

GST : Bio Fertilizer or Organic Manure other than those put up in Unit Container and bearing a brand name, will be covered under Schedule I of rate of GST on goods and attracts NIL rate of duty & Bio Fertilizer or Organic Manure put up in Unit Container and bearing a brand name, will be taxable under GST at rate of 5 per cent

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**[2018] 95 taxmann.com 119 (AAR- RAJASTHAN)
AUTHORITY FOR ADVANCE RULINGS, RAJASTHAN**

Rhizo Organic, *In re*

NITIN WAPA AND SUDHIR SHARMA, MEMBER
ADVANCE RULING NO. RAJ/AAR/2018-19/04
JUNE 16, 2018

B.S. Yadav *for the Applicant.*

RULING

SUBMISSION OF THE APPLICANT

1. M/s RHIZO Organic, E-1 1, Phase-IIInd, RIICO, Hanumangarh Jn. (hereinafter referred to as 'Applicant') engaged in the manufacturing of Bio-Fertilizers, submitted an application, seeking an Advance Ruling that Whether the Bio Fertilizer covered under the definition of Organic Manure (HSN code 3101) and What is the rate of GST applicable on Bio Fertilizer if it is not covered under Organic Manure (HSN Code: 3101)

2. The applicant has submitted a copy of The Fertilizer (Control) Order 1985, Ministry of Agriculture and Rural development regarding definition of Biofertilizer as,

"Biofertiliser means the product containing carrier based (solid or liquid) living microorganisms which are agriculturally useful in terms of nitrogen fixation, phosphorus solubilisation or nutrient mobilization, to increase the productivity of the soil and/or crop"

The applicant has also submitted specifications of Bio-Fertilizers.

3. Applicant's Questions(s) on which Advance Ruling is required

In order to seek advance ruling that, whether

(i) Whether goods (Bio Fertilizer or Organic Manure) are Exempt from GST or Not ?

Personal Hearing (PH)

4.1. In the matter personal hearing was given to the applicant, Shri B.S.Yadev, Managing Director, who appeared as representative of applicant for personal hearing on 15.06.2018. During the PH he reiterated the submission already made in the application for Advance Ruling. He requested that the case may be decided as per the submission made earlier in Advance Ruling Application.

4.2 The jurisdictional officer in his/her comments has stated that Bio Fertilizers are not covered under the definition of Organic Fertilizers . Organic fertilizers means substance made up of one or more unprocessed materials of biological nature (plant/animal) and may include unprocessed minerals materials that have been altered through micro biological decomposition process. While Bio fertilizers

means the product containing carrier based (solid or liquid) living microorganisms which are agriculturally useful in terms of nitrogen fixation, phosphorus solubilisation or nutrient mobilization, to increase the productivity of the soil and/or crop. Further he as stated that bio fertilizers are not exempted from GST if put in unit containers bearing registered brand name and fall under Tariff Item 3101 and are chargeable at 2.5% CGST+ 2.5% SGST total GST of 5% .

Issues to be decided:

5. The issue involved in this case is that, Whether the Bio Fertilizer covered under the definition of Organic Manure (HSN code 3101) and What is the rate of GST applicable on Bio Fertilizer if it is not covered under Organic Manure (HSN Code: 3101)

Findings and analysis:

6.1 Bio fertilizer is a substance which contains living micro organisms which, when applied to the seed, plant surfaces or soil colonizes the rhizosphere or the interior of the plant and promotes growth by increasing the supply or availability of primary nutrients to the host plant. Bio-fertilizers add nutrients through the natural processes of nitrogen fixation, solubilizing phosphorus, and stimulating plant growth through the synthesis of growth-promoting substances.

Major types and source of Biofertilizers are :-

- a. Rhizobium is a bacterium living in the root of leguminous plants in symbiotic association. The root cells of leguminous plant contain a purple coloured pigment called leghemoglobin in which the bacteria float to fix atmospheric nitrogen.
- b. Azospirillum lipoferum is another bacterium which lives in loose association with some grasses, rice, maize and rice.
- c. Azotobacter, Clostridium, Aerobacter, Methanobacterium are free living bacteria which fix atmospheric nitrogen.
- d. The leaves of Azolla (an aquatic pteridophyte) have large number of plants of Anabaena (a blue green algae) which have the capacity to fix atmospheric nitrogen which is made available to Azolla.
- e. Many free living blue-green algae (Anabaena, Nostoc, Aulosira) fix atmospheric nitrogen. Nostoc is placed in the rice crop and provides nitrogen to rice.
- f. Mycorrhiza : It is the symbiotic relationship between roots of higher plants and fungi.

6.2 As regard the classification of Bio-Fertilizers within the HSN Code 3101 as described in the Schedule I and Schedule II of GST?

- (A) Entry at HSN Code 3101 in the Schedule I of rate of GST on Goods, comprising of 'List of Goods at NIL Rate' states as below:-
"All goods and organic manure other than those put up in unit container and,-(a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily, subject to the conditions as in the ANNEXURE I] "
- (B) Entry at HSN Code 3101 in the Schedule IV of rate of GST on Goods,

comprising of 'List of Goods at 5% Rate' states as below:-

"All goods i.e. animal or vegetable fertilizers or organic fertilizers put up in unit containers and bearing a brand name"

(C) The standard description of the HSN Code 3101 is as below:-

"Animal or vegetable fertilisers, whether or not mixed together or chemically treated; fertilisers produced by the mixing or chemical treatment of animal or vegetable products "

(D) Bio-Fertilizers are made of animals (micro-organisms) and hence covered within the standard description of the HSN Code 3101.

6.3 .Fertilisers — Dhanzyme — Classifiable under Excise sub-heading 3101.00

The Supreme Court Bench comprising Hon'ble Mr. Justice N. Santosh Hegde and Hon'ble Mr. Justice Bisheshwar Prasad Singh on 12-8-2002 **dismissed on merits** the Civil Appeal Nos. 4970-72 of 2002 filed by Commissioner of Central Excise against the CEGAT order Nos. 74-81/2001-C, dated 31-5-2001 and reported in **2001 (131) E.L.T. 355 (Tri.) (Northern Minerals Ltd. v. Commissioner)**. While dismissing the Civil Appeal the Supreme Court passed the following order :-

The Appellate Tribunal in its order, in question had held that "Dhanzyme" **is a bio-fertiliser being a plant growth promoter only, thus classifiable under sub-heading 3101.00 of Central Excise Tariff Act, 1985** and chargeable to nil rate of duty and not classifiable under sub-heading 3808.20 *ibid* as plant growth regulator.

7. Therefore the Bio-Fertilizers, other than those put up in Unit Container and bearing a brand name will covered under Schedule I of rate of GST on Goods and would attracts NIL rate of duty and if the Bio-Fertiliser is put up in Unit Container and bears a brand name, it would be taxable under GST (g> 5%.

8. In view of the foregoing, we rule as under,

RULING

The goods (Bio Fertilizer or Organic Manure); other than those put up in Unit Container and bearing a brand name; will be covered under Schedule I of rate of GST on Goods and attracts NIL rate of duty & The goods (Bio Fertilizer or Organic Manure); put up in Unit Container and bearing a brand name, will be taxable under GST @ 5%.

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