



BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH

Goods and Service Tax

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Commissioner of State Tax (Member)
2. Sri. RV Pradhamesh Bhanu, Joint Commissioner of Central Tax (Member)

AAR No. 08/AP/GST/2022 dated: 30.05.2022

1	Name and address of the applicant	M/s. Sri Vinayaka Hatcheries Flat No. 203, Surya Towers, 2 nd floor, Society Building, Bhimavaram, West Godavari -534202
2	GSTIN	37AEGFS1313E1ZD
3	Date of filing of Form GST ARA-01	18.02.2021
4	Virtual Hearing	07.03.2022
5	Represented by	Sri Eswara Manikanta
6	Jurisdictional Authority - State	Assistant Commissioner (ST) Bhimavaram Circle, Eluru Division
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) Applicability of a notification issued under the provisions of this Act

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the APGST Act.
2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. Sri Vinayaka Hatcheries (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

The applicant i.e., M/s. Sri Vinayak Hatcheries had executed an agreement with Grobest Feeds Corporation (India) Private Limited for the purpose of taking a vacant land with a water channel meant for fish/ prawn farming. The applicant approached the Authority seeking advance ruling on the applicability of GST on renting of Land.

The applicant had filed an application in form GST ARA-01 dated 18.02.2022 by paying required amount of fee and approached the Authority for Advance Ruling on the applicability of GST Tax rates on the above activity.

4. Questions raised before the authority:

The applicant seek Advance Ruling on the applicability of GST on renting of Land and whether the activity of Fish/Prawn Farming is covered under "services relating to rearing all life forms of animals- by way of renting or leasing of vacant land" and eligible for GST exemption as per Sl.No.54 of notification No.12/2017 central tax (Rate) dt: 28.06.2017 and corresponding notification under Andhra Pradesh GST.

On Verification of basic information of the applicant, it is observed that the applicant is under State jurisdiction, i.e. Assistant Commissioner (ST) Bhimavarm Circle, Eluru Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the Central Tax Authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017. Remarks are received from the Central jurisdictional officers concerned on the issue mentioning that no proceedings are pending with the applicant on the above issue.

5. Applicant's Interpretation of Law:

The applicant submits the following arguments in support of the claim of GST exemption.

1. As per Sl.No.54 of Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017; under Heading 9986 - Services relating to rearing of all life forms of animals, by way of renting of vacant land with or without a structure incidental to its use are exempted from GST. As per the said entry, exemption is available for services relating to cultivation and rearing of all forms of animals.

The services can be by way of; (i) agricultural operations; (ii) supply of farm labour; (iii) process carries out at an agricultural farm; (iv) renting or leasing of agro machinery or vacant land; (v) loading and unloading of agricultural produce; (vi) agricultural extension services and (vii) services by any agricultural produce marketing committee.

Therefore, the conditions to be satisfied for exemption under the said entry is that the activity carried should be cultivation or rearing of animals or agricultural produce and the services provided shall conform to any of the descriptions enumerated therein. The conditions to be satisfied for the grant of exemption are; (a) activity carried should be cultivation or rearing; (b) Cultivation or rearing should be of agricultural produce or animals.

2. The activity carried out is fish and prawn farming. The term "rearing" means bringing up and care for until they are fully grown. The next condition is that the rearing should be of "animals". In this case, rearing is carried out in respect of fish and prawn. The wet land is given on annual lease. This is clear from the agreement. As per definition in 2(ZZ) of notification No. 12/2017 - GST dated 28.06.2017 "renting in relation to immovable property" means allowing, permitting or granting access, entry, occupation use or any such facility, wholly or partly, in an immovable

property and includes letting, licensing or other similar arrangements in respect of immovable property. From the above definition, it is clear that the arrangement between the lessor and the lessee, Sri Vinayaka Hatcheries clearly comes within the meaning of renting.

3. The last condition is that the renting should be of vacant land with or without structure incidental for its use. As per Black's Law Dictionary, "land" includes not only the soil or earth, but also things of permanent nature affixed thereto or found therein, whether by nature as water, trees, grass, herbage, other natural or perennial products, growing crops or trees, mineral under the surface, or by hand of man buildings, fixtures, fences bridges as well as works constructed for use of water, such as dikes, canals etc. It is thus clear that 'ponds' fall within the meaning of term 'land'. Thus, all the conditions stipulated in Sl.No 54 of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 are satisfied and the lease of vacant land for fish/ prawn farming qualifies for exemption as per the said entry.

The applicant further submits that the words such as "rearing of all life forms of animals" clearly reveal the legislative intention to include fish/prawn also, since they are aquatic animals. Hence the lease rent charged by Lessor i.e., water channel used for fish/prawn farming falls within the meaning of "services relating to rearing of all life forms of animals- by way of renting or leasing of vacant land" and eligible for GST exemption as per Sl.No 54 of notification No. 12/2017 – Central Tax (Rate) dated 28-06-2017 and corresponding under Andhra Pradesh GST Act.

The applicant gave a reference to the Ruling issued by Kerala Authority for Advance Ruling with similar facts in this regard.

6. Virtual Hearing:

The proceedings of Hearing were conducted through video conference on 07.03.2022 for which the authorized representative, Sri Eswara Manikanta attended and reiterated the submissions already made.

7. Discussion and Findings:

We have examined the specific issues raised in the application in light of the documents produced and submissions made by the applicant at the time of virtual hearing as well.

