


GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
--	---

ADVANCE RULING NO. GUJ/GAAR/R/74/2020
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/19)
 Date: 17.09.2020

Name and address of the applicant	:	M/s Isotex Corporation Private Limited, 178/1/C, 181/2/3, GIDC, Naroda, Ahmedabad-382330 (Gujarat)
GSTIN of the applicant	:	24AACCI9046D1ZS
Date of application	:	16.03.2020
Clause(s) of Section 97(2) of CGST/IGST Act, 2017, under which the question(s) raised.	:	(a) Classification of goods and/or services or both. (b) Applicability of a notification issued under the provisions of this Act; (e) Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	17.08.2020 (Through Video Conferencing)
Present for the applicant	:	Shri Nilesh V Suchak

BRIEF FACTS

The applicant, is engaged in the manufacture of “Waste to Energy Plants/Devices” viz. Agro Waste Thermic Fluid Heater, which falls under Tariff Item 8402 19 90 as Tariff Item 8402 covers within its ambit Steam or other Vapour Generating Boilers. The goods are manufactured and supplied from applicant's Unit I located at 178/1/C, 181/2/3, GIDC, Naroda, Ahmedabad-382330 and/or Unit II located at D/2/E-76, GIDC Industrial Estate, Ta.: Vagra, Dahej, Bharuch.

2. Such Agro Waste Thermic Fluid Heater is renewable energy device & parts thereof as it generates energy from waste namely, biomass. Such heaters or boilers are high efficiency Biomass Fired Boilers that uses waste material for generation of energy.

3. According to Sl. No.234 of Schedule I to Notification No.1/2017-CT (Rate) dated 28.06.2017, the Central Tax Rate of 2.5% is payable on renewable energy devices and parts for their manufacture as specified therein and falling under Chapter 84 or 85. The relevant extract from the said Notification is given below for ready reference:

SCHEDULE I-2.5%

S. No.	Chapter/Heading/ Subheading/ Tariff item	Description of goods
234.	84 or 85	Following renewable energy devices & parts for their manufacture: (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants /devices (f) Solar lantern/solar lamp (g) Ocean waves/tidal waves energy devices/plants.

4. In view of similar rate of 2.5% tax applicable under State GST Law, total GST payable on above stated goods covered at Sl. No.234, would be 5% i.e. 2.5% CGST & 2.5% SGST. Similarly, in terms of Sl. No.234 of Schedule I to Notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017, the rate of IGST applicable is 5% for the following goods.

SCHEDULE I- 5%

S. No.	Chapter/Heading/ Subheading/ Tariff item	Description of goods
234.	84 , 85 or 94	Following renewable energy devices & parts for their manufacture: (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants /devices (f) Solar lantern/solar lamp (g) Ocean waves/tidal waves energy devices/plants.

5. Prior to introduction of GST, such Agro Waste Thermic Fluid Heaters falling under Central Excise Tariff Item 84021990 was exempt from levy of whole of the duty of excise leviable thereon under Sl. No.332, List 8, Sl. No.16 of Notification No.12/2012-Central Excise and relevant extract of said Notification is given below for ready reference:

S. No.	Chapter/Headin g/ Subheading/ Tariff item	Description of goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
332	Any Chapter84 or 85	Non-conventional energy devices or system specified in List 8	Nil	-

LIST 8
(See S. No. 332)

*(1) Flat plate solar Collector (2) Black continuously plated solar selective coating sheets (in cut length or in coil) and fins and tubes (3) Concentrating and pipe type solar collector (4) Solar cooker (5) Solar water heater and system (6) Solar air heating system (7) Solar low pressure steam system (8) Solar stills and desalination system (9) Solar pump based on solar thermal and solar photovoltaic conversion (10) Solar power generating system (11) Solar photovoltaic module and panel for water pumping and other applications (12) Solar crop drier and system (13) Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller (14) Water pumping wind mill, wind aero-generator and battery charger (15) Bio-gas plant and bio-gas engine (16) **Agricultural, forestry, agro industrial, industrial, municipal and urban waste conversion device producing energy** (17) Equipment for utilising ocean waves energy (18) Solar lantern (19) Ocean thermal energy conversion system (20) Solar photovoltaic cell (21) Parts consumed within the factory of production of such parts for the manufacture of goods specified at S. Nos. 1 to 20.*

6. Similar issue is also decided by Haryana Advance Ruling Authority in RE: M/s Boldrocchi India Pvt Ltd.[2019 (22) G.S.T.L. 135 (A.A.R.-GST)] vide Ruling dated 18.09.2018 holding that "Pollution control device being supplied by the applicant for use in "waste to energy plants/devices" are classifiable under chapter Heading 8421 of the First Schedule to the Customs Tariff Act, 1975 and are covered by Sr. No.234 of Schedule I of Notification No.1/2017-Central Tax(Rate), dated 28.06.2017 & Notification No.35/2017-S.T.(Rate) dated 30.06.2017, chargeable to CGST @ 2.5% and SGST @ 2.5%."

7. Similar issue was also decided by Karnataka Appellate Authority for Advance Ruling in RE: Triveni Turbine Ltd.[2019 (23) G.S.T.L.549 (App. A.A.R.-GST)] decided on 03.04.2019 holding that "The turbine generator set to be supplied by the Appellant to the buyer for use in waste-to-energy project is covered under Sl. No. 234 of Schedule I of Notification No. 1/2017-I.T. (Rate) dated 28.06.2017, attracting 5% levy.

8. In view of above backdrops, the applicant has put forward his question on which advance ruling is required, as under:

"What is the classification and rate of tax payable in respect of Agro Waste Thermic Fluid Heater or Boiler and parts thereof considering the applicability of Sl. No.234 of Schedule I to Notification No.1/2017-Central Tax

(Rate), dated 28.06.2017 and corresponding notifications issued under State GST law and IGST Act?

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of aforesaid question(s) (i.e. applicant's view point and submission on issues on which the advance ruling is sought).

9. The applicant is of the bona fide belief that Biomass Fired Boilers or Agro waste Thermic Fluid Heater or Boiler supplied by it stands covered under Tariff Item 84021990 of the First Schedule to the Customs Act, 1975. Since the said goods are renewable devices and parts for their manufacture as they generate energy from agro waste of biomass.

9.1 The applicant is a manufacturer of Agro Waste Thermic Fluid Heater and/or Biomass Fired Boilers for providing renewable energy solutions specifically for Biomass.

9.2 Waste to energy plants/devices or renewable energy devices and parts for their manufacture as specified under Sl. No.234 of Schedule I to the Notification No.1/2017-Central Tax (Rate),dated 28.06.2017 specifically covers all goods falling under Chapter 84 that would attract Central GST rate of 2.5% and, hence, the total rate of GST including SGST would be 5% and the rate of IGST would be 5%.

9.3 Authority for Advance Ruling in case of Boldrocchi India Pvt. Ltd. and Appellate Authority for Advance Ruling in the case of Triveni Turbine Ltd. [2019 (23) G.S.T.L.549 (App. A.A.R.-GST)] has already decided similar issue holding that such goods attract total 5% rate of GST. Applicant also observed that other player in similar line, M/s Thermax Limited had cleared Waste to Energy Plant/Device Thermeon Boiler/Husk Briquette Fired/Unit + Parts under Invoice No.270100005249 dated 27-06-2019 charging 5% IGST based on the Sl. No. 234(e) of Notification No.1/2017-CT(Rate).

9.4 In view of the above facts, this applicant is of the *bonafide* belief that such Waste to Energy Plant/Device viz. Agro Waste Thermic Fluid Heater or Biomass Fired Boilers to be supplied by the applicant would attract total GST of 5% [CGST @ 2.5% and SGST @ 2.5% or IGST @5%] as such goods are covered by Sl. No. 234 of Notification No.1/2017-CT (Rate) and as such the said goods are falling under Chapter 84 of the First Schedule to the Customs Tariff Act, 1975.

RECORDS OF PERSONAL HEARING:

10. At the time of personal hearing held through Video Conferencing on 17.08.2020, the Authorised Representative of the applicant, Nilesh V Suchak, reiterated the facts as stated in the Application.

10.1 Further, the applicant has also submitted the additional submission dated 14.08.2020 at the time of personal hearing, as below:

- (i) The applicant manufactures “Waste to Energy Plants/Devices” which are known as Agro Waste Thermic Fluid Heater or Biomass Fired Boilers. This product is classified by them and the said classification is also accepted by the Excise Department without any objection till date since Excise Regime, under Tariff Item 8402 19 90. Tariff Item 8402 covers within its ambit Steam or other Vapour Generating Boilers. The same are manufactured and supplied from applicant's Unit I located at 178/1/C, 181/2/3, GIDC, Naroda, Ahmedabad-382330 and/or Unit II located at D/2/E-76, GIDC Industrial Estate, Ta.: Vagra, Dahej, Bharuch.
- (ii) Such Agro Waste Thermic Fluid Heater is renewable energy device & parts thereof as it generates energy from waste namely, biomass. Such heaters or boilers are high efficiency Biomass Fired Boilers that uses agro waste or biomass materials for generation of energy. They submitted the catalogue of ‘High Efficiency Biomass Fired Boilers’, the image of the same is scanned below:

High Efficiency Biomass Fired Boilers



- (iii) According to Sl. No.234 of Schedule I to Notification No.1/2017-CT (Rate) dated 28.06.2017, the Central Tax Rate of 2.5% is payable on renewable energy devices and parts for their manufacture as specified therein and falling under Chapter 84 or 85.
- (iv) As similar rate of 2.5% tax applicable under State GST Law, total GST payable on above stated goods covered at Sl. No.234, would be 5% i.e. 2.5% CGST & 2.5% SGST. Similarly, in terms of Sl. No.234 of Schedule I

to Notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017, the rate of IGST applicable is 5% for the same.

