



RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX, KAR BHAWAN, AMBEDKAR
CIRCLE, NEAR RAJASTHAN HIGH COURT
JAIPUR - 302005 (RAJASTHAN)



ADVANCE RULING NO. RAJ/AAR/2024-25/02

Mahipal Singh Additional Commissioner	:	Member (Central Tax)
Mahesh Kumar Gowla Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s HITESH GWALANI, B2-16, Sudarshna Nagar, Behind Gandhi Colony Ballabh Garden, Bikaner - 334003, Rajasthan
GSTIN of the applicant	:	08CKPPG9845L129
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(c) determination of time and value of supply of goods or services or both; (e) determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	19.02.2024
Present for the applicant	:	Mr. Ashish Gwalani, C.A.
Date of Ruling	:	09/04/2024

Note 1: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling, constituted under Section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

Note 2: At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST 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 provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by HITESH GWALANI, B2-16, Sudarshna Nagar, Behind Gandhi Colony Ballabh Garden, Bikaner - 334003, Rajasthan (hereinafter "*the applicant*") is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2)(a) given as under:

- (c) determination of time and value of supply of goods or services or both;
- (e) determination of the liability to pay tax on any goods or services or both;

A. SUBMISSION OF THE APPLICANT(in brief):-

M/s HITESH GWALANI (hereinafter referred to as the "applicant") are registered under GST having GSTIN.08CKPPG9845L129. The applicant proposed to start Business of Selling of various type of Scrap like old used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc.

The applicant proposed to start purchase of all above mentioned goods from unregistered supplier in small quantity (50 kg to 500 kg approximately). The unregistered Supplies may be located in the same State on purchase of above mentioned various item from unregistered suppliers. The applicant subsequently sale them to various manufacturers & propose to charge GST on the difference between the Sell price & Purchase price of the above mentioned goods in accordance with Rule 32(5) of CGST Rules 2017.

B. INTERPRETATION AND UNDERSTANDING OF APPLICANT ON QUESTION RAISED (IN BRIEF)

It is in this aforesaid background the applicant seeks determination on the question as to whether the used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc. qualify as second hand goods and thus covered under the Margin Scheme notified under Rule 32 (5) of the CGST Rules, 2017.

1. It is submitted that normally GST is charged on the transaction value of the goods. However, in respect of second hand goods, a person dealing in such goods is allowed to pay tax on the margin i.e. the difference between the value at which the goods are supplied and the price at which the goods are purchased. If there is no margin, no GST is charged for such supply. The purpose of the scheme is to avoid double taxation as the goods, having once borne the incidence of tax, re-enter the supply and the economic supply chain.
2. Rule 32(5) CGST Rules, 2017 specifies that 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. The relevant extract of Section 32(5) of the CGST Rules, 2017 is reproduced below:

"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 forevery quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession."

3. As provided in Rule 32(5) of the CGST Rules, 2017, the margin scheme is available in case of purchase and subsequent sale of second hand goods. In the present case, the Applicant wants to be engaged in the activity of procuring the used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc. (hereinafter referred to as scrap) in small quantities (50 to 500kg approx.) from various unregistered suppliers situated within the State of Rajasthan and outside Rajasthan.
4. For goods to qualify as second hand goods as per Rule 32(5) of the CGST Rules, 2017 such goods need be (1) used goods as such or goods after minor processing that does not change the nature of goods (2) goods on which no Input Tax Credit has been availed.
5. That used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc. are used goods and no processing is done on such goods. Therefore, these used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of

copper, used waste plastic bags & used plastic PET bottles etc. qualify as second hand goods in as much as these goods are 'used goods as such'. Further, the Applicant does not avail Input Tax Credit on such used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc.

6. In this regard, reference may also be placed on the Press Release dated 15th July, 2017 of the GST Council wherein it has been clarified as under in respect of old and used bottles:

"Doubts have been raised regarding the applicability of the margin scheme under GST for dealers in second hand goods in general and for dealers in old and used empty bottles in particular.

Rule 32(5) of the Central Goods and Services Tax Rules, 2017 provides that 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. This is known as the margin scheme.

Thus, margin scheme can be availed of by any registered person dealing in buying and selling of second hand goods [including old and used empty bottles] and who satisfies the conditions as laid down in rule 32(5) of the Central Goods and Services Tax Rules, 2017."

That the aforesaid clarification issued in respect of the used bottles shall squarely be applicable in respect of used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc. as just like used bottles no processing is done on the used lead acid batteries. Therefore, in the Applicant's view, these used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc qualify to be second hand goods. Accordingly, the Applicant dealer is entitled to operate under the Margin Scheme in respect of the old used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc.

Also AAR (Rajasthan) has given decision in case of M/s Shambhu Traders Pvt. Ltd. on 15th Dec. 2019 on similar grounds. In the said AAR, Authority has stated that the used lead acid batteries qualify to be second hand goods accordingly, the applicant/dealer is entitled to operate under margin scheme in respect of the used lead acid batteries.