The applicant is engaged in the activity of fish/prawn farming and the issue of contention is the applicability of GST on renting of land and whether the above activity is covered under "services relating to rearing of all life forms of animals, by way of renting or leasing of vacant land" and eligible for exemption contained in the entry at Sl. No. 54 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

The entry at Sl. No. 54 of the said notification reads as follows;

"Sl.No.54. Heading – 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;*

(b) *supply of farm labour;*

(c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(d) **renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;**

(e) loading, unloading, packing, storage or warehousing of agricultural produce;

(f) agricultural extension services;

(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(h) services by way of fumigation in a warehouse of agricultural produce. — Nil”

Primarily, we discuss the contention of the applicant that fish and prawn farming is covered under 'rearing of all life forms of animals', which means 'care for the younger ones until they are fully grown'.

If we clearly examine the entry under 9986, the thrust is on services relating to 'cultivation of plants' and 'rearing of all life forms of animals'. Cultivation of plants is essentially 'agriculture' while 'rearing of all life forms of animals' is 'animal husbandry'. Animal husbandry is the branch of agriculture where animals are reared, bred and raised for commercial purposes like meat, fibre, eggs, milk and other food products. Fish farming is not an agricultural activity as no basic agricultural operation 'directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing', as enumerated in sl.no. 54(a) is carried out on that vacant land. Furthermore, in case of fish/prawn farming, any of the processes as listed in the sl.no.54 (c) of the notification such as 'tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such other operations which do not alter the essential characteristics of agricultural produce' are not carried out on the vacant land. Hence, fish/prawn farming is not covered under services to agriculture as enumerated under Sl.No.54 of the notification.

Secondarily, we examine the fact that whether the land leased by the applicant is covered under services relating to cultivation of plants and rearing of all life forms of animals by way of '**renting or leasing of agro machinery or vacant land with or without a structure incidental to its use.**' In the instant case the applicant has taken on lease a land through a lease agreement. The clause 10 of the lease agreement is reproduced below for reference.

"Clause 10: *That the lessor hereby grants to the lessee, the right to enter into and use and remain in the said premises along with the existing appliances and fixtures and that the lessee will maintain the premises, including all appliances and fixtures in clean, sanitary, and good condition except normal wear and tear. Lessee will not remove lessor's appliances and fixtures from the premises for any purpose. The lessee would maintain all appliances, fixtures and premises in good condition and*

would at the time of vacating the premises ensure that all the appliances are in working condition and the premises restored to a good and fit condition except normal wear and tear”.

Not only the above clause, even when the lease agreement is examined in toto, nowhere it is mentioned specifically that the land is leased for any purpose related to agriculture, rearing of animals, fishing etc. The agreement between the lessor and the lessee (applicant) is executed in the lines of commercial renting of any other land without any reference to the purpose of usage of the land. It is open ended that the land might be used by the lessee for any other intended purpose in the absence of any specification as such. The activity of lease/license to occupy land is supply of service as per Schedule II of CGST Act, 2017 as presented below.

SCHEDULE II

[See Section 7 of the CGST Act]

¹ "Activities or Transactions" to be treated as Supply of Goods or Supply of Services

2) Land and Building

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services."

This would lead to the conclusion that the lease of vacant land would obviously be covered under heading 9972 vide notification no 11/2017 central tax (Rate) dt: 28.06.2017 and is taxable.

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)
16	9972	Real estate services	18%
	997212	Rental or leasing services involving own or leased non-residential property	

997212 service code includes:

1. Rental or leasing services concerning industrial, commercial or other non-residential buildings or property by owners or leaseholders, such as factories, office buildings, warehouses, theatres, convention centres, exhibition halls and multiple –use buildings that are primarily non–residential, agricultural, forestry and similar properties.
2. Rental or leasing of caravan sites, lock-up garages or other places for parking vehicles, by the month or year.

The absence of explicit intention in the lease agreement for the purpose of which the land is used would negate the eligibility criterion for exemption in the instant case. Thus, essentially it is this condition of sl.no 54(d) of Notification No. 12/2017-

Central Tax (Rate) dated 28.06.2017 that is not meted to consider the renting activity of vacant land as services relating to rearing of all life forms of animals.

In view of the observations made above, we rule as under.

RULING

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

Question: What is the applicability of GST on renting of Land and whether the activity of Fish/Prawn Farming is covered under "services relating to rearing all life forms of animals- by way of renting or leasing of vacant land" and eligible for GST exemption as per Sl.No.54 of notification No.12/2017 central tax (Rate) dt: 28.06.2017 and corresponding notification under Andhra Pradesh GST.

Answer: Ineligible for exemption as per Sl.No.54 of notification No.12/2017 central tax (Rate) dt: 28.06.2017 and taxable at the rate of 18% under sl. No. 16 of HSN Code 9972 of notification No.11/2017 central tax (Rate) dt: 28.06.2017.

Sd/-D. Ramesh
Member

Sd/-RV Pradhamesh Bhanu
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. Sri Vinayaka Hatcheries, flat no. 203, Surya Towers, 2nd floor, Society Building, Bhimavaram, West Godavari-534202, Andhra Pradesh **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Bhimavaram Circle, Eluru Division. **(By Registered Post)**
2. The Superintendent, Central Tax, Bhimavaram Range, Eluru 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 Principal Chief Commissioner (Central Tax), O/o Principal Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035.A.P. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.