

**THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX**  
**(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)**

**ORDER NO. MAH/AAAR/SS-RJ/08/2019-20**

**Date- 07.10.2019**

**BEFORE THE BENCH OF**

**(1) Smt. Sungita Sharma, MEMBER**

**(2) Shri Rajiv Jalota, MEMBER**

GSTIN Number	27AABCS9352H1Z4
Legal Name of Appellant	SAFSET AGENCIES PVT LTD.
Registered Address	FGP Centre, Commercial Union House, 3 <sup>rd</sup> Floor, 9, Wallace Street, Fort, Mumbai, Maharashtra-400001
Details of appeal	Appeal No. MAH/GST-AAAR-08/2019-20 dated 09.07.2019 against Advance Ruling No. GST-ARA-86/2018-19/B-7 dated 15.01.2019
Jurisdictional Officer	Dy. Commr. of SGST, (E-626), LTU-I, Mumbai

**PROCEEDINGS**

**(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

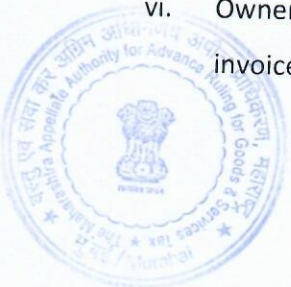
At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions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

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Safset Agencies Pvt Ltd. (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-86/2018-19/B-7 dated 15.01.2019.



### BRIEF FACTS OF THE CASE

1. This Appeal is being filed by Safset Agencies Private Limited (Astaguru.com) against ruling no. GST-ARA-86/2018-19/B-7 dated 15.01.2019 pronounced by Maharashtra Authority for Advance Ruling ("AAR"). The said order was served to appellant on 14.06.2019 through email.
2. Applicant, having Good and Service Tax ("GST") Registration No. 27 AABCS9352H 1Z4.
3. Appellant is a dealer dealing in various goods such as paintings, vintage collectibles, sculptures, classic miniatures paintings, fine writing instruments, vintage timepieces, celebrity memorabilia, aristocratic jewellery and vintage cars.
4. Appellant usually procures the abovementioned goods on approval basis from unregistered as well as registered persons ("sellers"). Appellant displays all such goods on its website and conducts the auction sale in respect of such goods. The goods are sold to the highest bidder in the auction.
5. The standard business process of Appellant is as under:
  - i. Intending seller and Appellant sign an 'on approval contract' wherein intending seller agrees to sell his goods to the appellant on approval basis at mutually agreed price.
  - ii. On receipt of goods on approval and being satisfied with quality and authenticity of the goods, Appellant uploads the details of goods for on line auction.
  - iii. The goods remain in the possession of Appellant during the mutually agreed period of approval. Appellant has right to retain or return the goods during the approval period. Either approval is granted by Appellant within 6 months from the date on which it receives the said goods and purchases the same at mutually agreed price or returns the said goods to the intending seller.
  - iv. After conveying the approval and confirming purchase of goods, Appellant sells the goods to buyer (highest bidder) in auction.
- V. Appellant issues the sales invoice to the buyers.
- vi. Ownership of auctioned goods is transferred from Appellant to buyer on issuance of invoice by Appellant.





6. The appellant deals in painting, old jewelry, cars, watches, memorabilia/collectibles and antiques. Appellant is predominantly a dealer in personal effects (second hand or used goods) procured or bought from users or collectors.
7. There are different practices prevailing in the trade as to classification, valuation and applicable GST rates on goods dealt in by the appellant.

Appellant had filed an application before the AAR seeking a ruling on classification, valuation and applicable GST rates on goods dealt by the Appellant. The purpose of appellant going for advance ruling was to have absolute clarity as to its tax obligation.

Appellant sought advance ruling in respect of determination of classification, valuation and GST rates applicable to various goods dealt with by it.

8. AAR admitted the appellant's application in preliminary hearing held on 28.11.2018.
9. AAR passed order no. GST-ARA-86/2018-19/B-7 on 15.01.2019 specifying the classification, valuation and applicable GST rates on goods dealt by the Appellant.
10. The gist of points on which advance ruling was sought by the Appellant and the ruling thereon given by Honorable AAR is as under:

Sr. No.	Description of Goods	Advance Ruling Sought by the Appellant on	Ruling by AAR
1.	Paintings bought from individual art collectors	HSN code	9701
		Applicable Rates	12%
		Whether Appellant can discharge the tax liability on difference between sales and purchase price considering painting as second	Rule 32(5) is not applicable. Appellant to pay tax at 12% on the sale value of the paintings.



