

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
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. Thiru Senthilvelavan B., I.R.S Member/ Additional Commissioner,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Tmt T. Padmavathi, Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

ORDER No.32/AAR/2021 DATED: 17. 08.2021

GSTIN Number, if any / User id		33AAECE2203J1Z5
Legal Name of Applicant		ESMARIO MARINE PRIVATE LIMITED
Registered Address/Address provided while obtaining user id		Plot No. P.P.IV, Phase III, AGS Colony, Mugalivakkam Main Road, Mugalivakkam, Chennai-600125
Details of Application		GST ARA- 01 Application Sl.No. 08/2021/ARA Dated 16.03.2021
Concerned Officer		Centre: Chennai Outer Commissionerate. State: Ayyappanthangal Assessment Circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Wholesale Business/Retail Business/ Warehouse/Depot
B	Description (in Brief)	The applicant is dealer for marine engines and gearboxes having sub-dealers all over coastal areas.
Issue/s on which advance ruling required		1. Classification of goods and/or services or both 2. Determination of the liability to pay tax on any goods or services or both.

<p>Question(s) on which advance ruling is required</p>	<ol style="list-style-type: none"> 1. Whether the supply of goods under HSN Code 8407 while principal supply is for fishing boats and vessels applying 5% GST rate is correct or not. 2. As per the earlier Advance Rulings issued in various states and circular issued from Ministry of Finance (Revenue Department) it clearly states that the GST liability for HSN 8408 is only 5% when it is supplied to fishing boats and vessels even though it is in higher taxable rate of 28% GST under the GST Schedule. Why it cannot adopt the same for HSN 8407 marine engines. 3. Goods of supply under HSN code 8409, 8483, 8902, 8487, 8501, 8502, 8415, 8418, 8413 which is also supplied to fishing boats and vessels mainly. Whether it can be adopted as per the circular.
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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.

M/s ESMARIO MARINE PRIVATE LIMITED, Plot No. P.P.IV, Phase III, AGS Colony, Mugalivakkam Main Road, Mugalivakkam, Chennai-600125 (hereinafter called the Applicant) are registered under GST with GSTIN 33AAECE2203J1Z5. The applicant has sought Advance Ruling on:

1. Whether the supply of goods under HSN Code 8407 while principal supply is for fishing boats and vessels applying 5% GST rate is correct or not.

2. As per the earlier Advance Rulings issued in various states and circular issued from Ministry of Finance (Revenue Department) it clearly states that the GST liability for HSN 8408 is only 5% when it is supplied to fishing boats and vessels even though it is in higher taxable rate of 28% GST under the GST Schedule. Why it cannot adopt the same for HSN 8407 marine engines.

3. Goods of supply under HSN code 8409, 8483, 8902, 8487, 8501, 8502, 8415, 8418, 8413 which is also supplied to fishing boats and vessels mainly. Whether it can be adopted as per the circular.

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 private limited company incorporated in the year 2015 having its registered office at Chennai. They are largest dealer for Marine Engines and Gearboxes having Sub dealers all over the coastal area. They have stated that as per the earlier Advance rulings issued in various states and Circular issued From Ministry of Finance (Revenue Dept) it clearly states that the GST liability for HSN 8408 is only 5% (CGST 2.5% and SGST 2.5 %) when it is supplied to fishing boats and vessels even though it is in higher taxable rate (28%) under GST Schedule. The applicant has sought the authority to clarify that if GST @ 5% is allowed for HSN code 8408 then why it is not to be followed in HSN code 8407, 8409, 8483, 8902, 8487, 8501, 8502, 8415, 8418, 8413 which is also supplied to fishing boats and vessels mainly. Further, they have stated that they are collecting Marine Fishers Identity Card issued by the Government of India (Ministry of Agriculture) while supplying to the fishing boats and vessels as a proof for supplying to the fishing boats.

2.2 On interpretation of law, they have stated that as per the circular No.52/26/2018-GST the marine engine for fishing vessels 8408 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 ; they are ready to furnish the relevant documents of proof of supply of goods is for fishing boats and vessels only; As per Notification No. 01/2017-Central Tax (rate) dated 28.06.2017 it is clearly stated that Marine Engines supplied to Fishing Boats would attract 5% GST even though it is Higher taxable rate. ; Advance Ruling

KER/34/2019 dated 01.03.2019 issued in the case of M/s. Techno Tradings and Services (P) ltd, wherein it was held that

- i. The Diesel Engines supplied for use in goods falling under heading 8901, 8902, 8904, 8905, 8906, 8907 will be deemed to be parts of vessels / goods falling under the above headings and thereby taxable @5% GST as per SI No.252 of Schedule I of the Notification No 01/2017 Central Tax (Rate) dated 28.06.2017. If It is used for some other purpose, the applicable tax rate would be 28% GST as per SI No. 115 of Schedule IV of the said notification.
- ii. The Gear Boxes falling under TSH 8483 when supplied for use in vessels 1 goods falling under heading 8901, 8902, 8904, 8905,8906, .8907 will be deemed to be parts of such goods and thereby would be taxable @5% GST as per SI No.252 of Schedule I of the Notification No.01/2017 Central Tax (Rate) dated 28.06.2017. If it is used for some other purpose, the applicable tax rate would be 28% GST as per SI No, 135 of the said notification.
- iii.. The marine diesel engine and gear boxes supplied for use in vessels/ goods fading under heading 8901, 8902, 8904, 8905, 8906, 8907 will be deemed to be parts of such goods and thereby taxable @6% GST per Serial No.252 of Schedule-I of the Notification No, 1/2017 Central Tax (Rate) dated 28.06,2017. If it is used for some other purpose, the applicable" tax rate would be as per their respective TSH 8408 and 8433 at the rate of 28% GST as per SI Nos 115 and 135 of the said notification.

They have also furnished copy of ruling issued by Maharashtra AAR in the case of CS Diesel Engineering Private Limited.

3.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media on 26.03.2021. The applicant vide return mail dated 26.03.2021 stated that they preferred in-person hearing and if the same is not possible to be extended to grant virtual personal hearing. The hearing was held on 16.07.2021. The Authorised Representatives S/Shri. S.Shunmugesh and N.Ramesh Prabhu appeared for the virtual hearing. They reiterated their written submissions and further stated that they are distributors who are proposing to import products from Japan which are to be supplied for use in fishing boats and vessels. They relied on

the Kerala AAR ruling in the case of South Indian Federation of Fisherman Societies, Thiruvanthapuram. They submitted that as a proof of the subject products being used in fishing vessels a self-declaration from the fisherman is obtained. They also submitted that they have not carried on this activity in the pre-GST regime and also that they don't have any purchase orders at present. They were asked to submit list of products they intend to supply and their financial statements which they agreed to.

3.2 The applicant on 16.07.2021 furnished copy of the Advance Ruling issued in the case of South Indian Federation of Fisherman Societies, Thiruvanthapuram by AAR, Kerala. Further vide their letter dated 22.07.2021 they submitted that they are the distributor for 'marine engines and equipment' and focus on providing complete sales and service support to customers under various application segments including commercial fishing boats, rescue boats, work/passenger boats, etc; Their key potential customers are commercial fishermen, work boat customers including pilot launch, passenger boats, self-propelled barges, etc apart from government organizations like NDRF, Civil Defence Kolkata, ASDMA involved in flood and rescue operations, patrol boats like Indian Navy, Indian Army, BSF, Indian Coast Guard, etc.; they provide complete sales and service support to all their customers and have multiple service center and trained manpower across the coastline for the same.; They had been representing one of the reputed and leading marine engine manufacturers from Japan making purpose-built marine diesel engines for commercial fishing boats and work boats application targeting coastal and in-land vessels for the last several years.; They are in the process of securing distributorship with multiple reputed global marine engines, equipment, accessories and component manufacturers making the following products and hence are seeking ruling::

- Marine Engines & Marine Outboard Motors (OBMs) and spark-ignition type, falling under HSN 8407 & 8407 2100 (from Honda Marine, Japan) – primarily used for fishing boats & vessels under 8902, other than 8901, 8904, 8906 & 8907.
- Marine Diesel Engines (for propulsion application) falling under HSN 8408 1093 (Hyundai Seasall, Korea) – primarily used for fishing boats & vessels under HSN 8902, work boats including passenger boats & barges under HSN 8901, other than 8904, 8906 & 8907.

