सत्यमेव जयते

BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING
for the State of Andhra Pradesh (Goods and Service Tax)

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D NO 5-56, Block-B, R.K. Spring Valley Apartment, Bunder Road, Edupugallu, Vijayawada, Andhra Pradesh – 521151)

Present:

Sri Suresh Kishnani (Member) (Central Tax)

Sri S. Ravi Shankar Narayan (Member) (State Tax)

The 20th day of January, 2022

Order /AAAR/AP/01(GST)/2022

1	Name and address of the appellant	M/s. Bharat Dynamics Limited G Block, Autonagar, Fakir Takya, Gajuwaka, Visakhapatnam, Andhra Pradesh-530049
2	GSTIN	37AAACB7880N1Z3
3	Date of filing of Form GST ARA-02	26.03.2021
4	Hearing (Virtual)	14.12.2021
5	Authorized Representatives	Sri Krupasindu Satpathy (DGM, Finance-BDL) Sri Sivarajan Kalyanaraman (Tax-Consultant)
6	Jurisdictional Authority – State	Assistant Commissioner (ST) Gajuwaka Circle, Visakhapatnam

(Under Section 101 of the Central Goods and Service Tax Act and the Andhra Pradesh Goods and Service Tax Act).

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

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and APGST Act"] by M/s. Bharat Dynamics Limited (herein after referred to as the "Appellant") against the Advance Ruling No. AAR No.11/AP/GST/2021 dated 10.02.2021 issued by the Authority for Advance Ruling, Andhra Pradesh.

1. Background of the Case:

1.1 The appellant, M/s Bharat Dynamics Limited (BDL), a Government of India Enterprise under the Ministry of Defence is a manufacturing base for guided missiles and allied Defence equipment.

1.2 The clarification sought by the appellant relates to supplies to be effected against a supply Order No. XXXXX from the Government of India, Ministry of Defence (MOD), AAKANKSHA, New Delhi, India for supply of Submarine Fired Decoy

System (hereinafter referred to as 'SFDS') along with associated services. The aforesaid supply shall be executed at the applicant's unit in Andhra Pradesh with principal place of business at Autonagar, Gajuwaka, Visakhapatnam, Andhra Pradesh.

1.3 The SFDS in question is a component proposed to be fitted to the submarines operated by the Indian Navy for protection/safety of the submarines against incoming torpedoes/missiles.

The Appellant had filed an application for Advance Ruling before the Authority for Advance Ruling on the following questions:

Whether the Submarine Fired Decoy System (SFDS) supplied by the applicant is classifiable as 'parts of submarine' under Chapter Heading 8906 and, therefore, attract a GST rate of five (5%) by virtue of entry no. 252 of Schedule I in Notification No. 1/2017-Integrated Tax (Rate) dated 28.07.2017 ?

The Authority for Advance Ruling, Andhra Pradesh in its orders in **AAR No.11/AP/GST/2021 dated 10.02.2021** held:

"The proposed supply in question falls under Sl.No.434 under Chapter/Heading/Sub-heading/ Tariff Item 9306 under Schedule III of Notification No. 1/2017 – Central Tax (Rate) dt: 28.06.2017 attracting tax rate of 18% as amended from time to time".

Aggrieved by the impugned order dated 10.02.2021, the appellant has filed the present appeal, on the following grounds.

2. Grounds of Appeal:

The Appellant prefers the present appeal before this Authority on the following grounds, amongst others, each of which is taken in the alternative and without prejudice to each other:

2.1 The appellant claims that the Ld. Designated authority passed a non speaking order, without considering the submissions and declarations submitted by email sent on 07.01.2021 claiming that SFDS is designed to be fitted in the submarine as a basic protective system and it is designed with a separate space for fitment of this system. The said system as such has got no other use than in a submarine which is a warship in nature.

The appellant claims that appropriate justification for usage of the classification rule has not been provided by the Ld. Designated authority.

2.2 The appellant submits that SFD System qualifies as a 'part' of Submarine on the grounds mentioned below:

Usage of SFDS system in Submarine/Warship:

As per the Merriam Webster Dictionary, "Warship" means a "military ship that has many weapons and is used for fighting in wars". Certain parts would be essentially required in a warship to protect the warship and armies. Therefore, in case of warships, parts required for protecting the warship constitute an essential and integral part of the warship.

In order to protect submarines against such enemy attacks using torpedoes, submarines come equipped with a decoy system, which deploys stationary Jammers & Decoys during the course of pre-determined evasive counter manoeuvres, to maximize the submarine survivability against modern torpedo attacks, thus making SFDS a very important part of submarines.

Submarine Fired Decoy System (SFDS) is an integral part of Advanced Torpedo Defense System (ATDS) suit, which is effective against modern and vintage torpedo fired against a ship or submarine.

Submarines are warships that can travel both above and below the surface of the sea. Apart from surveillance, these are usually built and used for warfare and armed with torpedoes or guided missiles. A submarine is equipped with a torpedo launching system as well as a decoy system.

As mentioned in the above paras, certain essential components are required in a warship to protect the warship and the defence forces. Therefore, in case of warships, systems/ parts required for protecting the warship are an essential and requisite system of warship. The appellant submits that one such part is the decoy system (SFDS) which is to be integrally incorporated in the submarines i.e., warships for effective functioning of the submarine.

SFDS launches decoys as an anti-torpedo countermeasure system for submarines, designed to counter the attacks of acoustic homing torpedoes, active/ passive, lightweight and heavyweight, wire and non- wire- guided, by deploying the expendable, light-weight, high-performance stationary jammers and stationary decoys. An SFDS encompasses Launcher Assembly, Jammers and Decoys Reaction Managed Firing (RMF) panel.

The Jammer part of SFDS is an underwater broadband noise generator that is launched in the water by means of a dedicated system installed on onboard submarines. The unit is an expendable device to be launched against an attacking torpedo in order to mask the submarine echo by increasing the noise level received by the torpedo acoustic homing system.

The decoy is an underwater echo repeater. It is an expendable device launched against an attacking torpedo in order to simulate false target echoes, seducing the torpedo acoustic system. When the appellant refers to a decoy system, the decoy system is an anti-torpedo countermeasure system for submarines. Thus, the SFDS is an important part of the submarine.

2.3 The appellant while quoting the relevant provisions of the GST law, under the said Schedule-I of the Rate Notification 01/2017 Central Tax (Rate) dt: 28.06.2017 refers to serial no. 246 to 251 wherein given group of items falling under chapter 89

are placed in the 5% category and then Entry no.252 i.e., parts of headings of 8901, 8902, 8904, 8906, 8907 as presented below:

S.No.	Chapter/Heading/ Sub-heading/Tariff	Description of Goods
246	8901	Cruise Ships, Excursion boats, ferry boats, cargo ships, barges and similar vessels for the transportation of persons or goods
247	8902	Fishing vessels; factory ships and other vessels for processing or preserving fishery products
248	8904	Tugs and pusher craft
249	8905	Light vessels, fire-floats, dredges, floating cranes and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms
250	8906	Other vessels, including warships and lifeboats other than rowing boats
251	8907	Other floating structures (for example, rafts, tanks, coffer dams, landing stages, buoys and beacons)
252	Chapter	Parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907

2.4 It is pertinent to note that although entry no. 252 under the first schedule of the Notification uses the expression 'parts of goods of headings.....8906, neither the schedule nor the GST Act define the term 'parts of goods'. Therefore, reliance needs to be placed on the case laws under the erstwhile regime and dictionary meanings to understand the true purport of the term 'parts of goods'.

The dictionary meanings of the term 'parts' are as below:

> "Cambridge Dictionary: a separate piece of something or a piece that combines with other pieces to form the whole of something; one of the pieces that together form a machine or some type of equipment."

Basis the above general dictionary meanings, it can be inferred that anything can be considered as a part of other if it forms an essential component or assists in performing a functionality of the main product.

Chapter 89 does not have a separate heading for parts and accessories. The headings in the chapter, from 8901 to 8908, do not include sub-heading/items for 'parts and accessories'.In the absence of separate heading of classification for parts

of ships, the expression 'any chapter' in Column 2 of the Schedule assumes significance.

The appellant submits that the column 2 of the Schedules in the CGST Rate Notification refers to "Chapter/Heading/Sub-heading/Tariff item". Whereas for every Sl.No, the respective chapter/Heading number has been mentioned, in respect of Sl.No.252 of the said notification, in the said column 2 the expression "Any chapter" is used which signifies that irrespective of classification of the particular product/item/goods, the rate of tax applicable would be 5% only.

It is to be noted here that Entry No.252 referred supra covers parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907. There is no question in the current case on the fact and understanding that the submarines are classified under 8906. Thus, the appellant wishes to submit that the parts of such goods are eligible to be covered under Entry no.252 referred above. SFDS, being a part of submarines, is covered under such entry and hence liable to GST at the rate of 5%.

2.5 The appellant submits that submarine fired Decoy Systems (SFDS) is required to protect submarines against enemy attacks using torpedoes. If a warship is attacked by an enemy torpedo, it loses it capacity to function to its potential. Thus, the very existence or functionality of a warship will be jeopardized if it is not protected against enemy attack. One such protection is to equip the warship with a counter measure to an attacking torpedo and this counter measure is SFDS. This establishes that the SFDS is an integral and essential system of a warship in the absence of which the warship's capability is compromised. Therefore, SFDS is an essential part of the submarines and hence qualifies to be "part of Submarines" and, therefore, attract GST at the rate of 5% vide entry no.252 of Schedule I of the CGST Rate Notification.

2.6 Reference can be drawn in case of GE Industrial India Ltd. v. CCE & CE, Bangalore-1 2019 (5) TMI 205 under the erstwhile laws, wherein it has been held that once the goods are supplied for specified use and have been certified to be so used by the Naval Authorities, the exemption is applicable irrespective of the classification of goods.

The appellant submits that all the systems proposed to be supplied by them are meant for use in warships, vessels and submarines as evidenced by the supply orders. Hence, irrespective of the classification of the subject goods, the rate of tax applicable would be 5% in terms of Sl.No. 252 of schedule I.

2.7 Judicial precedents under the pre-GST regime can also assist in understanding the meaning of the term 'part' of a goods. In G.S. Auto International Limited v.

Collector of Central Excise, Chandigarh, 2003- TIOL-92-SC-CX, the Supreme Court observed as below:

"For the purposes of classification under chapter Heading 87.08, the test to be applied is whether the goods are suitable for use solely or primarily with articles of chapter heading Nos. 87.01 to 87.05 if the answer is in the affirmative, the goods be classifiable under chapter heading 87.08 but if the answer is in the negative, they would have to be classified under chapter heading no. 73.18. Having regard to the finding that the goods in question cannot but be regarded as parts of automobiles, it has to be held that they are suitable for use primarily with articles of chapter heading nos 87.01 to 87.05. it follows that the goods in question cannot be treated as falling under chapter heading no. 73.18 and that they can properly be classified under chapter heading no. 87.08 of the Central Excise Tariff Act, 1985."

2.8 Having observed thus, the Supreme Court held the parts in question to be classifiable as parts of automobile. According to the Supreme Court, the test to be applied whether the goods are suitable for use solely or primarily with articles of the said chapter. If the answer to this question is in the affirmative, the goods will be classifiable as part of any good. In the instant case, SFDS is solely or primarily useful in the warships/submarines, and hence the same ought to be classified under s.no. 252 of 5% schedule of the Notification.

2.9 In CCE, Chennai v. Besmak Components (P) Ltd., 2007 (3) TMI 50 GE, the Chennai Bench of the Hon'ble CESTAT had to decide upon the classification of plastic parts used in automobiles. Following the decision in GS Auto International Limited on ascertaining the plastic goods in question designed for use in motor vehicles, the Tribunal sustained the classification of these goods as parts of motor vehicles and not parts of general use. The relevant extract of the decision is as hereunder:

"6. We have carefully considered the facts of the case and the grounds of appeal. The first two categories of goods are parts of gadgets used in cars. As per section note 1 (k) to Section XVI, as parts falling under Section XVII. In the instant case they are classifiable as automobile parts of chapter 87. The third category of goods is designed for use in automobiles and is of high degree of precision. They have to be classified under the related heading for parts of vehicles etc. of Section XVII.in this connection we also rely on the observation of the apex court in the case of G.S. Auto International Ltd. v. CCE, Chandigarh reported in MANU/SC/0031/2003, wherein the apex Court had observed as follows....."

2.10 Courts/Tribunals have consistently reiterated the principles in the aforesaid decisions. Therefore, despite not being case laws of the GST regime, the principles/ratio laid down thereunder should be adopted for the purpose of classification of SFDS in question.

2.11 The SFDS system in question is designed for use in the submarines. Apart from their usage in a submarine for countering torpedoes, it does not have any independent use for it to be sold in the market.The system in question does not have any independent use other than in a submarine, is by itself should be a sufficient reason for it to be classifiable as 'part' of a submarine.

2.12 The role of SFDS in safeguarding the submarines from incoming torpedo attacks is also well acknowledged in the market. The defense market recognizes, which is the relevant market, recognizes the SFDS as a system necessary for anti-torpedo attacks. The market identity of the SFDS as a system connected to a submarine for anti-torpedo measures supports the argument of the appellant that SFDS qualifies as part of a submarine.
Basis the above, the appellant submits that the SFDS system qualifies as 'parts of submarine' and therefore, the proposed supply ought to attract a tax rate of 5%.

2.13 The appellant places reliance on the case of **Mehra Brothers v. Joint Commercial Officer 1990 (11) TMI 144.** The Apex court in this case, held that a part or accessory need not necessarily mean an item which is essential for the effective use of a vehicle but also would include any item which adds to the comfort or enjoyment of the vehicle.

Further, the appellant submits that each of the systems are essential for the overall functioning of the warships and submarines and therefore the expression "parts" in the subject entry of the Notification(s) should be construed to include all such systems / assemblies.

2.14 The appellant submitted that in view of the judicial pronouncements, which though have been rendered in the context of Central Excise law, the fact that they enumerated the scope of 'part' of automobiles, which is broadly the subject matter in this application, it is submitted that the understanding of the appellant that the systems attract 5% GST only is appropriate.
The appellant further submitted that S.No. 252 of Schedule I of the GST Rate Notification is applicable so long as the goods are used in warships, vessels and submarines, whether for construction or repair or replacements.

2.15 It was held by the Maharashtra Appellate Authority for Advance Ruling in the case of **A.S.Moloobhoy Pvt Ltd.** that
"35. We agree with the contention of the appellant that if EPIRB which is a critical element of GMDSS is classified as part of the ship under SR.no.252 then there is no reason to exclude SART, NAVTEX and AIS from it.
GMDSS includes the following systems:-
(a) Communication equipment
(b) Positioning and localization system

(c) Maritime safety information.

EPIRB on SART are a part of the positioning and localization system and NAVITEX is a part of maritime and safety information."

It is submitted that even in appellant's case the purpose of warship would get defeated if the safety of warships is not kept in mind. Hence, SFD system is an integral part of the warships.

3. Additional Submissions:

The appellant submits that the present appeal has been filed against the order issued vide 11/AP/GST/2021 dt 10.02.2021 by the Andhra Pradesh Advance Ruling Authority. In this regard, the appellant was granted a personal hearing dated 29.07.2021 through Virtual mode. The appellant reiterated various grounds and submissions made vide the appeal memorandum submitted before the Hon'ble AAAR followed by the additional submissions attached vide email dated 29.07.2021 (date of personal hearing).

During the said hearing the then Hon'ble AAAR bench had requested the appellant to submit a letter describing the key functionalities of the SFDS and also a clarification in relation to the supply of Jammer & Decoys under the subject supply order. The appellant had submitted the said letter to the Hon'ble AAAR on 04.08.2021.

In addition to the appeal memorandum and the additional submissions made before the Hon'ble AAAR during the personal hearing scheduled on 29.07.2021, the Appellant presented the recent developments as below:

Inspection note for supply of submarine fired decoy systems (SFDS)

3.1. The appellant submitted that, the Factory Acceptance Trial (FAT) for SFDS has been conducted in November 2021 and an Inspection Note and the Certificate of Acceptance has been issued by the Ministry of Defence to be supplied under the subject order. The inspection note was issued by appropriate authority designated by Ministry of Defence.

3.2. With regard to requirement of the test, the appellant submitted that the Factory Acceptance Trials (FAT) of the product was conducted at the supplier's premises in order to check their compliance with the specifications. The purpose of FAT is to ensure that all equipment to be delivered is fully functional and all faults have been eliminated prior to dispatch and installation. Based on the FAT report, the Inspection Note will be submitted by the Inspection Agency to the appellant for onward dispatch of material to the consignee (Ministry of Defence).

3.3. Therefore, the appellant further submitted that the SFDS is an integral part of the warships and the FAT is carried out to ensure that it complies with all the necessary technical specifications. A copy of the Certificate of Acceptance and the Inspection Note were submitted.

3.4. The appellant placed reliance on the below rulings wherein it was held that any system/sub-system or article or product, that is fitted to the ship or boat or a floating structure becomes a part or accessory of the said ship, irrespective of its classification and merits classification under sl.no.252 of the Schedule I of Notification No.1/2017 Central Tax (Rate) dt:28.06.2017.

Sl. No	Advance Rulings	Parts involved	Relevant Para
1	Bharat Electronics Limited [2019 (29) G.S.T.L. 178 (A.A.R. -GST)]	Systems such as color tactical display system, Radar system (for surveillance and threat alert, Navigation and attack, weather surveillance), Missile system, Electro Optical fire control system, optical director system, etc.	(c) Submarines Warships are required to be fitted with certain systems/sub-systems such as radar, sonar etc meant for "On Board Ships" of the Indian Navy. These systems are meant for warships, more specifically warships. Without these systems, the warships cannot function in required, proper & effective manner. Therefore, it can be considered that these systems are essential parts/ accessories of the warships.
2	Alekton Engineering Industries Pvt. Ltd [2019 (26) G.S.T.L.143 (AAR GST)]	Triple screw pumps and its parts used for marine application, i.e., on board vessels and warships supplied to Indian Navy.	Lubrication & Screw Pumps to be treated as parts of vessels / warships of the Indian Navy. Lubrication & screw pumps supplied for

			use in warships shall attract GST at the rate of 5% as per entry at sl.no. 252 of schedule I of Notification No.01/2017 CT (Rate).
3	C.S. Diesel Engineering PVt Ltd [2019 (26) G.S.T.L. 506 (AAAR GST)]	Engine, Gear Box and Generator	Engines, Gear Box & Generator are to be treated as parts of ships/vessels and to be classified under sl.no.252 of the Notification no 01/2017 – CT (Rate) when supplied to ship building companies or Indian Navy for use in manufacture of ships vessels boats etc.
4	Exide Industries Limited (2021 (9) TMI 909 (AAR – Maharashtra)	Submarine Batteries, Spare parts & interconnecting links	Batteries be treated as key parts & specifically designed and manufactured for use only in warships more particularly in submarines. Batteries supplied exclusively and directly to the Indian Navy for use in the manufacture of submarines to be classified under Sl.No.252 of the Notification no. 1/2017- CT (Rate).
5	Man Energy Solutions India Private Limited 2021 (8) TMI 49 (AAAR- Maharashtra)	Two stroke & Four stroke Marine diesel engines and parts thereof	Marine engines to be considered as parts of the ships/vessels without which the

			ship/vessel cannot sail. Marine diesel engines to be classified under sl.no.252 of the Notification no.1/2017 – CT (Rate), when supplied to ship building companies or Indian Navy for use in manufacture of ships , vessels, boats etc.
6	South Indian Federation of Fishermen Societies (2021 (7) TMI 533 (AAAR – Kerala)	Marine Engines & its parts thereof	The marine engine and its spare parts supplied for use in vessels shall attract GST at the rate of 5% as per entry at SL.No.252 of schedule I of Notification No.1/2017 Central Tax (Rate).

In view of the grounds of appeal and the additional submissions, the appellant reiterated that the submarine Fired Decoy System supplied by the appellant to the Ministry of Defence is classifiable as parts of submarine falling under heading chapter Heading 8906 and therefore, attract a GST rate of Five (5%) by virtue of entry no 252 of Schedule I in CGST Rate Notification.

3.4.1 SFDS is an essential part of a warship: The appellant submitted that the goods in question i.e., SFDS are integral and essential part of a warship.

A reference can also be made to the HSN explanatory notes of the Tariff Heading 8906, where the warships are classified, which states that "This heading includes Warships of all kinds including ships designed for warfare, fitted with various offensive and defensive weapons and incorporating protective shields against projectiles (e.g., armour-plating, or multiple watertight bulkheads), or with underwater devices (anti-magnetic mine-detectors). They are also generally fitted with detection and listening devices such as radar, sonar, infra-red detection apparatus and scrambling equipment for radio transmissions". The said tariff heading also includes submarines which are used as Warships.

3.4.2 Classification under Central Excise law:

The appellant submitted that even under the Central Excise Regime and the customs, whenever the exemption was provided to goods meant for ships, etc falling

under Chapter 89 either for manufacture of ships or for repairs or for specified purposes such as under by Indian Navy, such exemption has been provided to all the goods falling under any chapter. Thus, the intention was to exempt all the goods meant for ships falling under chapter 89.

3.4.3 In the regard, the appellant submitted that they have been claiming exemption on the supply of torpedo decoy system to the Naval Authorities for use in the construction of the warships under the Notification No.64/95-CE dated 16.03.1995 as amended by Notification No.25/2002 - CE dated 11.04.2002 which was also certified by the Rear Admiral, Chief Technical Officer. The said exemption was never questioned or challenged under the earlier regime. The extract of the Notification and a sample invoice issued along with the certificate from Headquarters of Western Naval Command were submitted.

Exemption has been allowed based on the certificate for Naval Officer in the following cases:

GE Industrial India Ltd 2016 (1) TMI 1138 - CESTAT Bangalore

L3 communications India Pvt Ltd 2019 (5) TMI 205- CESTAT Bangalore.

3.5. The appellant had filed the following additional submissions on 04.08.2021 with reference to the clarification sought by this authority at the time of Virtual Hearing regarding the scope of the contract and the functionality of the SFDS system:

3.5.1. The SFDS system is permanently fitted on the designated space of the submarine for fitment of the system. The said system is having life equivalent to the submarine and overhauled/maintained periodically. Earlier supplied similar systems to the Indian Navy are being maintained at monthly routine check-up and overhauling.

3.5.2. The SFDS consists of following sub-systems:

a) Launching system: Mounted externally on the pressure hull of the submarine and below the submarine superstructure.

b) Control Panel: A man machine interface fitted in CIC room of submarine which controls the launching of the Decoys and Jammers.

c) Jammers/Decoys: Fired from the launching system and not recoverable, i.e., expendable/consumable.

3.5.3. Clarification with regards to supply order No.XXXXX:

The order is for supply of the SFDS System (including the launching system and control panel, interface and loading platform etc.), while Jammers and Decoys are not part of the supplies under this supply order. Jammers and Decoys are

expendable devices and are generally supplied against separate orders from Indian Navy.

3.5.4. In view of the grounds of appeal and the additional submissions, the appellant reiterates that the submarine Fired Decoy System (SFDS) supplied by the appellant to the Ministry of Defence is classifiable as parts of submarine falling under heading chapter Heading 8906 and, therefore, attract a GST rate of (5%) by virtue of entry No.252 of Schedule I in CGST Rate Notification.

4. Virtual Hearing:

The proceedings of Hearing were conducted through video conference on 14th December 2021, for which the authorized representatives, Sri Krupasindu Satpathy, DGM - Finance, BDL and Sri Sivarajan Kalyanaraman, Tax-Consultant attended and presented further additional submissions.

5. Discussion and Findings:

We have gone through the entire records of the appeal, facts of the case, and also considered the written and oral submissions made at length by the appellant in light of the Ruling pronounced by the AAR.

It is observed that the main issue to be decided is the classification and the relevant HSN code of the proposed supply of goods i.e.,the Submarine Fired Decoy System (SFDS) supplied by the appellant.

It is the contention of the appellant that the proposed supply of Submarine Fired Decoy System (SFDS) is classifiable as 'parts of submarine' under Chapter Heading 8906 and, therefore, attract a GST rate of five (5%) by virtue of entry no. 252 of Schedule I in Notification No. 1/2017-Integrated Tax (Rate) dated 28.07.2017. But the lower authority has taken up a different view classifying itunder Sl.No.434 under Chapter/Heading/Sub-heading/ Tariff Item 9306 under Schedule III of Notification No. 1/2017 – Central Tax (Rate) dt: 28.06.2017 attracting tax rate of 18%.

Before we consider the key details of the SFDS system, that is supposed to be fit into the submarine, whether as an 'essential part' or an 'additional feature' that enables the submarine fit for a definite or a designated purpose; we look into the role of 'submarines' for military operations as such in the present case. The submarines under discussion pertain to the Indian Navy and are basically used for warfare. A submarine, when used as a warship, is equipped with a torpedo launching system as well as a decoy system. Therefore, it can rightly be concluded that the said Submarines are 'Warships' which are classifiable under CTH 8906.

The Appellant further submitted that, there is a designated space allocated in the submarine for the fitment of the SFDS system and it is permanently fitted in

that space. The said system has life equivalent to the submarine and overhauled/maintained periodically.

Moreover, the SFDS system in question is tailor made/customized for use in the submarines by the Indian Navy. Apart from their usage in a submarine for countering torpedoes, it does not have any independent use for it to be sold in the market. Thus it deserves to be classifiable as 'part' of a submarine.

Even the defence market recognizes the SFDS as a system necessary for anti-torpedo attacks. The market identity of the SFDS as a system connected to a submarine for anti-torpedo measures qualifies the argument that it is 'part of submarine' in commercial parlance too.

From the above and as per the detailed write up on the usage of SFDS in the Appeal (vide paras 10 to 17), it appears that, SFDS is a defense Mechanism and without which the very existence of the submarine is at stake. This in itself is an irrevocable proof/evidence that this is an essential part of the said submarine.

Similarly, in case of Bharat Electronics Limited [2019 (29) G.S.T.L. 178 (A.A.R.-GST)], the systems like "*color tactical display system, Radar system, Electro Optical fire control system, optical director system*", etc, are ruled as 'parts of submarine'. Now in the present case, SFDS system is a similar system, as is in the case of Bharat Electronics Ltd. Further, following the spirit of the advance rulings pronounced by various Advance Ruling Authorities (on which the appellant placed reliance), we differ with the ruling of the lower Authority that, SFDS is not a part of 'Submarine', but an additional feature that falls under the category of 'arms and ammunition'.

It is our considered view that SFDS is a part of submarine falling under Section XVII Chapter 8906 of the Customs Tariff Act, 1975. In light of the above findings, the following order is passed.

ORDER

We differ with the ruling of the Advance Ruling Authority and hereby modify the same and hold that the SFDS is classifiable as 'parts of Submarine' falling under Chapter 8906 and consequently attract a GST rate of five (5) percent, by virtue of entry No.252 of Schedule I in Notification No. 12/2017 – Central Tax (Rate) Dated 28.06.2017.

Sd/-Suresh Kishnani
Chief Commissioner (Central Tax)
Member

Sd/- S. Ravi Shankar Narayan
Chief Commissioner (State Tax)
Member

// t.c.f.b.o //

Deputy Commissioner (ST)
DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., Vijayawada

TO

1) M/s. Bharat Dynamics Limited, G Block, Autonagar, Fakir Takya, Gajuwaka, Visakhapatnam, Andhra Pradesh-530049**(By Registered Post).**

Copy to

1. The Assistant Commissioner of State Tax, Gajuwaka Circle, Visakhapatnam Division. **(By Registered Post)**
2. The Superintendent, Central Tax, CGST Sheelanagar Range, Visakhapatnam Division. **(By Registered Post**)

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P).
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035**(By Registered Post).**