		hand goods following Rule 32(5) of the CGST Rules, 2017.	
2.	Old cars	HSN code	8703
		Applicable Rates	18% provided conditions mentioned in Notification No. 8/2018 - CT(R) dated 25.01.2018 are complied with
		Whether Appellant can discharge the tax liability on difference between sales and purchase price considering old cars as second hand goods following Rule 32(5) of the CGST Rules, 2017.	Rule 32(5) is applicable subject to the conditions of the Notification No. 8/2018 dated 25.01.2018 are complied with.
3.	Old jewellery	HSN code	7113
		Applicable Rates	As applicable to the above HSN Code
		Whether Appellant can discharge the tax liability on	Rule 32(5) of the CGST Rules,





		difference between sales and purchase price considering old jewellery as second hand goods following Rule 32(5) of the CGST Rules, 2017.	2017 is applicable
4.	Antique Jewellery	HSN code	9706 00 00
		Applicable Rates	12%
		Whether Appellant can discharge the tax liability on difference between sales and purchase price considering old jewellery as second hand goods following Rule 32(5) of the CGST Rules, 2017.	Rule 32(5) is not applicable. Appellant to pay tax at 12% on the sale value of the Antique Jewellery.
5.	Old Watches	HSN code	9101, 9102
		Applicable Rates	18%
		Whether Appellant can discharge the tax liability on difference between sales and purchase price	Rule 32(5) of the CGST Rules, 2017 is applicable. Tax will be paid on difference



		considering old watches as second hand goods following Rule 32(5) of the CGST Rules, 2017.	between the sale price and purchase price.
6.	Antique Watches	HSN code	9706 00 00
		Applicable Rates	12%
		Whether Appellant can discharge the tax liability on difference between sales and purchase price considering Antique Watches as second hand goods following Rule 32(5) of the CGST Rules, 2017.	Rule 32(5) is not applicable. Appellant to pay tax at 12% on the sale value of the Antique Watches.
7.	Collectibles and HSN Code	HSN code	In absence of specific details of goods covered under this, AAR did not answer to the question posed to them.
		Applicable Rates	
		Whether Appellant can discharge the tax liability on difference between sales and purchase price considering Collectibles and HSN Code as	





		second hand goods following Rule 32(5) of the CGST Rules, 2017.	
8.	Collectible Books	HSN code	If it is in the form of printed books, newspapers, pictures, etc., it will fall under various sub-headings of chapter 49 of GST Act. In absence of various details AAR did not answer to the query posed to them.
		Applicable Rates	
		Whether Appellant can discharge the tax liability on difference between sales and purchase price considering Collectible Books as second hand goods following Rule 32(5) of the CGST Rules, 2017.	
9.	Antique Books	HSN code	Antique Books under 100 years is dealt with by AAR will be classified under appropriate heads. In absence of specific details and description, AAR did not answer the query posed to them.
		Applicable Rates	
		Whether Appellant can discharge the tax liability on difference between sales and purchase price considering Antique Books as second hand goods following Rule	



		32(5) of the CGST Rules, 2017.	
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11. Apart from buying paintings from individual art collectors, Appellant also procures paintings from other art dealers and directly from painters. Appellant has sought advance ruling on such items.

Appellant also purchases paintings, collectibles, and antiques from other art dealers. Appellant pays full tax on sale value of such paintings, collectibles and antiques. Appellant neither sought advance ruling on such goods nor it is a subject matter of order of AAR.

12. Appellant sincerely thank Hon'ble AAR for very considered decision on certain issues relating to following goods.

Ref. No. of the table given at point no. 10	Description of goods	Remarks
2.	Old cars	Appellant accepts ruling of AAR on this point in toto i.e. HSN Code, Classification, Applicable Tax Rate, Valuation and Applicability of Notification No 8/2018-CT(R) dated 25.01.2018
3.	Old Jewellery	Appellant accepts ruling of AAR on this point in toto i.e. HSN Code, Classification, Applicable Tax Rate, and applicability of Rule 32(5) of the CGST Rules.





5.	Old Watches	Appellant accepts ruling of AAR on this point in toto i.e. HSN Code, Classification, Applicable Tax Rate, and applicability of Rule 32(5) of the CGST Rules.
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13. Appellant further partially accepts the verdict of Hon'ble AAR on following goods:

Ref. No. of the table given at point no. 10	Description of goods	Remarks
1.	Paintings bought from individual art collectors	Appellant accepts ruling of AAR on this point as to HSN Code, Classification, Applicable Tax Rate. However, Appellant respectfully disagrees with AAR ruling that Rule 32(5) is not applicable and Appellant is obliged to pay tax at 12% of sale value of such paintings. Appellant wish to contest that Rule 32(5) of CGST Rules, 2017 is applicable to sale of such paintings and Appellant is liable to discharge tax on difference between the



		sales price and purchase price.
4 and 6	Antique Watches and Antique Jewellery purchase from individual collectors and users	<p>Appellant accepts ruling of AAR on this point as to HSN Code, Classification, Applicable Tax Rate.</p> <p>However, Appellant respectfully disagrees with AAR ruling that Rule 32(5) is not applicable and Appellant is obliged to pay tax at 12% of sale value of such goods.</p> <p>Appellant wish to contest that Rule 32(5) of CGST Rules, 2017 is applicable to sale of such goods and Appellant is liable to discharge tax on difference between the sales price and purchase price.</p>
7 and 8	Collectibles (including books) purchased from individual collectors and users	<p>Hon'ble AAR did not answer the question raised.</p> <p>Appellant does not wish to contend on points as to HSN Code, Classification and Applicable Tax Rate.</p>





		However, the Appellant would like to contest further in respect of applicability of Rule 32(5) of the CGST Rules, 2017.
9	Antiques Books purchased from individual collectors and users.	Appellant accepts ruling of AAR on this point as to HSN Code, Classification, Applicable Tax Rate. However, Appellant respectfully disagrees with AAR ruling that Rule 32(5) is not applicable and Appellant is obliged to pay tax at 12% of sale value of such books. Appellant wish to contest that Rule 32(5) of CGST Rules, 2017 is applicable to sale of such books and Appellant is liable to discharge tax on difference between the sales price and purchase price.