- Marine Outboard Engines and compression-ignition type and falling under HSN 8408 0101 (from Hyundai Seasall, Korea) – primarily used for fishing boats & vessels and alike with HSN: 8901, 8902, 8904, 8906 and 8907.
- Marine Gensets falling under HSN 8501 & 8502 (from Hyundai Seasall, Korea) – primarily used for fishing vessels and alike with HSN: 8902, 8901, 8904, 8906 & 8907.
- Marine Gearboxes falling under HSN 8483 (from D-I, Korea) – primarily used for fishing boats & vessels and alike with HSN: 8901, 8902, 8904, 8906 and 8907.
- Marine Generating Sets falling under HSN 8501 & 8502 (from Northern Lights, USA) – primarily used for fishing vessels and alike with HSN: 8902, 8901, 8904, 8906 & 8907.
- Fuel Water Separators & Filters falling under HSN 84212300 (from Griffin Singapore) – primarily used for fishing boats & vessels and alike with HSN: 8901, 8902, 8904, 8905, 8906 and 8907.
- Marine Air-Conditioning Systems (from Technicold & part of Northern Lights Marine Generating Sets, USA) falling under HSN 8415, but primarily used for commercial work, fishing and patrol vessels and alike with HSN: 8901, 8902, 8904, 8905, 8906 & 8907.
- Marine Refrigeration Systems (DeepChill brand from Sunwell, Canada), falling under HSN 8418, but primarily used for preserving the freshness of the fish & seafood material caught in the sea and installed on fishing vessels under HSN 8902.
- Marine Refrigeration Systems & Ice Slurry Machines (Snowkey brand from Fujian Snowman), falling under HSN 8418 – primarily used for preserving the fish and installed on fishing vessels under HSN 8902.
- Sea Water Pumps (from JMP Corporation, Korea) falling under HSN 8413, but primarily used for fishing boats & vessels with HSN: 8901, 8902, 8904, 8905, 8906 & 8907.
- Propellers for Marine Outboard Motors and Sterndrives under HSN 8487 (from Solas Propellers Taiwan), primarily used for primarily used for fishing boats & vessels under 8902, other than 8901, 8904, 8906 & 8907.
- Marine Spare Parts & Accessories, including Ultraflex brand of Control & Steering Systems from Italy under HSN 8409, but primarily used for commercial work, fishing and patrol vessels and alike with HSN: 8901, 8902, 8904, 8905, 8906 & 8907.

The applicant has stated that they have sought the advance ruling for the above mentioned products/ items and are seeking clarification whether these items can be invoiced under 5% GST when used as "Parts of heading of 8901, 8902, 8904, 8905, 8906 and 8907" attracting 5% IGST or 2.5% CGST + 2.5% SGST/UTGST" as per as per Schedule I (Sr. No. 252) of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017. Further, in addition to case laws/ circular relied upon by them, they have relied upon the Advance ruling issued by Maharashtra AAR in the case of M/s Shandong Heavy Industries Private limited to substantiate their contentions and also have referred to Notification No. 02/2021 Integrated Tax (rate) dated 02.06.2021 clarifying that maintenance, repair or overhaul services in respect of ships and other vessels, their engines and other components or parts will fall under 5% GST w.e.f 2nd June 2021. They have submitted the Balance sheets for 2018, 2019 & 2020 of the entity without any notes to the Balance sheet.

3.3 On perusal of the above submissions, it was seen that the applicant has stated that they are providing complete sales & Service Support to all their customers and have multiple Service Centers/trained manpower across the Coastline for the same, whereas during hearing it was informed that they have not carried on this activity Pre-GST regime and also they don't have any purchase orders at present. The applicant was called upon to substantiate this contradiction with evidences like copy of invoice for sale/support extended, picture and technical write-up of the items dealt with presently & details of Service Support Centers; Pictures of the items for which the classification is sought along with the item-wise technical write-up.

3.4 The applicant vide their letter dated 29.07.2021 submitted the following details:

- Esmario Marine Pvt Ltd. was formed in 2015 and the registration was made on 18/12/2015 with address as Block F1, 3rd Floor, Surya Towers, S.P. Road, Secunderabad – 500003, Telangana. This company was formed before the GST regime (1st July 2017) and remained the authorized distributor for Yanmar Marine Diesel Engines from Japan till 31st March 2021. The Hyderabad office was taking care of the sales and service support of these engines, but considering the high value of the products and the necessity of the shipyards to import directly, the principals had invoiced the shipyards directly and hence, the applicant was not involved in those

transactions. The principals had given the necessary commission to their Hyderabad office to provide installation & commissioning support for which the applicable service tax or GST was paid properly.

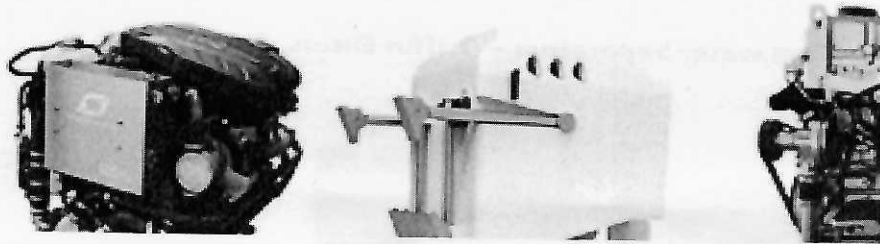
- Most of these transactions were pertaining to sales of engines or spare parts to Indian Government and defense and paramilitary organizations, including Indian Navy, Indian Army, Inland Waterways Authority of India Ltd. (IWAI), etc. In the past, to ensure prompt service support is provided to mission critical applications of defense organizations, their Hyderabad office posted trained service personnel in some of the critical locations like Mumbai, but deputed them from Hyderabad to Leh or Goa where the ships will anchor before continuing the voyage.
- In mid-2019, the company decided diversity and focus on retail business with new products which are more cost-effective and affordable to customers, mainly in the commercial fishing and passenger boat applications by setting up an office in Chennai and a separate GSTIN was obtained in March 2020 after which they started discussing with various principals to finalize the distribution agreement. However, due to COVID and related lockdown, their business got affected and the agreements got delayed and are still under discussion. They expect to be concluded shortly and commence business from Chennai. Further, at the moment the applicant is not representing any major vendor from the international market and hence, Chennai office is not involved in any transactions yet.
- The various products, they intend to deal with and are in discussion with the respective principals in respect of which the ruling is sought is detailed with pictures and item-wise technical write-up verbatim below:

Outboard Motor (OBM): from Honda Marine, Japan:



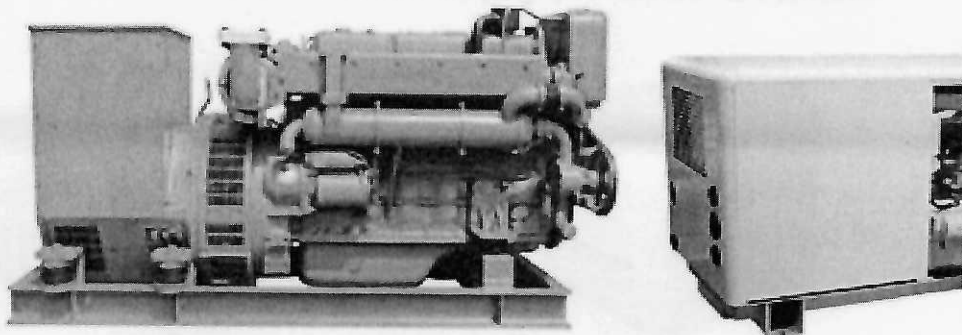
BF8, BF9.9 and BF20 Marine Outboard Motors (OBM) from Honda

Marine Diesel Engines & Marine Outboard Engines: Hyundai Se



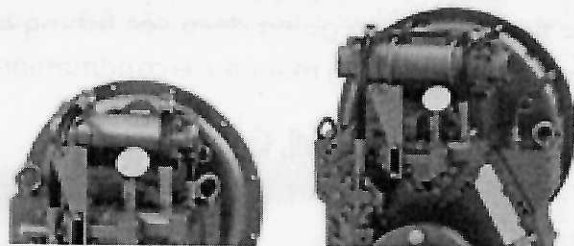
R200 and S270 series marine diesel engines (HSN: 8408 1093) from company of Hyundai & Kia Motors, South Korea) are extremely hence, a preferred choice for life boats and patrol boats (HSN: 890; to sterndrive or waterjets to suit the application other than conventional the first of its Marine Diesel Outboard Engine (HSN: 8408 1010) ignition type engine with diesel as fuel and packaged together system as one integral unit. Due to the extreme compact design,

Marine Gensets: Hyundai Seasall, Korea



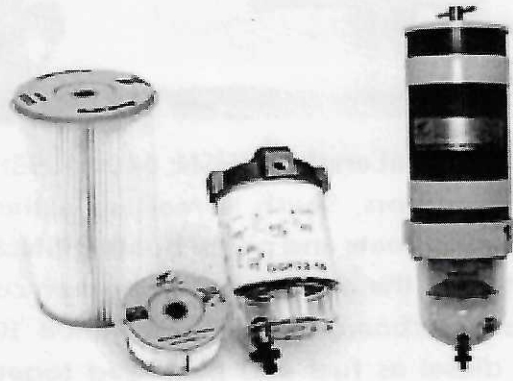
Marine Diesel Generating Sets (HS code: 8502) are widely used in sea

Marine Gearboxes: D-I, Korea



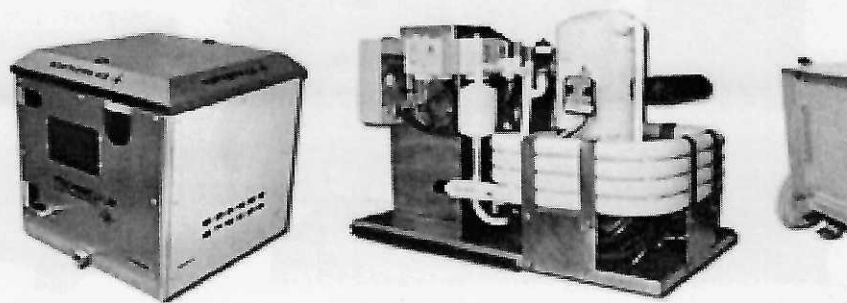
Marine gearbox models from D-I like DMT90A and DMT170H (for passenger boat & commercial fishing vessels (HS 8901, 8902) are from engine crankshaft to boat's propeller shaft based on the requirement. They are generally hydraulically operated with re

Fuel water Separators – Griffin Filters, Singapore:



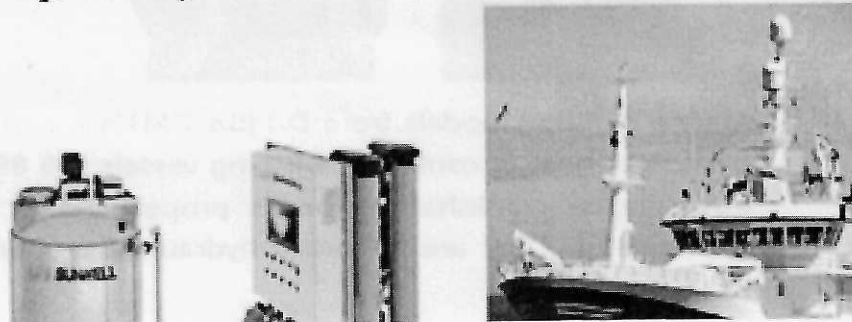
Griffin Filters Singapore is one of the world's reputed makers of fuel water separators for marine application. They have separate models designed for various applications.

Marine Air-Conditioning Systems: Technicold, USA



Technicold, from Northern Lights USA, is one of the most reputed manufacturers of marine gensets (HS 8502) and marine air-conditioning systems for various applications like passenger boat, self-propelled barges, fishing boats and even some types of ocean-going deep sea fishing boats. The company offers complete, custom marine air-conditioning systems.

Marine Refrigeration Systems – Sunwell, Canada:



Sunwell Technologies, Canada registered the world's first slurry U.S.A. in 1976. Sunwell pioneered and continued to develop the the world leader in slurry ice systems (HS 8418), with numerous various processes for the production, storage and distribution of is comprised of tiny pearl-like micro-crystals in slurry form to a product at peak freshness. Many food products require different stages of processing and storage, to optimize quality and freshn state is important because changing the state of the medium al allows one to create ideal preservation conditions. Sunwell has th system that can produce variable state of ice to suit any preser

Marine sea water pumps: JMP Corporation, Korea



JMP Corporation is one of the most reputed manufacturers of r (HS 8413) and sea water strainers (8421) widely used by majority of th engine manufacturers across the world. They have been making t pumps since 1978 and established a benchmark in the marine ind boats and vessels, including passenger ferries, self-propelled bar fishing boats. patrol boats. etc (HS 8901. 8902. 8904. 8906 & 8907)

Propellers for Marine Outboard Motors (OBM) and Marine :



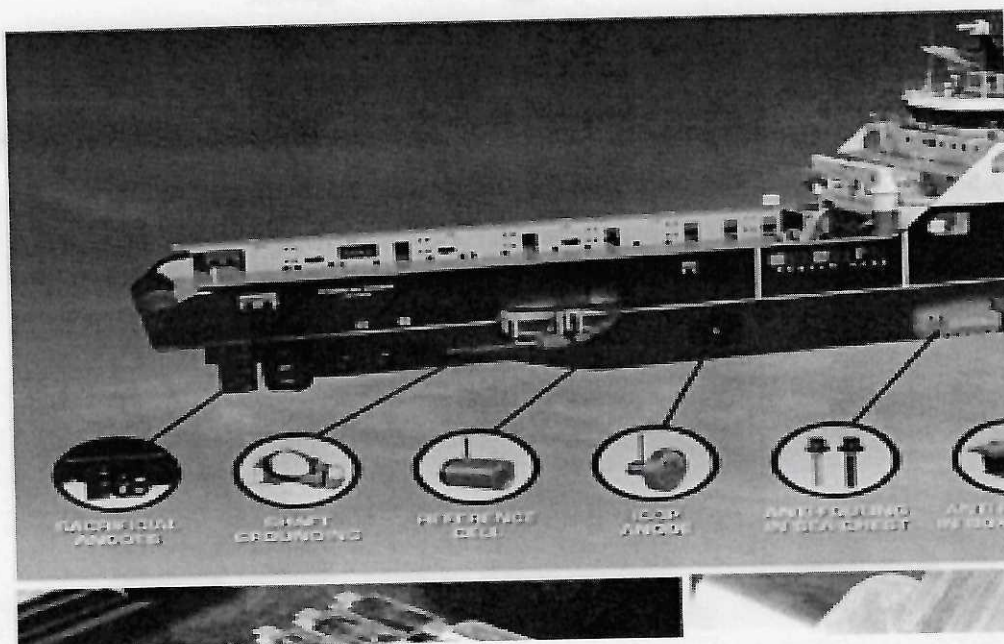
Solas was founded in 1985 by Dr. Solas Y. J. Lin. Solas is now one of the most trusted names in outboard/stern drive propellers. The company is known for its superior design and craftsmanship from team SOLAS. Located in Taiwan, the company has a class research and design, highly skilled workers, cost-effective manufacturing facility to deliver the highest quality propellers to its customers across the world. The company is famous for their propellers made out of special squeeze die-cast Aluminium and

Control & Steering Systems: Ultraflex, Italy



Ultraflex is a premium manufacturer and leader of remote-control (HS 8483) and has been in the business since 1935. With full manufacturing facilities in Italy and USA Ultraflex can support all sectors of the marine industry, from small recreational boats to large commercial vessels.

Marine Spares & Accessories (HS 8409, 7907, 7616, 8543):



All marine engines, equipments and marine outboard motors (HS 8483, 8415, 8418, 8502, 8487 and 8421 used on fishing boats & vessels (HS 8904, 8906 & 8907) require accessories and spare parts for regular maintenance and repair. These are mostly categorized under 8409, 7907, 7616, 8543, 8544, 8545, 8546, 8547, 8548, 8549, 8550, 8551, 8552, 8553, 8554, 8555, 8556, 8557, 8558, 8559, 8560, 8561, 8562, 8563, 8564, 8565, 8566, 8567, 8568, 8569, 8570, 8571, 8572, 8573, 8574, 8575, 8576, 8577, 8578, 8579, 8580, 8581, 8582, 8583, 8584, 8585, 8586, 8587, 8588, 8589, 8590, 8591, 8592, 8593, 8594, 8595, 8596, 8597, 8598, 8599, 8600, 8601, 8602, 8603, 8604, 8605, 8606, 8607, 8608, 8609, 8610, 8611, 8612, 8613, 8614, 8615, 8616, 8617, 8618, 8619, 8620, 8621, 8622, 8623, 8624, 8625, 8626, 8627, 8628, 8629, 8630, 8631, 8632, 8633, 8634, 8635, 8636, 8637, 8638, 8639, 8640, 8641, 8642, 8643, 8644, 8645, 8646, 8647, 8648, 8649, 8650, 8651, 8652, 8653, 8654, 8655, 8656, 8657, 8658, 8659, 8660, 8661, 8662, 8663, 8664, 8665, 8666, 8667, 8668, 8669, 8670, 8671, 8672, 8673, 8674, 8675, 8676, 8677, 8678, 8679, 8680, 8681, 8682, 8683, 8684, 8685, 8686, 8687, 8688, 8689, 8690, 8691, 8692, 8693, 8694, 8695, 8696, 8697, 8698, 8699, 8700, 8701, 8702, 8703, 8704, 8705, 8706, 8707, 8708, 8709, 8710, 8711, 8712, 8713, 8714, 8715, 8716, 8717, 8718, 8719, 8720, 8721, 8722, 8723, 8724, 8725, 8726, 8727, 8728, 8729, 8730, 8731, 8732, 8733, 8734, 8735, 8736, 8737, 8738, 8739, 8740, 8741, 8742, 8743, 8744, 8745, 8746, 8747, 8748, 8749, 8750, 8751, 8752, 8753, 8754, 8755, 8756, 8757, 8758, 8759, 8760, 8761, 8762, 8763, 8764, 8765, 8766, 8767, 8768, 8769, 8770, 8771, 8772, 8773, 8774, 8775, 8776, 8777, 8778, 8779, 8780, 8781, 8782, 8783, 8784, 8785, 8786, 8787, 8788, 8789, 8790, 8791, 8792, 8793, 8794, 8795, 8796, 8797, 8798, 8799, 8800, 8801, 8802, 8803, 8804, 8805, 8806, 8807, 8808, 8809, 8810, 8811, 8812, 8813, 8814, 8815, 8816, 8817, 8818, 8819, 8820, 8821, 8822, 8823, 8824, 8825, 8826, 8827, 8828, 8829, 8830, 8831, 8832, 8833, 8834, 8835, 8836, 8837, 8838, 8839, 8840, 8841, 8842, 8843, 8844, 8845, 8846, 8847, 8848, 8849, 8850, 8851, 8852, 8853, 8854, 8855, 8856, 8857, 8858, 8859, 8860, 8861, 8862, 8863, 8864, 8865, 8866, 8867, 8868, 8869, 8870, 8871, 8872, 8873, 8874, 8875, 8876, 8877, 8878, 8879, 8880, 8881, 8882, 8883, 8884, 8885, 8886, 8887, 8888, 8889, 8890, 8891, 8892, 8893, 8894, 8895, 8896, 8897, 8898, 8899, 8900, 8901, 8902, 8903, 8904, 8905, 8906, 8907, 8908, 8909, 8910, 8911, 8912, 8913, 8914, 8915, 8916, 8917, 8918, 8919, 8920, 8921, 8922, 8923, 8924, 8925, 8926, 8927, 8928, 8929, 8930, 8931, 8932, 8933, 8934, 8935, 8936, 8937, 8938, 8939, 8940, 8941, 8942, 8943, 8944, 8945, 8946, 8947, 8948, 8949, 8950, 8951, 8952, 8953, 8954, 8955, 8956, 8957, 8958, 8959, 8960, 8961, 8962, 8963, 8964, 8965, 8966, 8967, 8968, 8969, 8970, 8971, 8972, 8973, 8974, 8975, 8976, 8977, 8978, 8979, 8980, 8981, 8982, 8983, 8984, 8985, 8986, 8987, 8988, 8989, 8990, 8991, 8992, 8993, 8994, 8995, 8996, 8997, 8998, 8999, 9000. Anodes and aluminium anodes apart from cathodic protection (Current Cathodic Protection) and ICAF/ MGPS (Impressed Current Cathodic Protection System). A zinc or aluminium anode is a type of sacrificial anode that prevents corrosion through cathodic protection. Oxidants, which are used in the anode rather than the protected metal structure, thus prevent the metal from being corroded. Impressed current cathodic protection (ICCP) is a type of cathodic protection consisting of sacrificial anodes connected to an external power source.

4. The Centre Jurisdictional authority who has administrative control over the applicant has furnished the following remarks:

Q.No:1

As per Notification No.01/2017 dated 28.06.2017 Central Tax the HSN Code 8407 - it attracts rate of duty 28% (CGST 14% and SGST 14%)

Question No.2

According to Notification No.01/2017 Central Tax - HSN Code 8408- there is a condition that if the Engine having capacity 15 HP it attracts 12% (CGST 6% and SGST 6%) otherwise it attracts rate of duty 28% (CGST 14% and SGST 14%)

Question No.3

As per Notification 01/2017 dated 28.06.2017 HSN CODE - 8409 attracts rate of duty 28% HSN CODE 8483 -28%, HSN CODE 8415 - 28%, HSN CODE 8418 - 28% AND HSN CODE 8501,8502,8487 -18% AND HSN CODE 8413 - Manual Hand Pump and parts rate of duty 5%,if it is fixed piston engine it attracts rate of duty 28%. HSN CODE 8902 - fishing vessels -it attracts rate of duty 5%.

They have not stated any remarks on pending proceedings and it is construed as no proceedings are pending on the questions raised by the applicant.

5. The State Jurisdictional authority has not submitted any remarks. It is construed that no proceedings are pending on the questions raised by the applicant

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant, all the additional submissions made during the hearing and thereafter and the submissions of the Jurisdictional authorities. The applicant has applied for ruling on the following questions: -

1. Whether the supply of goods under HSN Code 8407 while principal supply is for fishing boats and vessels applying 5% GST rate is correct or not.
2. As per the earlier Advance Rulings issued in various states and circular issued from Ministry of Finance (Revenue Department) it clearly states that the GST liability for HSN 8408 is only 5% when it is supplied to fishing boats and vessels even though it is in higher taxable rate of 28% GST under the GST Schedule. Why it cannot adopt the same for HSN 8407 marine engines.

3. Goods of supply under HSN code 8409, 8483, 8902, 8487, 8501, 8502, 8415, 8418, 8413 which is also supplied to fishing boats and vessels mainly. Whether it can be adopted as per the circular.

7.1 From the submissions, it is seen that they have not carried on this activity in pre GST regime and also they don't have any purchase orders at present. Their Hyderabad Office was undertaking sales and Service Support of these engines and the applicant office at Chennai was set up only in March 2020. They have stated that presently, they are not representing any major vendor from the international market but intend to deal with the following products for which they have furnished the pictures and Write-up as has been brought out in Para 3 above:

- Outboard Motor(OBM) from Honda Marine, Japan (HSN 84072100);
- Marine Diesel Engines & Marine Outboard Engines from Hyundai Seasall, Korea(HSN:8408 1093)
- Marine Gensets from Hyundai Seasall, Korea (HSN 8502);
- Marine Gearboxed from D-I, Korea (HSN:8483);
- Fuel water Separators from Griffin Filters, Singapore (HSN 8421);
- Marine Air-Conditioning System from Technicold, USA (HSN 8415);
- Marine Refrigeration Systems from Sunwell, Canada (HSN 8418);
- Marine Sea Water Pumps from JMP Corporation, Korea(HSN:8413 and 8421);
- Propellers for Marine Outboard Motors (OBM) and Marine Sterndrives from Solas, Taiwan (HSN:...)
- Control & Steering Systems from Ultraflex, Italy(HSN 8483)
- Marine Spares & Accessories(HSN: 8408, 8407, 8483, 8415, 8418, 8502, 8487 and 8421)

Apart from the pictures and write-up, the applicant has not furnished any documents such as Bill of Entry, Tax Invoice, Purchase Order, address of sale & Service centers, letter/correspondences to support their argument that they are in discussion with the mentioned Principals, the class of buyers of such intended goods, agreement/letter entered into with such class of recipients, etc which are essential facts of the case. The applicant has stated that they intend to enter into dealership with the principals as stated above, procure goods and supply for fishing boats and vessels and has sought ruling on the applicable rate of tax on such supply.

7.2 The applicant has contended that as per the earlier advance rulings issued in various states and Circular No.52/26/2018-GST dated 09.08.2018 it is clearly seen that the GST liability for HSN 8408 is only 5% when it is supplied to fishing boats and vessels even though it falls under the 28% slab under GST. The applicant has sought the authority to clarify why the same may not be applicable for the HSN 8409, 8483, 8902, 8487, 8501, 8502, 8415, 8418, 8413 which is also supplied to fishing boats and vessels mainly. On perusal of the cited Rulings from the other authorities, the ruling is extended based on the facts substantiated with the documentary evidences of supplies being made by the applicants respectively

7.3 As per Section 95(a) of the GST Act, Advance Ruling can be sought in respect of the proposed supplies and as per Section 103 of the Act, the ruling is applicable to only the person seeking the ruling based on the material facts of the transactions. In the case at hand, the ruling is sought on the applicability of effective rate of the products said to be 'proposed to supply' as parts of fishing boats and vessels falling under CTH 8901, 8902,8904,8905, 8906 & 8907. The clarification sought is whether the rate prescribed under sl.no. 252 of Annexure-I of Notification No. 01/2017-C.T.(Rate) dated 28.06.2017 as amended. The said entry is as below:

Sl.No	Chapter/Heading/Sub-Heading/Tariff item	Description of Goods	Rate
252	Any chapter	Parts of goods of headings 8901,8902,8904,8905,8906,8907	2.5%

The said entry is applicable to goods falling under any chapter, provided the same is 'Parts' of goods of heading

- 8901- Cruise Ships, Excursion Boats , Ferry-Boats, Cargo Ships, Barges And Similar Vessels For The Transport Of Persons Or Goods;
- 8902 - Fishing Vessels; Factory Ships And Other Vessels For Processing Or Preserving Fishery Products;
- 8904- Tugs And Pusher Craft;
- 8905- Light-Vessels, Fire-Floats, Dredgers, Floating Cranes, And Other Vessels The Navigability Of Which Is Subsidiary To Their Main Function; Floating Docks; Floating Or Submersible Drilling Or Production Platforms;
- 8906- Other Vessels, Including Warships And Lifeboats Other Than Rowing Boats;

- 8907- Other Floating Structures (For Example, Rafts, Tanks, Cofferdams, Landing-Stages, Buoys and Beacons).

7.4 In the case at hand, the applicant has stated that they have been established in March 2020 for the proposed supplies but had not furnished any documentary evidence to substantiate their proposed supply in the form of any Purchase Order from any class of recipient, List of goods to be supplied or any documentary evidence to prove the proposed business of the applicant, i.e., any correspondences with the proposed principal suppliers with whom they intend to enter into transactions or agreements/Purchase orders for further supply. In this situation, without the specifics of the proposed supply, substantiated with the material facts, this authority is constrained to rule on the applicability of the said entry to the proposed transactions, based on the clarification in the Circulars and the rulings extended by the Advance Ruling authorities of Kerala, Maharashtra, etc. It is pertinent to note here that the advance ruling is applicable to the applicant and their jurisdictional authority only and ruling cannot be extended based on the facts of any other case. Therefore, without material evidence for the proposed supply, no ruling is extended on the clarifications sought by the applicant.

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

RULING

No ruling is extended for the reasons stated in para 7 above.

6/6
17/8/2021
Tmt. T.Padmavathi
(Member SGST)

17/8/21
Shri B. Senthilvelavan
(Member CGST)



To
M/s ESMARIO MARINE PRIVATE LIMITED,
Plot No. P.P.IV, Phase III, AGS Colony,
Mugalivakkam Main Road, Mugalivakkam,
Chennai-600125 **// BY SPEED POST WITH ACK.DUE //**

Copy Submitted to:

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

Copy to:

3. The Commissioner of GST & Central Excise,
Chennai Outer Commissionerate
Newry Towers, No. 2054, I Block, II Avenue,
12th Main Road, Anna Nagar, Chennai 600 040.
4. The Assistant Commissioner (ST),
Ayyappanthangal Assessment Circle,
Integrated Commercial Taxes Buildings,
1st Floor, 4/109, Bangalore High Road,
Nazarethpet,
Varadharajapuram,
Poonamallee. Chennai 600 123.
5. Master File/ Spare - 2.

ALBERTSON'S STORE #100122
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