The Rule 32(5) of the CGST Rule, 2017 which provides for margin scheme in case of intra-state supplies shall also be applicable in case of inter-state supply. The applicant is entitled to make inter-state supplies of used lead acid batteries while operating the margin scheme.

Applicant's interpretation with respect to second question:-

1. In terms of Rule 2 of the Integrated Goods and Service Tax Rules, 2017, the Central Goods and Service Tax Rules, 2017, for carrying out the provisions specified in Section 20 of the Integrated Goods and Service Tax Act, 2017 shall, so far as may be, apply in relation to integrated tax as they apply in case of central tax. Section 20 of the IGST Act prescribes that the provisions of the CGST Act shall mutatis mutandis apply to

various subjects which have been provided under Section 20. The subject pertaining to 'time and value of supply' is also covered under Section 20, hence the rules made under CGST Act in relation to valuation of a supply is applicable to IGST Act as well.

2. Therefore, Rule 32(5) of the CGST Rules, 2017 which provides for Margin Scheme in case of intra-state supplies shall also be applicable in case of inter-state supplies.

Therefore, the Applicant is of the view that they are entitled to make inter-state supplies of old used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, used old steel utensils scrap & old used scrap of copper used waste plastic bags, used plastic PET bottles while operating under the Margin Scheme.

C. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:-

- Q.1. When the Applicant is operating under the Margin Scheme notified under Rule 32(5) of the Central Goods and Service Tax Rules, 2017 ("CGST Rules, 2017") by selling the old used Iron Scrap, used Lead Acid Batteries, old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc to manufacturers whether such thus covered under the Margin Scheme notified under Rule 32(5) of the CGST Rules, 2017?
- Q2. When the applicant is operating under the Margin Scheme notified under Rule 32(5) of the Central Goods and Service Tax Rules, 2017 (CGST Rules, 2017) by selling used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc. to manufacturers whether the goods when sold outside the state or when sold within the state of Rajasthan qualifies under the Margin Scheme.

D. PERSONAL HEARING

In the matter, personal hearing was granted to the applicant on 19.02.2024. Mr. Ashish Gwalani, C.A. and Authorized Representative appeared for personal hearing. He reiterated the submission already made by them.

E. COMMENTS OF THE JURISDICTIONAL OFFICER:-

Comments received from the Assistant Commissioner state tax Ward-III, Circle-B, Bikaner vide letter S.No.409 dated-26.12.2023 are as under: -

In this regard, it is submitted that Firm M/s. HITESH GWALANI (BABA SUPPLIER)GSTIN : 08CKPPG9845L1Z9 registered at Office of Assistant Commissioner, State Tax, Ward-III, Circle-B, Bikaner requested for advance ruling as below: -

1. When the applicant is operating under the Margin Scheme notified under Rule 32(5) of the Central Goods and Service Tax Rules, 2017 ("CGST Rule, 2017") by selling the old used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, used old Steel utensils scrap & old used scrap of copper, old used Brass utensils and other scrap, used waste plastic bags, used plastic PET bottles to manufacturers whether such thus covered under the Margin Scheme notified under Rule 32(5) of the CGST Rules, 2017?
2. When the application is operating under the Margin Scheme notified under Rule 32(5) of the Central Goods and Service Tax Rules, 2017 (CGST Rule, 2017) by selling the used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, used old Steel utensils scrap & old used scrap of copper, old used Brass utensils and other scrap, used waste plastic bags & used plastic PET bottles etc. to

manufacturers whether the goods when sold outside the state or when sold within the state of Rajasthan qualifies under the Margin Scheme.

Considering application of dealer and as per dealer profile, dealer collects scrap items from URD (Unregistered Dealers) and supply these items to manufacturers. Commodities on which applicability of Margin Scheme sought

1. Lead Acid Batteries -
2. Iron Scrap
3. Aluminium utensils
4. Steel utensils scrap
5. scrap of copper
6. Brass utensils and other scrap
7. waste plastic bags & used plastic PET bottles

In this regard the relevant extract of Section 32(5) of the CGST Rules, 2017

"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."

Further Government have clarified it through Notification No.8/2018 -Central Tax (Rate) New Delhi Dated 25th January, 2018 in which S.No.4 Chapter Heading 87 Description of Goods All Old and used Vehicles other than those mentioned from S. No. 1 to S.No.3. So it is clearly stated that only automobiles considered in the margin scheme. Therefore, the commodities in which dealer has sought to include in margin scheme, is not considerable.

The commodities in which dealer claims to fit in margin scheme that's not a definite commodity in any Chapter Heading, Sub Heading or Tariff Item, but it's scrap as a whole, most of them are not to be used furthermore as a commodity. Actually, the said items used as primary content or as raw material in the supply chain. Here is no possibilities of title holding or sustain reusability. So, the dealer fails to identify the difference between Scrap and second-hand goods. So, on these items margin scheme is not applicable.