Being aggrieved by unfavorable portion (as stated in remark column of above table) of ruling of Hon'ble AAR, Appellant is approaching Appellate Authority for Advance Ruling ("AAAR") for final clarity on all these issues.

**GROUND OF APPEAL**

14. On the facts of the case and in law, Advance Ruling Authority has erred in holding that Rule 32(5) of CGST Rules, 2017 does not apply to sale of paintings, antique jewellery, antique watches, collectibles, other antiques bought from individual collectors and users and full sale value of such goods is liable to tax.

**Detailed submissions:**

15. Rule 32(5) of Central Goods and Service Tax Rules, 2017 ("CGST Rules") deals with determination of value of second hand goods. The relevant extract of Rule 32(5) of CGST Rules is as under:

"Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e. used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored."

16. The term "second hand goods" for Rule 32(5) of CGST Rules would mean used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on purchase of such goods.
17. Paintings, antique jewelry, antique watches and collectibles are used goods. It is coming for sale after being used by the seller or the earlier owners of such goods. Appellant does not perform any process on such goods which changes the nature of such goods.
18. Appellant is not claiming any input tax credit when such goods are procured from individual collectors or users, as such sellers are not registered suppliers.
19. In light of above discussion, Appellant humbly submits that the goods for which this appeal is filed are "second hand goods" as defined under Rule 32(5) of CGST Rules.





Hence, the value of such goods should be difference between the sale price and the purchase price. The tax is chargeable at applicable rate on such difference only and not on sale value/transaction value of such goods.

20. Rule 32(5) of CGST Rules applies to the "second hand goods" or "used goods". The terms "second hand goods" and "used goods" are not defined in the CGST Act or CGST Rules. Even General Clauses Act does not defined these terms. Hence, one has to go by the dictionary meaning or common parlance meaning of the word "second hand goods" or "used goods".
21. The meaning of the terms "second hand goods" and "used goods" as per various dictionaries are as under:

**Second Hand Goods:**

- i. Second-hand things are not new and have been owned by someone else (Collins Dictionary)
- ii. having had a previous owner; not new (English Oxford Dictionary)
- iii. not new; having been used in the past by someone else {Cambridge English Dictionary}
- iv. acquired after being used by another {Merriam Webster}
- v. previously used or owned (Dictionary.com)

**Used Goods:**

- i. already owned or put to a purpose by someone else; not new (Cambridge Dictionary)
  - ii. that has endured use {Merriam Webster}
22. Usually market is divided into two main segments i.e. primary market and secondary market.

A primary market means market where goods comes for the first time at a retail shop or any other way for reaching ultimate consumers. This is the time when the price for the goods is established for the first time.



Once the goods are purchased from the primary market and when such purchaser (whether a collector or consumer) decides to sell it, such goods enters the secondary market as used goods or second hand goods.

23. Appellant is a player in the secondary market procuring second hand or used goods from the individual collector or users.
24. It seems that Hon'ble AAR perhaps felt that paintings are not "used goods" per se.

There is a subtle difference between the term "used" and "consumed".

Paintings are essentially a work of art made on a piece of paper or any other material. The person acquires paintings as his hobby or for social status. Individual collector or user usually displays the paintings at his home or office. It is a status symbol for the owner of painting. What is stated here, for paintings, applies to antiques, collectibles, memorabilia, etc. The main purpose and usage of such goods is to elevate the social status of the owner. There are fair chances that the individual selling these goods to the Appellant might have used the antique jewelry, watches, etc. on various occasions for personal use. Even if such goods are displayed, it is usage of such goods enhancing social status of such collector.

Just because not all above items can be consumed, one cannot say that it is not "used". Clothes are "used" whenever they are worn. Similarly, furniture is used though it has a long life. Similarly, when paintings, antiques and collectibles are displayed or acquired for status symbol, the same are said to be "used".

25. One of the condition in Rule 32(5) is that "no input tax credit should have been availed on the purchase of such second hand or used goods".

Usually the dealer in second hand goods or used goods purchases such goods (personal effects) mainly from individuals not registered under GST. Sellers of such goods (being not liable to GST) do not charge tax on goods sold by them to second hand goods dealer. In absence of any tax charged, the question of availing input tax credit by dealer (appellant in given case) does not arise. In such case, dealer has not taken any credit of tax and hence Rule 32(5) clearly and squarely applies on sale of such goods.





26. One may tend to take a view that Rule 32(5) applies only to sale of goods, which are purchased on payment of GST and where credit of such tax is not availed. This interpretation will make Rule 32(5) redundant in majority of transactions as such second hand or used goods are normally purchased from individuals not liable to tax as such goods are not sold by them in course of business.
27. The question may arise in which circumstances the phrase "where no input tax credit has been availed on the purchase of such goods" shall apply. The purpose of this phrase seems to prevent the dealer purchasing second hand goods or used goods from registered person on payment of GST and availing dual benefit of paying the tax on margin and claiming input tax credit simultaneously.

The GST is a value added tax and each person in the value addition chain is expected to pay tax on the value addition made by him in the transaction. The intention of promulgating Rule 32(5) is to ensure that a dealer operating in unorganized sector (buying second hand or used goods from unregistered persons or non-business entities) is not saddled with tax liability disproportionate to value addition done by him in transaction chain. In majority of the cases, the margin of such second hand goods dealer is less than the tax leviable on such goods under normal scheme of taxation and hence need for such provision.

If paintings and ancient jewellery are interpreted to not mean "used goods" then the whole purpose of the GST legislation will be defeated as the tax is sought to be charged on value addition and not on the price addition of such goods.

28. It is settled principle of interpretation that if a statutory provision is open to more than one interpretation, one has to choose that interpretation which represents the true intention of the legislature. A statute is to be construed according to the intent of them that make it and the duty of judicature is to act upon the true intent of the legislature i.e. mens or sentential legis (Salmond: "Jurisprudence" 11th Edition). This principle of interpretation has been enshrined in various judicial pronouncements including the following:

- Venkataswami Naidu, R vs Narasram Naraindas {AIR 1966 SC 361}





- District Mining Officer vs Tata Iron and Steel Co. (AIR 2001 SC 3134)
- Bhatia International vs Bulk Trading SA (AIR 2002 SC 1432)
- South Asia Industries (Pvt) Ltd vs Sarup Singh (AIR 1966 SC 346)
- Kartar Singh vs State of Punjab [ JT(1994) 2 SC 423]
- Narayanaswami vs. G. Panneersevlam (AIR 1972 SC 2284)

29. It appears that Hon'ble AAR have given undue weightage to the high value of paintings, antiques and collectibles sold by the Appellant. Rule 32(5) of CGST Rules, does not put any restriction or cap on value of goods. The Rule applies to any second hand or used goods irrespective of value of such goods.

30. The order of Hon'ble AAR does not give any specific or elaborate reasons for denying benefit of Rule 32(5) of CGST Rules to goods under consideration. AAR order, to this extent, is cryptic and non-speaking.

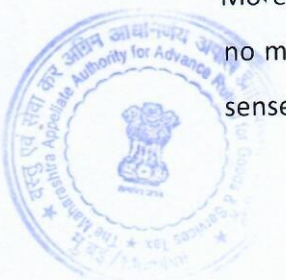
Hon'ble AAR has simply said in observations part of its order that value of antique goods, paintings, etc. increases with time and hence cannot be treated as "used goods" under Rule 32(5) of CGST Rules.

Simply because value of such goods increases with a passage of time, it cannot be said that it is not used goods. Classic example is that of flat in which one resides. The value of the flat increases with years passing by but one cannot say that flat is not used.

31. Moreover, there is no stipulation in the Rule that the goods whose value increases with the passage of time is not "used or second hand goods". It is a settled jurisprudence that tax authorities cannot read any word or phrase into the legal provisions.

32. Appellant humbly submits that it is settled jurisprudence principle that when the words of a statute are clear, plain or unambiguous i.e. they are reasonable susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences.

Moreover, if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense.





This rule of interpretation is followed in plethora of judgements. Few of such judgments are as under:

- i. Nelson Matis v/s Union of India (AIR 1992 SC 1981)
- ii. Gurudevanti VKSSS Maryadit V /s State of Maharashtra (AIR 2001 SC 1980)
- iii. Swedish Match AB v/s Securities and Exchange Board of India (AIR 2004 SC 4219)
- iv. Government of Andhra Pradesh V /s Road Rollers Owners Welfare Association [2004 (6) sec 210]

In given case, Hon'ble AAR is reading certain words and phrase not there in the statute. Such an attempt is legally not tenable as it is contrary to all rules of construction to read words into an Act.

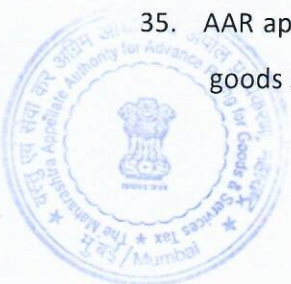
33. Rule 32(5) is presumptive scheme of valuation. Such presumptive schemes are promulgated for trade facilitation or for convenience of tax administration. Once such valuation scheme is on the statute book, it is mandatory for assessee as well as tax authorities to follow it in letter and spirit, irrespective of revenue considerations. Once the goods are second hand or used goods, Rule 32(5) is applicable irrespective of value of such goods and irrespective of nature of such goods.
34. Hon'ble AAR is perhaps under misconception that as the value of paintings, antiques, collectibles, memorabilia etc. increases with the passage of time. Hence, such goods are not second hand goods entitled to benefit of Rule 32(5) of CGST Rules.

Rule 32(5) of CGST Rules provides an option to a second hand goods dealer to pay tax on the margin of the selling price and purchase price if positive.

It is clear from above provision that the Government's intention is to levy tax only on those transactions wherein the selling price of goods exceeds the purchase price. This is possible only when the sale value of old goods increases with passage of time.

We strongly contend that the Hon'ble AAR has erred in concluding that Rule 32(5) is not applicable to those goods whose value increases with the passage of time.

35. AAR appears to be under misconceived notion that sale value of second hand or used goods should always diminish with passage of time. If one accepts this notion of AAR, it





will make entire Rule 32(5) virtually futile. If value of used or second hand goods diminishes with time then the government will never be able to collect tax under Rule 32(5) of the CGST Rules. The position taken by Hon'ble AAR is absolutely contrary to the legal provisions.

36. Appellant is an auctioneer dealer mainly deals in "old personal effects" such as jewellery, paintings, antiques, memorabilia, collectibles etc. Most of these are articles used by the seller of the goods or previous owners of such goods. Appellant buys above goods. It does not perform any process on such goods, which changes its nature. Appellant does not claim input tax credit of tax paid on procurement of such goods.

Rule 32(5) of CGST Rules clearly and unambiguously applies to person dealing in second hand goods. As stated in facts of case, Appellant is mainly dealing in old jewellery, paintings and antiques and hence same should apply to paintings, antiques, collectibles, memorabilia, etc. bought by Appellant from individual collectors or users.

In light of above submissions, Appellant humbly submits that valuation of supply of paintings, antique jewelry, antique watches, other antiques, collectibles, memorabilia, etc should be done in accordance with Rule 32(5) of CGST Rules.

#### **Respondent's Submissions**

37. The issues raised by the applicant have been decided by ARA vide order dated 15/01/2019. The dealer has filed appeal before AAA, Maharashtra. The main issue in appeal proceedings is **Whether Applicant is entitled to value following goods in accordance with Rule 32(5) of Central Goods and Service Tax Rules, 2017 or otherwise under different situation and for different commodities.** The submission is as under:

38. The appellant has partially accepted the verdict of AAR on following goods:

Ref. No.	Description of goods	Appellant contention in appeal proceedings.	AAR HELD THAT:





1	<p>Paintings bought from <b>individual art collectors</b></p>	<p>Appellant accepts ruling of AAR on this point as to HSN Code, Classification and Applicable Tax rate.</p> <p>However, Appellant respectfully disagrees with AAR ruling that Rule 32(5) of CGST Rules, 2017 is not applicable and Appellant is obliged to pay tax at 12% on sale value of such paintings.</p> <p><b>Appellant wish to contest that Rule 32(5) of CGST Rules, 2017 is applicable to sale of such paintings and Appellant is liable to discharge tax on difference between the sales price and purchase price.</b></p>	<p>The applicant has requested for valuation of paintings bought <b><u>from individual art collectors</u></b>. The Chapter 9701 of the GST Tariff, 2017 covers "Paintings, drawings and pastels, executed entirely by hand, other than drawings of heading 4906 and other than hand-painted or hand-decorated manufactured articles; collages and similar decorative plaques". If the said paintings as mentioned by the applicant answer the description of item mentioned in Heading 9701, then the goods will be covered under this Heading and will attract a rate of 12%. Paintings cannot be treated as used and therefore the applicant must pay GST of 12% on the sale value, if their goods answer the description of Heading 9701.</p>
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4 and 6	<b>Antique Watches and Antique Jewellery</b> purchased from individual collectors and users	Appellant accepts ruling of AAR on this point as to HSN Code, Classification and Applicable Tax rate.  However, Appellant respectfully disagrees with AAR ruling that Rule 32(5) of CGST Rules, 2017 is not applicable and Appellant is obliged to pay tax at 12% on sale value of such goods.  <b>Appellant wish to contest that Rule 32(5) of CGST Rules, 2017 is applicable to sale of such goods and Appellant is liable to discharge tax on difference between the sales price and purchase price.</b>	Antique jewellery of age exceeding 100 years - HELD THAT:- Tariff item 9706 00 00 covers 'Antiques of an age exceeding 100 years'. Antique jewellery of age exceeding 100 years will fall under this tariff item and will be liable to tax @ GST. The provisions of Rule 32(5) of CGST Rules will not be applicable to them in this case.  Antique watches of age exceeding 100 years - HELD THAT:- Tariff item 9706 00 00 covers 'Antiques of an age exceeding 100 years'. Antique watches of age exceeding 100 years will fall under this Tariff item and will be liable to tax @ 12% GST. The provisions of Rule 32(5) of CGST Rules will not be applicable to them in this case.
7 and 8	Collectibles (including books) purchased from individual	Hon'ble AAR did not answer the question raised.	The specific details and description of 'collectibles (books)' has not been mentioned by the applicant and in the absence of





	collectors and users.	Appellant does not wish to contend on points as to HSN Code, Classification and Applicable Tax Rate.  <b>However, Appellant would like to contest further in respect of applicability of Rule 32(5) of CGST Rules, 2017.</b>	specifics the question cannot be answered.
9	<b>Antique Books</b> purchased from individual collectors and users	Appellant accepts ruling of AAR on this point as to HSN Code, Classification and Applicable Tax rate.  However, Appellant respectfully disagrees with AAR ruling that Rule 32(5) of CGST Rules, 2017 is not applicable and Appellant is obliged to pay tax at 12% on sale value of such books.  <b>Appellant wish to contest that Rule 32(5) of CGST Rules, 2017 is applicable to sale of such books and Appellant is liable to discharge tax on difference between the</b>	Antique Books -Such articles will be covered under Tariff item 9706 00 00 only they are exceeding 100 years of age.  If the antique books are under 100 years of age then they will be classified under the appropriate heading of the GST Tariff. Antique books of less than 100 years of age, if it is in the form of printed books, newspapers, pictures, etc, will fall under the various sub headings of Chapter 49 of the GST Tariff as the case may be. Since the specific details and description of 'collectibles (books)' has not been mentioned by the applicant, in the absence of



		sales price and purchase price.	specifics the question cannot be answered.
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39. **Whether Applicant is entitled to value following goods in accordance with Rule 32(5) of Central Goods and Service Tax Rules, 2017** (hereinafter referred to as “CGST Rules”):

- a) Paintings bought from individual collectors and connoisseur
- b) Antique jewellery, watches and books
- c) Collectibles and Memorabilia

The Rule 32(5) of CGST Rules, 2017 reads as under:-

Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and **where no input tax credit has been availed on the purchase of such goods**, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored.

Paintings bought from individual collectors and connoisseur / Collectibles and Memorabilia:-

The applicant has requested for valuation of paintings bought **from individual art collectors**. The Chapter Headings 9701 of the GST Tariff, 2017 covers “Paintings, drawings and pastels, executed entirely by hand, other than drawings of heading 4906 and other than hand-painted or hand-decorated manufactured articles; collages and similar decorative plaques”. If the said paintings as mentioned by the applicant answer the description of item mentioned in Heading 9701, then the goods will be covered under this Heading and will attract a rate of 12%. The Paintings cannot be treated as used and therefore the applicant must pay GST of 12% on the sale value, if their goods answer the description of Heading 9701.

**The applicant cannot establish that** the paintings/ collectibles have been purchased by his vendor at some time and then used to treat it as second hand goods.

40. **The nature of schedule entry and rate of tax prescribed under GST ACT, 2017,**





**Schedule II – 6%**

S. No.	Chapter Heading / Subheading / Tariff item	Description of Goods
(1)	(2)	(3)
236.	9701	Paintings, drawings and pastels, executed entirely by hand, other than drawings of heading 4906 and other than hand-painted or hand-decorated manufactured articles; collages and similar decorative plaques.
237.	9702	Original engravings, prints and lithographs
238.	9703	Original sculptures and statuary, in any material
239.	9705	Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, paleontological, ethnographic or numismatic interest [other than numismatic coins]
<b>240.</b>	<b>9706</b>	<b>Antiques of an age exceeding one hundred years</b>

**41. The Antique goods means:-**

The collectable objects have a high value because of its age and quality. The value of antiques is affected by many different factors. **The Age ,Quality of work and material rarity, condition, Market demand, or kiln mark or autograph of legend.** Antiques that are highly wanted after but are scarce can usually command a better price. In individual situations another factor is the value attributed to a specific antique by its owner, and the price a collector is willing to pay to obtain it for his/her collection. In other words, this is dependent on the demand and supply situation on the antique market. Therefore, the actual value of an antique may never be the same at two points in time, or in two or more different sales locations.



42. **The Antique goods are very special in character** and have inherent value cannot be treated as second hand goods. These goods being antique in nature, attend to and represent the specific/ separate class of goods having separate identity, class, value, nature etc.
43. **Moreover, the applicant cannot** establish that the goods have been purchased by his vendor were Antique at some time and then used to treat it as second hand goods. Under GST ACT, 2017 **the specific class of antique** goods has been incorporated in schedule –II, Hence, the Rule 32(5) of CGST Rules, 2017 is not applicable.

#### PERSONAL HEARING

44. A personal Hearing in the matter was conducted on 04.10.2019, which was attended by Shri Naresh Shah, C.A., representative of the Appellant, as well as by Shri V.V. Kulkarni, the Jurisdictional Officer and the respondent in the instant matter, who tendered oral submissions in support of their cases besides reiterating their respective written submissions filed before us.

#### Discussions and Findings

45. We have examined the contention of the appellant. We have also gone through the written submission presented by them. We have also examined the contention of the jurisdictional officer. The issue raised in the Advance Ruling can be conceptualized in the following table:-

Sr No	Description of goods	Advance ruling sought by the appellant on	Ruling of AAR
1	Paintings bought from individual art collectors	HSN Code	9701
		Applicable rate	12%
		Whether appellant can discharge the tax liability on difference between sales price and purchase price considering painting as	Rule 32(5) is not applicable. Appellant to pay tax





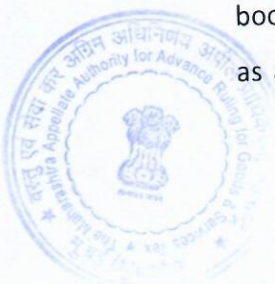
		second hand goods following Rule 32(5) of CGST Rules 2017	at 12% on sale value of painting.
2	Old Cars	<p>HSN Code</p> <p>Applicable rate</p> <p>Whether appellant can discharge the tax liability on difference between sales price and purchase price considering painting as second hand goods following Rule 32(5) of CGST Rules 2017</p>	<p>8703</p> <p>18%</p> <p>Rule 32(5) is applicable.</p> <p>Appellant to pay tax at 12% on sale value of painting</p>
3	Old Jewellery	<p>HSN Code</p> <p>Applicable rate</p> <p>Whether appellant can discharge the tax liability on difference between sales price and purchase price considering painting as second hand goods following Rule 32(5) of CGST Rules 2017</p>	<p>7113</p> <p>Rule 32(5) is applicable.</p> <p>Appellant to pay tax at 12% on sale value of painting</p>
4	Antique Jewellery	<p>HSN Code</p> <p>Applicable rate</p> <p>Whether appellant can discharge the tax liability on difference between sales price and purchase price considering painting as second hand goods following Rule 32(5) of CGST Rules 2017</p>	<p>9706</p> <p>12%</p> <p>Rule 32(5) is not applicable.</p> <p>Appellant to pay tax at 12% on sale value of painting</p>
	Old watches	<p>HSN Code</p> <p>Applicable rate</p> <p>Whether appellant can discharge the tax liability on difference between sales price and purchase price considering painting as second hand goods following Rule 32(5) of CGST Rules 2017</p>	<p>9101,9102</p> <p>18%</p> <p>Rule 32(5) is applicable. Tax will be paid on the difference between the sale price and the purchase price.</p>
5	Antique Watches	<p>HSN Code</p> <p>Applicable rate</p> <p>Whether appellant can discharge the tax liability on difference between sales price and purchase price considering painting as second hand goods</p>	<p>9706.00 00</p> <p>12%</p> <p>Appellant to pay 12% on sale value of antique watches. Rule 32(5) is not applicable.</p> <p>Appellant to pay tax</p>





		following Rule 32(5) of CGST Rules 2017	at 12% on sale value of painting
6	Collectibles and Memorabilia	HSN Code Applicable rate Whether appellant can discharge the tax liability on difference between sales price and purchase price considering painting as second hand goods following Rule 32(5) of CGST Rules 2017	Chapter 49 In absence of specific details AAR did not answer to the query posed by them
	Collectible Books	HSN Code Applicable rate Whether appellant can discharge the tax liability on difference between sales price and purchase price considering painting as second hand goods following Rule 32(5) of CGST Rules 2017	If it is the form of printed books, newspapers, pictures etc it will fall under various sub-headings of Chapter 49 of GST. In absence of specific details AAR did not answer to the query posed by them
7	Antique Books	HSN Code Applicable rate Whether appellant can discharge the tax liability on difference between sales price and purchase price considering painting as second hand goods following Rule 32(5) of CGST Rules 2017	In absence of specific details AAR did not answer to the query posed by them

46. The applicant has stated that apart from buying paintings from individual art collectors, appellant also procures paintings from other art dealers and directly from painters. The applicant also purchases paintings, collectibles and antiques from other art dealers. The applicant accepts the ruling of the AAR on old cars/old jewelry/ old watches in toto. In the above table, which is classified into 9 items, the appellant has accepted the verdict of the AAR as far as the HSN code classification and applicable tax rate is concerned of all of the commodities except collectibles and memorabilia ( Item no 6) and Collectible books (Item no 7). Though AAR has not given any decision on the classification as well as applicability of rule 32(5) on the above two categories, i.e. Item no 6 and 7, the





appellant has expressed his wish not to contend the issue of classification (HSN code). Therefore, we have to decide in all of the above 9 items, the limited issue of the applicability of rule 32(5) of the CGST Rules.

47. The applicant has filed an appeal before the AAAR contending that Rule 32(5) is applicable to Paintings bought from individual art collectors/Antique watches/Antique Jewelry /Collectibles are purchased from individual collectors and users. However, the AAR has held that Paintings/Antique jewelry/ Collectibles/Antique watches cannot be called as 'used goods' and therefore the Rule 32(5) is not applicable here.

48. The said rule is reproduced below:-

*(5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:*

*Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.*

49. The contentions of the appellant can be summarized as follows:-

- 1) Paintings/Antique jewellery/Collectibles and memorabilia/Collectibles/Antique watches/Antique Books are used goods. It is coming for sale after being used by the seller or the earlier owners of such goods. The applicant does not perform any process on them.
- 2) The applicant is not claiming any ITC when such goods are procured from individual collectors or users as such sellers are URPs.
- 3) The terms 'used goods', 'second hand goods' are not defined anywhere in the Act.
- 4) Just because the items are not consumed it cannot be said that they are not used.
- 5) The intention of promulgating Rule 32 (5) is to ensure that the dealer operating in the unorganized sector is not saddled with tax liability disproportionate to value addition done by him.
- 6) If paintings/antique jewellery are not interpreted to mean 'used goods' then the whole purpose of GST legislation will be defeated as the tax is sought on value addition,





7) The value of the goods should not be a determinant factor in the issue.

50. Ongoing through the wordings of rule 32(5) of the CGST Rules, we find it difficult to agree with the conclusion drawn by the AAR for the following reasons:-

The rule as it stands does not have any qualification to the words 'used' or 'second hand'. The words themselves are also not explained in the rule. Therefore, they have to be understood as they are used in common parlance. Definition of 'used' as given in the various dictionaries are as follows: -

- Second-hand things, not new and have been owned by someone else (Collins Dictionary).
- Having a previous owner, not new (English Oxford Dictionary).
- Not new; having been used in the past by someone else (Cambridge English Dictionary).
- Acquired after being used by another (Merriam Webster)
- Previously used or owned (dictionary.com)
- Used goods – Already owned or put to it for a purpose by someone else (Cambridge English Dictionary).
- Previously used or owned; second-hand (dictionary.com).
- Employed in accomplish something, that has endowed used (Merriam Webster)
- Second-hand owned not new (Collins Dictionary).

51. It is seen from the above, that the terms 'second-hand' and 'used' are synonymous words. Goods can be called as second-hand' or 'used' when they are not new. It is used by someone else or by the original owner before they are sold. In the instant case, the appellant is an auction dealer whose main business is to sell jewelry, car, watches, antiques etc. It is their contention that most of these are articles used by the original owners or persons selling such goods to the appellant. It is also submitted by them that they do not perform any process on such goods. It is seen from the web-site of the appellant - *astaguru.com* that the appellant sells vintage collectible and rare antiques such as sculptures, paintings, writing instruments, vintage cars etc. They are players in the secondary market. A primary market refers to any goods when they come to the market for the first time. The appellant being an auctioneer dealer sells personal effects





or such other goods in an auction which have not come in the market for the first time and therefore it is called a secondary market.

52. Rule 32(5) gives the benefit of the margin scheme to the second-hand or used goods and the rule is made up of the following parts:-

The taxable supply is provided by a person dealing in buying and selling;  
of second-hand i.e. used goods;  
as such or after minor processing which does not changed the nature of goods;  
where no ITC has been availed on the purchases of such goods.

A reading of the rule says that the value for tax purpose will be the difference between the selling price and purchase price. In the said case, the appellant fulfills all the conditions of the rule. 1) The appellant is a seller dealing in buying and selling second-hand goods. 2) The goods sold by them are, as per their contention, second-hand or used goods which have not come for sale for the first time in the market. 3) The appellant has sold the goods as such and has done no processing on them. 4) No ITC is availed by them on the purchase of those goods.

53. Therefore, if all the above conditions are fulfilled by the appellant there seems to be no reasons in denying them the benefit of the margin scheme contained in rule 32(5) of the CGST Rules. The AAR has given the benefit to old cars, old jewelry and old watches but have denied the benefit to paintings, antique jewelry and antique watches. The only reason given by the AAR for coming the said conclusion is that 'paintings' cannot be treated as used but have given no further explanation as to why they should not be treated as used. Also no reason is advanced in the order for denying the benefit to antique jewelry and antique watches. As for 'antique books' no ruling is given, citing the reason as "absence of specific details". The only conclusion we can draw from the order of the AAR is that they seem to have been swayed by the fact that antique watches, painting and jewelry are valuable products which cannot be classified in the category of 'second-hand or used'. Also the fact that there is a separate tariff heading for 'Antiques' in the form of tariff heading code 97060000 covering 'Antiques exceeding 100 years' seems to have influenced them. However, we wish to point out that the classification of the goods does not have anything to do with the application of rule 32(5). The question of whether the rule will apply has to be decided independently of the fitment





of the product. There is nothing in rule 32(5) which says that it is not applicable to valuable or precious objects or objects having antique value. It is a settled principle of jurisprudence that when the words of a statute are unambiguous and only one reasonable meaning can be given to it, then the courts are bound to give effect to that meaning. Such words have to be interpreted in their natural and ordinary sense. Therefore, the term 'second-hand and used' has to be given its ordinary meaning and nothing more is to be attributed to it especially when the legislature has not chosen to expand or contract its meaning. Antique pieces are also second-hand and used by people before they come in the market. The paintings are bought by the appellant from individual art collectors. It presupposes that the art collectors have bought it second-hand or used and then sold it to the appellant. It would be an entirely different thing if the appellant has bought the paintings from the artists themselves. However, this is not the fact before us and we go entirely by the submissions of the appellant that they have bought it from individual art collectors. If such is the case, then there are no grounds to say that they are not second-hand or used. All the categories- valuable paintings, antique watches, antique jewelry, though falling under the category of valuable goods, are at the same time also 'second hand or used goods' and therefore they cannot be denied the benefit of rule 32(5). We feel that the term 'antique books' is evocative enough to describe what it contains and the appellant can apply Rule 32(5) to it.

54. The AAR has not given any ruling on collectibles/memorabilia and collectible books; the reason being given is that no specific details of such goods are given. In the grounds of appeal presented before the AAR, the appellant has described such goods as only 'collectibles' and 'memorabilia and collectibles'. They have not dwelt at length as to what commodities are covered in that category. The appellant has stated that 'collectibles and memorabilia' encompasses clothing, support equipment, spectacles, accessories etc. The above description is of general nature. The appellant has not given any further description as to whether they are bought from individual art collectors or not. Also, the appellant has asked for separate ruling on collectible books and antique books. It is not known whether they are same or not. Also no specific explanation is given as to what is the difference between collectible books and antique books. For the above reason, we agree with the Ruling of the AAR.





In view of the above deliberation, we hold the following: -

**ORDER**

The appellant is eligible to take benefit of rule 32(5) for the products in TABLE 1 placed by them before us except items placed at 7 & 8. We cannot give any ruling on items 7 & 8 and we agree with the observations of the AAR on 7 & 8, that in absence of any specific description of the products contained in them, no ruling can be given.

  
(RAJIV JALOTA)  
MEMBER



  
(SUNGITA SHARMA)  
MEMBER

- Copy to- 1. The Appellant  
2. The AAR, Maharashtra  
3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai  
4. The Commissioner of State Tax, Maharashtra  
5. The Jurisdictional Officer  
7. The Web Manager, [WWW.GSTCOUNCIL.GOV.IN](http://WWW.GSTCOUNCIL.GOV.IN)  
8. Office copy