- (v) Prior to introduction of GST, such Agro Waste Thermic Fluid Heaters falling under Central Excise Tariff Item 84021990 was exempt from levy of whole of the duty of excise leviable thereon under Sl. No.332, List 8, Sl. No.16 of Notification No.12/2012-Central Excise.
- (vi) They have submitted ER-1 Return for the month of May, 2017 to show that they were clearing 'Agro Waste Thermic Fluid Heaters' falling under CETSH 84021990 without payment of Central Excise duty claiming exemption under Notification No.12/2012-CE, Sl. No.332, List 8, Sl. No.16.
- (vii) The applicant is of bona-fide belief that Biomass Fired Boilers or Agro Waste Thermal Fluid Heaters/Boilers that use agro waste/ biomass to generate energy stand covered under Tariff Item 84021990 of the First Schedule to the Customs Tariff Act, 1975. The applicant believes that the said goods are clearly Waste to Energy Plants "WTEP" or devices as the same generate renewable energy from waste.
- (viii) CBIC Circular No.80/54/2018-GST dated 31st December, 2018 has categorically clarified in its paragraph No. 11 that *this concession would be available only to such machinery, equipment etc., which fall under Chapter 84, 85 and 94 and used in the initial setting up of renewable energy plants and devices including WTEP.*
- (ix) The applicant also observed that other player in similar line, M/s Thermax Limited appears to have been clearing Waste to Energy Plant/Device Thermeon Boiler/Husk Briquette Fired/Unit + Parts under Invoice No.270100005249 dated 27-06-2019 charging 5% IGST based on the Sl. No. 234(e) of Notification No.1/2017-CT(Rate).
- (x) Similar issue is also decided by Haryana Advance Ruling Authority in RE: **M/s Boldrocchi India Pvt Ltd. [2019 (22) G.S.T.L. 135 (A.A.R.-GST)]** vide Ruling dated 18.09.2018 holding that *"Pollution control device being supplied by the applicant for use in "waste to energy plants/devices" are classifiable under chapter Heading 8421 of the First Schedule to the Customs Tariff Act, 1975 and are covered by Sr. No.234 of Schedule I of Notification No.1/2017-Central Tax (Rate), dated 28.06.2017 & Notification No.35/2017-S.T.(Rate) dated 30.06.2017, chargeable to CGST @ 2.5% and SGST @ 2.5%."*

- (xi) Similar issue was also decided by Karnataka Appellate Authority for Advance Ruling in RE: **Triveni Turbine Ltd. [2019 (23) G.S.T.L.549 (App. A.A.R.-GST)]** decided on 03.04.2019 holding that *"The turbine generator set to be supplied by the Appellant to the buyer for use in waste-to-energy project is covered under Sl. No. 234 of Schedule I of Notification No. 1/2017-I.T. (Rate) dated 28.06.2017, attracting 5% levy."*
- (xii) The applicant further submitted that in the GST Notifications, the scope of the entry includes renewable energy devices & parts for the manufacture. Further, the specific entry reads as "waste to energy plants/devices". The text of the entry itself shows a clear departure from the exemption Notification in the Central Excise Regime in as much as the entry is not limited to 'waste conversion device producing energy' only includes "waste to energy plants/devices" in its entirety and includes parts used for the manufacture of the waste to energy plants/devices. The entry does not specify that the device or parts are required to either 'Produce' or 'convert' energy. The present GST Notifications not only includes the boilers used in conversion of waste to 'heat energy' but also includes all the equipment falling under Chapter Heading 84, 85 & 94 of the Customs Tariff Act, 1975 used in the entire process of converting waste to energy. The applicant submitted that once it is undisputed that the entire system comprising of the Agro Waste Thermic Fluid Heaters or Biomass Fired Boilers is required for converting waste to energy, the same will be considered as devices including parts thereof eligible for benefit of total GST rate of 5%.
- (xiii) The applicant further submitted that the word "Plant" is defined in words and phrases of Excise, Customs and Service Tax, 4th Edition, as *'the land, buildings, **machinery, apparatus** and fixtures employed on a trade or an industrial business/buildings and other physical equipment of an institution. In the case of Commissioner of Income Tax, Andhra Pradesh v. Taj Mahal Hotel, Secunderabad, reported in [(1971) 82 ITR 44(SC)], the Hon'ble Supreme Court has deliberated on the ambit of the word 'plant' and observed that in popular sense, the ambit of the word 'plant' is very wide. In the case of SV Electricals v. CCE, Bhopal reported in 2003 (155) ELT 534, the Tribunal has observed that 'plant is an all-embracing term expressive of land, buildings and the equipment of the business conducted on the premises. In view of the above, the word 'plant' used in the entry would subsume all such other devices that are used in Waste to energy conversion plants. They further submitted that the benefit of this entry is on the entire waste to energy plant.*

- (xiv) They also draw attention to other advance rulings pertaining to 'waste to energy plants/devices which gives the benefit to devices used in Waste to Energy Plants. Advance Ruling pronounced for M/s Mukund Ltd., reported at 2018 (18) GSTL 327 (A.AR.-GST), the question for consideration was 'whether the Electric Overhead Travelling Grab Crane to be supplied by the applicant to the buyer for use in the waste to energy project is covered under Sl. No. 234 of Schedule I of Notification No.1/2017 dated 28-06-2018-IGST (Rate) as 'Renewable energy devices and parts for the manufacture of waste to energy plants/devices' attracting 5% levy. The Ld. Authority held that EOT Grab Cranes are integral part of the Waste to Energy Plants project for manufacturing and generation of end product of electricity and, hence, cranes were indeed a Part of waste to energy plants. In Advance Ruling pronounced for M/s. Enexio Power Cooling Solutions India Pvt. Ltd. reported in 2018(19) GSTL 135 (A.A.R.-GST), the question for consideration before the Authority was 'whether the Air-Cooled Condenser (ACC) to be supplied by the applicant to the buyer for use in the waste to energy project is classifiable as 'part for the manufacture of waste to energy plants/ devices' attracting 5% IGST or 2.5% CGST and 2.5% APGST. The Ld. Authority has held that ACC being an integral part of waste to energy plants are covered under the Entry No.234 of Schedule I of Notification No.1/2017-C.T. (Rate), dated 28-06-2017.
- (xv) In view of the above rulings, they submitted that they are also eligible to the concessional rate of total GST of 5% and not granting of the benefit of 5% in the instant case would result in discrimination of this applicant against other assessees who have received the benefit of Entry 234 for parts/devices used in Waste to Energy manufacturing plants. They further relied upon case of Damodar J. Malpani v. Collector of Customs, Bombay reported in 2000 (115) E.L.T. 42(S.C.), wherein the Hon'ble SC has held that not granting benefit or exemption to similarly placed assesses would amount to discrimination.
- (xvi) In view of the above facts, this application is of the bonafide belief that such Waste to Energy Plant/Device viz. Agro Waste Thermic Fluid Heater or Biomass Fired Boilers to be supplied by the applicant would attract total GST of 5% [CGST 2.5% + SGST 2.5% or IGST at 5%] as such goods are covered by Sl. No.234 of Notification No.1/2017-CT (Rate) and as the said goods are falling under Chapter 84 of the First Schedule to the Customs Tariff Act, 1975.

(xvii) Considering the above stated submissions, they prayed to issue a ruling to the effect that Agro Waste Thermic Fluid Heater or Biomass Fired Boilers that generate renewable energy by using agro waste or biomass is classifiable under Tariff item 8402 19 90 of the First Schedule to the Customs Tariff Act, 1975 and the said Boilers and parts thereof would attract total GST of 5% [CGST 2.5% + SGST 2.5% or IGST at 5%] as such goods are covered by Entry at Sl. No.234 of Schedule I to Notification No.1/2017-CT (Rate) dated 28.06.2017 and corresponding notifications issued under State GST Law and under IGST Act.

DISCUSSION & FINDINGS:

11. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

11.1 At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 GGST Act.

12. In the instant case, the applicant seeks advance ruling in the matter of classification and rate of GST applicable on the parts (viz. Thermic Fluid Heater or Boiler) being supplied for setting up Waste to Energy Plant.

13. The applicant has submitted that the Agro Waste Thermic Fluid Heater is renewable energy device & parts thereof as it generates energy from waste namely, biomass. Such heaters or boilers are high efficiency Biomass Fired Boilers using waste material for generation of energy.

14. The applicant seeks the HSN classification code for the above explained parts (viz. Thermic Fluid Heater or Boiler) of "Waste to Energy Plant". As per the functioning/working of the impugned product, it is an energy generation device, which merits classification in Chapter heading 8402 of the First Schedule to the Customs Act, 1975, which is reproduced below:

"8402 STEAM OR OTHER VAPOUR GENERATING BOILERS (OTHER THAN CENTRAL HEATING HOT WATER BOILERS CAPABLE ALSO OF PRODUCING LOW PRESSURE STEAM); SUPER-HEATED WATER BOILERS

- Steam or other vapour generating boilers:

8402 11 00 – Watertube boilers with a steam production exceeding 45t per hour

8402 12 00 -- Water tube boilers with a steam production not exceeding 45t per hour
8402 19 -- Other vapour generating boilers, including hybrid boilers:
8402 19 10 --- Fire tube horizontal (lancashire) boilers
8402 19 20 --- Fire tube boilers vertical
8402 19 90 --- Other
8402 20 00 - Super-heated water boilers
8402 90 - Parts:
8402 90 10 --- Parts of fire tube boilers
8402 90 20 --- Parts of watertube boilers
8402 90 90 --- Other”

Thus, the impugned product is classifiable under heading 8402 19 19 of the First Schedule to the Customs Tariff Act, 1975, being a Thermic Fluid Heater or Boiler.

15. The Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, as amended is relevant to the matter. This Notification has six Schedules wherein the listed goods attract the rate of CGST applicable to the respective Schedules. Schedule I comprises of goods which are chargeable to CGST @ 2.5%. Serial No. 234 covers the listed renewable energy devices and parts for their manufacture and these items attract 2.5% CGST. One of the items in the list is ‘Waste to energy plants/devices’, which reads as under:

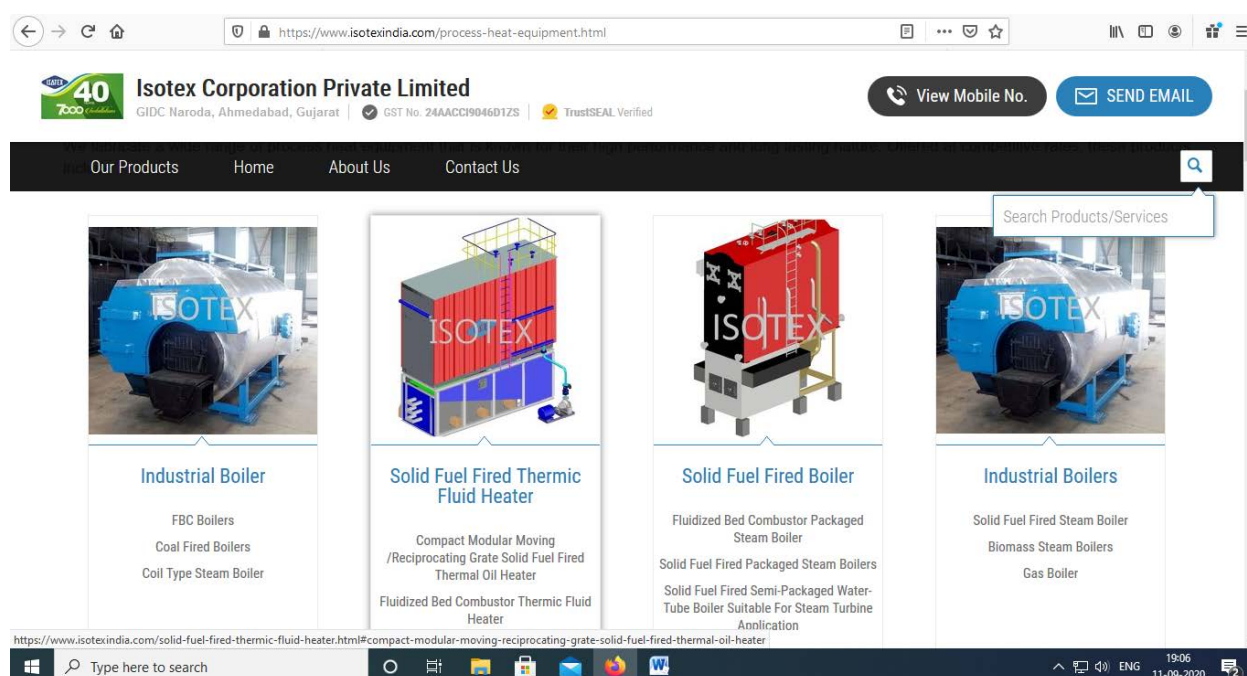
SCHEDULE I-2.5%

S. No.	Chapter/Heading/ Subheading/ Tariff item	Description of goods
234.	84 or 85	Following renewable energy devices & parts for their manufacture: (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants /devices (f) Solar lantern/solar lamp (g) Ocean waves/tidal waves energy devices/plants.

16. The vital condition for applicability of Sr. No. 234 of Notification No. 1/2017- Central Tax (Rate) is that the devices or parts thereof should be those listed in column 3 thereto. The applicant has claimed their device as ‘Waste to Energy Plant/ Device’. The inescapable inference that can be drawn from the entry is that the energy should be inevitably created from waste. In other words the fuel used for obtaining energy should inevitably be ‘waste’. The product has been presented by the applicant as ‘Thermic Fluid Heater’ in their written submission and during the course of personal hearing a brochure was submitted wherein the product has been categorised as ‘Biomass Fired Boiler’. The applicant has not clearly specified the functionality of the product and it becomes very difficult to classify the product merely going by the generic

interpretation of the name allotted to the product. The product Thermic Fluid Heater/ Boiler gets classified under Chapter 8402 19 90 in terms of the description of the goods as listed under the respective head of the First Schedule to the Customs Tariff. However, the applicability of Sr. No. 234 of Notification No. 1/2017- Central Tax (Rate) essentially depends on the nature of fuel used for such energy device.

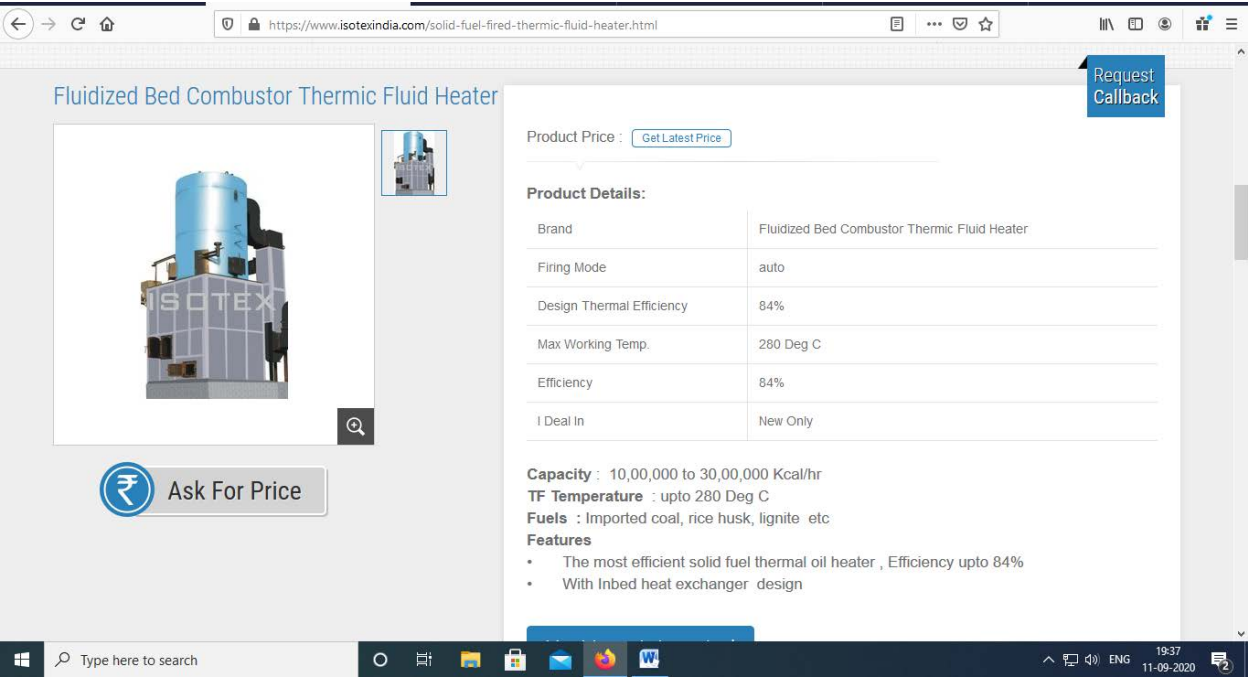
16.1 For the purpose of ascertaining the type of fuel used for the said device, we have referred to the official website of the applicant wherein the products manufactured by them are portrayed. They have mainly categorised their product in four classes viz. Industrial Boiler, Solid Fuel Fired Thermic Fluid Heater, Solid Fuel Fired Boiler and Industrial Boilers which is evident from the following screen-shot of the relevant page:



16.2 Under the category of Solid Fuel Fired Thermic Fluid Heater, the following products have been listed:

- Compact Modular Moving/ Reciprocating Grate Solid Fuel Fired Thermal Oil Heater
- Fluidized Bed Combustor Thermic Fluid Heater
- Compact moving grate type Solid Fuel Fired Thermal Oil Heater