There is no question of Double taxation on these goods, because the parents items have realized their full value and these items are merely left over.

So, therefore no question arises of applicability of Margin Scheme on scrap items as proposed by dealer and also same with question no. 2 as well.

F. FINDINGS, ANALYSIS & CONCLUSION:

- 1) We have carefully examined the statement of facts, supporting documents filed by the applicant along with the application, oral and written submissions made at the time of hearing and the comments of the Central Tax Authority. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.
- 2) The applicant in engaged in purchasing and selling of used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, used old Steel utensils scrap & old used scrap of copper, old used Brass utensils and other scrap, used waste plastic bags& used plastic PET bottles to the manufacturers.
- 3) The main question to be decided is whether the applicant is covered under the Margin Scheme notified under Rule 32(5) of the Central Goods and Service Tax Rules, 2017 or not .

- 4) Rule 32(5) of the Central Goods and Service Tax Rules, 2017 provides that-

"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."

- 5) Though the definition of second hand goods is not prescribed in GST but as per the common trade parlance, the definition of same is as under-

Secondhand goods means any new or used property that has been sold, traded, exchanged, consigned or otherwise disposed of by its original owner.

- 6) The applicant is dealing with used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, used old Steel utensils scrap & old used scrap of copper, old used Brass utensils and other scrap, used waste plastic bags& used plastic PET bottles, therefore it cannot be covered under the definition of Second Hand Goods as basically these items can be termed as scrap which are to be consumed/melted for manufacture of new item and thus the nature of goods is changed.
- 7) Thus we hold that the items to be dealt with by the applicant do not qualify to be Second Hand Goods and therefore the applicant is not eligible to operate under the Margin Scheme in term of Rule 32(5) of Central Goods and Service Tax Rules, 2017.
- 8) Further Central Government has issued Notification No.8 /2018 (Central Rate) dated 25.01.2018 in respect of Margin Scheme under Rule 32(5) of CGST Act, 2017. On perusal of same we find that benefit of Margin Scheme is available only with respect to Motor Vehicles only where as the items to be dealt with by the applicant such as used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, used old Steel utensils scrap & old used scrap of copper, old used Brass utensils and other scrap, used waste plastic bags& used plastic PET bottles are different from Motor Vehicles.
- 9) Thus we have reached to the conclusion that since the items to be dealt with by the applicant do not qualify to be Second Hand Goods, the applicant is not eligible to operate under Margin Scheme in term of Rule 32(5) of Central Goods and Service Tax Rules, 2017 read with corresponding provisions of SGST Rules, 2017.
- 10) The second clarification sought by the applicant is that whether they are eligible for benefit of Margin Scheme for intra state supply or inter-state supply of goods.
- 11) Since above, we have established that the applicant is not eligible to operate under Margin Scheme in term of Rule 32(5) of Central Goods and Service Tax Rules, 2017 read with corresponding provisions of SGST Rules, 2017 as the items to be dealt with by them do not qualify to be Second Hand Goods, the benefit is neither available for intra state supply of goods nor inter-state supply of goods.

In view of the foregoing, without going into merits of the case, we rule as under -

RULING

Q.1. When the Applicant is operating under the Margin Scheme notified under Rule 32(5) of the Central Goods and Service Tax Rules, 2017 ("CGST Rules, 2017") by selling the old used Iron Scrap, used Lead Acid Batteries, old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc to manufacturers whether such thus covered under the Margin Scheme notified under Rule 32(5) of the CGST Rules, 2017?

Ans- The applicant is not covered under the Margin Scheme notified under Rule 32(5) of the CGST Rules, 2017.

Q.2. When the applicant is operating under the Margin Scheme notified under Rule 32(5) of the Central Goods and Service Tax Rules, 2017 (CGST Rules, 2017) by selling used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc. to manufacturers whether the goods when sold outside the state or when sold within the state of Rajasthan qualifies under the Margin Scheme.

Ans- The benefit of Margin Scheme notified under Rule 32(5) of the CGST Rules, 2017 is not available to applicant neither for intra state supply of goods nor inter-state supply of goods.

M
09/04/2024
(Mahipal Singh)
MEMBER
CENTRAL TAX



W/S
09/04/2024
(Mahesh Kumar Gowla)
MEMBER
STATE TAX

F. No. AAR/SF/2024-25/07-11

Date: 09/04/2024

SPEED POST

To,

M/s HITESH GWALANI
B2-16, Sudarshna Nagar, Behind Gandhi Colony Ballabh Garden,
Bikaner - 334003, RAJASTHAN

Copy to: -

1. The Chief Commissioner, CGST and Central Excise (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan-302005;
2. The Chief Commissioner, State Tax, KarBhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005;
3. The Pr.Commissioner, CGST and Central Excise Commissionerate JAIPUR, Rajasthan;
4. Assistant Commissioner State tax Ward-III, Circle-B, