy metals, pesticides, aflatoxin and other food safety parameters as specified in Prevention of Food Adulteration Rules 1955.'

In view of the foregoing, it is clear that, grading of fresh table grapes undertaken by the applicant is in accordance with the guidelines/provisions stipulated in the mentioned Trade notice of APEDA and the Fruits and Vegetables Grading and Marketing Rules and testing for residue of various chemicals/pesticides is as per 'Procedures for Export of Fresh Table Grapes to the European Union' of APEDA.

7.3 It is the contention of the applicant that they undertake testing of 'agricultural produce' and therefore would be covered under Entry 54 (a) of the Exemption Notification No. 12/2017-C.T.(Rate) dated 28.06.2017, the description of which is "agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing' and chargeable to Nil rate of tax.

7.4 The scope of services is given as Annexure to Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 and for ease of reference, the relevant portion is extracted below:

454	Heading 9986		Support services to agriculture, hunting, forestry, fishing, mining and utilities
455	Group 99861		Support services to agriculture, hunting, forestry and fishing
456		998611	Support services to crop production
457		998612	Animal husbandry services
458		998613	Support services to hunting
459		998614	Support services to forestry and logging
460		998615	Support services to fishing
461		998619	Other support services to agriculture, hunting, forestry and fishing

From the above, it is seen the plausible sub-group is 998611 and 998619. The Explanatory Notes to the Scheme of Classification of Services indicate the Scope and Coverage of the headings, groups and service codes of the scheme of classification of services, which can be used as a guiding tool for classification. The notes pertaining to 998611 and 998619 are as under:

998611 Support services to crop production

This service code includes

- i. services to improve the propagation quality of the seed, including treatment of genetically modified seeds; removal of non-seed materials, undersized, mechanically or insect-damaged and immature seeds; removal of seed moisture to a safe level for seed storage; drying, cleaning, grading and treating of seeds to be marketed;
- ii. post-harvest crop services such as preparation of crops for primary markets, cotton ginning services;
- iii. Other support services to crop production like tilling of fields preparatory to planting; planting, cultivation and fertilization of crops; spraying, including from the air;
- iv. pest control for agriculture; trimming of fruit trees and vines; transplanting and thinning of crops; harvesting;
- v. provision of agricultural machinery with crew and operators; operation of irrigation systems for agricultural purposes;
- vi. other services necessary for agricultural production; Crop production services on inputs owned by others like operation of a crop production unit on a fee or contract basis

This service code does not include:

- formation and clearance of agricultural land, cf. 995432
- services provided by agronomists and agricultural economists, cf. 998311
- other pest control services, cf. 998531
- water distribution services through mains (on a fee or contract basis), cf. 998633

998619 Other support services related to agriculture, hunting, forestry and fishing

This service code includes other support services related to agriculture, hunting, forestry and fishing, n.e.c.

On examining the above, we find that **998611** covers support services to crop production which includes grading of seeds to be marketed, Post-harvest crop services limited to preparation for primary markets, other support services like tilling of fields preparatory to planting, planting, cultivation and fertilization of crops, spraying, including from the air, pest control for agriculture, etc. In short, 998611 covers support services necessary for Crop Production and includes activities of Post-harvest services of crop for preparation for Primary markets. Preparation of crops for primary market involves activities which are essential for selling the produce. Without these activities by the farmers, the produce would not be sold in primary market. This could include activities such as threshing to separate the grains from the stalks in the case of cereals as in the primary market, only grains are purchased and not the stalks. Such activities would be essential for the production of the crop, without which the crop would not be ready for primary market. It is seen from Para vi. That this SAC covers only services **necessary** for agricultural production. i.e. without these services the production of the crop would not be complete.

The testing undertaken by the applicant involves grading and testing for chemical residues of the 'Fresh Table grapes'. These activities are not necessary for the

production of the grapes as these are conducted after the production. From the submissions of the applicant and as detailed in Para 7.2 above, the grading and testing for residue is done to ascertain the eligibility of the crop to the export market and is not an activity done for preparation for Primary markets. This stands validated by Rule 8 of the said rules, which says, for domestic trade, food safety parameters as specified in Prevention of Food Adulteration Rules 1955 are to be complied. There is still a market for the grapes even without this testing and grading. Therefore, the testing done by the applicant is not a support services to crop production covered under SAC 998611.

SAC **998619** includes other support services related to agriculture, not elsewhere classified. To be classified under this sub-group, the activity is to be a support service related to agriculture and not classified elsewhere. The activity undertaken by the applicant is testing for chemical residue/grading/ certification of the 'Fresh Table grapes' for Marketing/Export as per the procedure of APEDA, the Export Development Authority for Agricultural and Processed food products and the applicant lab is an authorized lab of Directorate of Marketing & Inspection which establishes that the activity of the applicant is a support service to the exporter-client of the applicant for marketing/export and is not a support service related to agriculture but is related ensure the agriculture produce has access to certain markets to earn a higher price. Even without these activities of the applicant, the crop is produced. Hence, the supply by the applicant is not classifiable under SAC 998619 also.

The Explanatory Notes for Services states:

998346 Technical testing and analysis services

This service code includes

1. testing and analysis of the chemical and biological properties of materials such as air, water, waste (municipal and industrial), fuels, metal, soil, minerals, food and chemicals;

It is seen from the above that the testing for chemical residue, grading based on physical attributes of table grapes is classifiable under SAC 998346.

7.5 Entry at Sl. No 54(a) of Notification 12/2017 C.T.(Rate) dated 28.06.2017 exempts inter-state services namely:

S.No	Chapter, Section or Heading	Description of Service	Rate(Per cent)	Condition
54	9986	Services relating to cultivation of plants 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— (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;	NIL	

'Agricultural produce' is defined under explanation 2(d) of Notification No. 12/2017-C.T.(Rate) as under:

2(d) "agricultural produce" means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;


From the above, it is seen that supply of services classifiable under SAC 9986 and which are agricultural operations directly related to production of any agricultural produce are eligible for this exemption. For the case in hand, the activities of testing for chemical residue, grading based on physical attributes of table grapes are not classifiable under SAC 9986 as they are not meant for preparation of crops for primary market and not necessary for production of the grapes. Hence, they are not directly related to the production of the table grapes. Accordingly, the activities of the applicant are not eligible for the exemption under therefore the applicant is not eligible for exemption at Entry No. 54 (a) of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 as amended and Notification No.II(2)/CTR/532(d-15)/2017 vide G.O.(Ms) 73 dated 28.06.2017.

8. In light of the above, we rule as under:

RULING

The Services provided by the applicant related to testing of chemicals in fresh table grapes are not classifiable under SAC 9986 and is not exempt as per Slno 54(a) of Notification 12/2017 Central Tax(Rate) dated 28.06.2017 as amended for CGST and Notification No.II(2)/CTR/532(d-15)/2017 vide G.O.(Ms) 73 dated 28.06.2017 for SGST.


Ms. Manasa Gangotri Kata,
Member, CGST


Shri Kurinji Selvaan V.S.,
Member – SGST

To
SGS India Private Limited
28B/1 SP and 28B/2 SP, BNT connection building,
Ambattur Industrial Estate,
2nd Main Road,
Ambattur
Chennai-600058



Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Additional Chief Secretary/Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST & C.Ex., 26/1, Mahatma Gandhi road,
Chennai North Commissionerate, Nungambakkam, Chennai 600034.
4. The Assistant Commissioner
Ambattur Industrial Estate Assessment Circle,
No. 127, Yadaval Street, 1st Floor,
Padi, Chennai – 600 050.
5. Master File/ Spare-2.