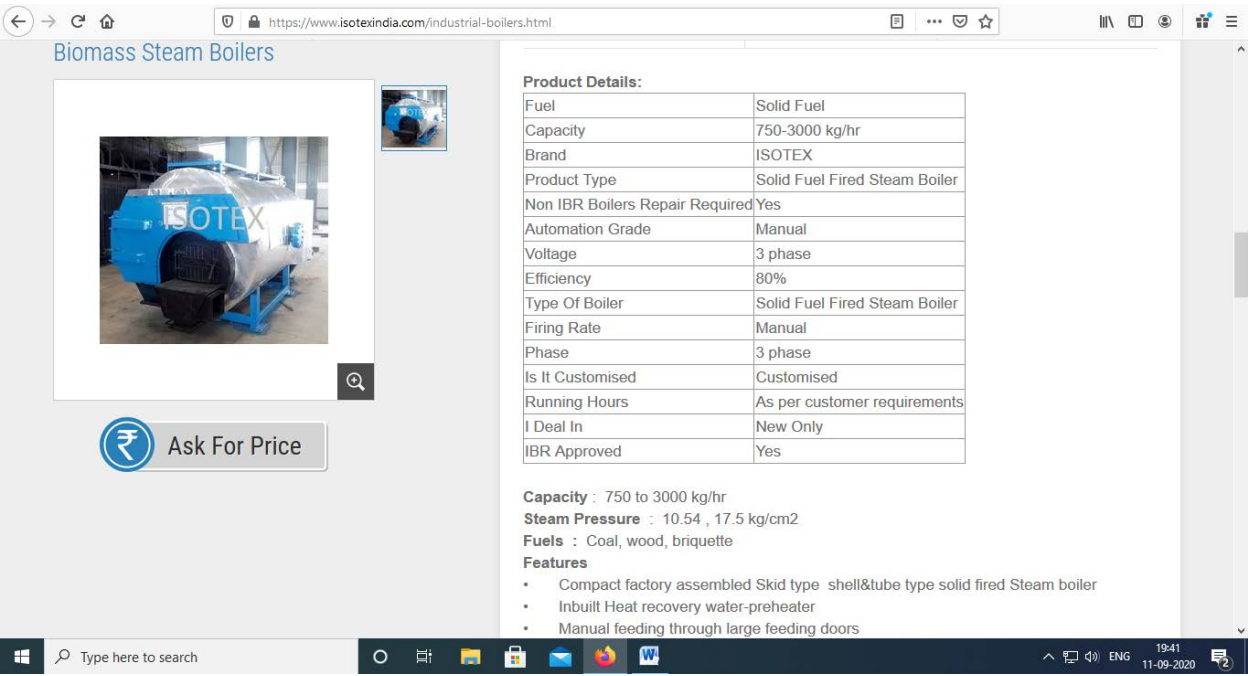
The nearest product that matches the description to the product under consideration is 'Fluidized Bed Combustor Thermic Fluid Heater'. The fuel used for generating heat from the said product has been specified as Imported coal, rice husk, lignite, etc. as evident from the image produced below:



16.3 Likewise, under the category of Industrial Boiler, the following products have been listed:

- Solid Fired Steam Boiler
- Biomass Steam Boilers
- Gas Boiler

The nearest match, as per the brochure submitted during the course of personal hearing, is Biomass Steam Boiler. The fuel used for generating heat from the said product has been specified as Coal, wood, briquette, etc. as evident from the image produced under:



16.4 Thus, it is seen that the products matching the description of the product under consideration use fuel such as Imported coal, rice husk, lignite, Coal, wood and briquette. None of these are non-conventional but are purely

conventional fuels used for generation of heat or steam. As discussed above, the crucial factor is that the heat or steam should have been generated by use of a waste/ non-conventional element so as to qualify under the head '**Waste to energy plants /devices**'. However, the technical specifications available on the website of the applicant do not indicate that their product is generating energy from waste. Rather the literature indicates that the energy is generated by use of conventional elements as listed above.

16.5 In the instant case, we find that the applicant has presented partial facts and deliberately chosen to remain silent on the vital aspect regarding the fuel used in their energy devices/ plants. This situation is akin to naming one's pet cat as 'Tiger' and asking someone the classification of the pet by referring to its name rather than the technical characteristics. Such analysis by merely referring to a name would lead to wrong conclusions. To avoid such erroneous conclusions, we have no option but to refer to the technical specifications of the products of the applicant as available on their official website. Reference to such technical specifications leads to the inescapable inference that the fuel used for generation of energy is not 'waste' but conventional energy generating elements. Resultantly, we find that the rates as specified at Sr. No. 234 of Notification No. 1/2017-Central Tax (Rate) will not be applicable to the product under consideration.

17. Coming to the applicable rate of tax, it is to mention that the said product attracts rate of tax of 9% CGST + 9% SGST as applicable under Sr. No. 310 under Schedule III of Notification No. 1/2017-Central Tax (Rate) read with the corresponding notification under the Gujarat GST Act in case of Intra-State supply. Likewise, the applicable rate of tax will be 18% IGST under Sr. No. 310 under Schedule III of Notification No.1/2017- Integrated Tax (Rate) in case of Inter-State supply.

18. The case laws of M/s Boldrocchi India Pvt. Ltd. [2019 (22) G.S.T.L. 135 (A.A.R.-GST)], M/s Triveni Turbine Ltd. [2019 (23) G.S.T.L.549 (App. A.A.R.-GST)], M/s Mukund Ltd., reported at 2018 (18) GSTL 327 (A.A.R.-GST) and M/s. Enexio Power Cooling Solutions India Pvt. Ltd., reported in 2018(19) GSTL 135 (A.A.R.-GST) relied upon by the applicant are not applicable to the facts of the present case in as much as the claim of the applicant to the effect that the product is a 'Waste to Energy Plant/ Device' gets nipped in the bud as discussed hereinabove.

19. Further, it is to mention that the applicant has referred to **CBEC (TRU) Circular No.80/54/2018-GST issued from F. No. 354/432/2018-TRU dated 31st December, 2018**, clarifying GST rates & classification in respect of

various goods. Vide para 11, clarification has been issued regarding applicable GST rate on the goods used in the setting up of Waste to Energy plants (WTEP) in term of Sr. No. 234 of Schedule I of Notification No.1/2017-Central Tax (Rates) dated 28th June, 2017, extracted as below:

“11. Applicability of GST on supply of Waste to Energy Plant:

11.1. Representations have been received regarding applicable GST rate on the goods used in the setting up of Waste to Energy plants (WTEP) in term of Sr. No. 234 of Schedule I of Notification No 1/2017-Central Tax (Rates) dated 28th June, 2018. The said entry 234 prescribes 5% rate on the following renewable energy devices & parts for their manufacture:

- (a) Bio-gas plant*
- (b) Solar power based devices*
- (c) Solar power generating system*
- (d) Wind mills, Wind Operated Electricity Generator (WOEG)*
- (e) Waste to energy plants / devices*
- (f) Solar lantern / solar lamp*
- (g) Ocean waves/tidal waves energy devices/plant*
- (h) Photo voltaic cells, whether or not assembled in modules or made up into panels*

11.2 The notification specifically applies only the goods falling under chapters 84, 85 and 94 of the Tariff. Therefore, this concession would be available only to such machinery, equipment etc., which fall under Chapter 84, 85 and 94 and used in the initial setting up of renewable energy plants and devices including WTEP. This entry does not cover goods falling under other chapters, say a transport vehicle falling under Chapter 87 that may be used for movement of waste to WTEP.

11.3 Another related doubt raised is as to how would a supplier satisfy himself that goods falling under Chapter 84, 85 and 94, say a turbine or a boiler, required in a WTEP, would be used in the WTEP. In this context, it is clarified that GST is to be self-assessed by a taxpayer. Therefore, he needs to satisfy himself with the requisite document from a buyer such as supply contracts/order for WTEP from the concerned authorities before supplying goods claiming concession under said entry 234.”

In this regard, firstly it is to mention that the said clarification will not apply to the facts of the present case in as much as the heat generating devices of the applicant are conventional devices and do not fall under the category of

‘Waste to Energy Plant/Devices’. Secondly, the concession would be available only if used in the initial setting up of renewable energy plants and devices including WTEP. Though, the applicant has claimed the benefit of Sr. No.234 of Notification No.1/2017-Central Tax (Rate), they have not produced any documentary evidence such as supply contracts/order for WTEP from the concerned authorities to show that said Agro Waste Thermic Fluid Heater or Boiler is supplied for use in the initial setting up of renewable energy plants and devices including “waste to energy plants/devices”. Thus, it is seen that the applicant has chosen to omit the vital facts regarding the nature of fuel used for generation of energy and whether the said device is used for initial set-up of renewable energy plants. By providing such partial information, they have sought to claim a decision in their favour.

20. In light of the above discussions, we rule as under –

R U L I N G

Question: What is the classification and rate of tax payable in respect of Agro Waste Thermic Fluid Heater or Boiler and parts thereof considering the applicability of Sl. No. 234 of Schedule I to Notification No.1/2017-Central Tax (Rate), dated 28.06.2017 and corresponding notifications issued under State GST law and IGST Act?

Answer: The Agro Waste Thermic Fluid Heaters or Boilers are classifiable under heading 8402 19 19 of the First Schedule to the Customs Tariff Act, 1975 and attract 9% CGST + 9% SGST in terms of Sr. No. 310 of Schedule III of Notification No. 1/2017-Central Tax (Rate) & the corresponding Notification issued under GGST Act, 2017 OR 18% IGST in terms of Sr. No. 310 of Schedule III of Notification No.1/2017- Integrated Tax (Rate), as applicable.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 17.09.2020.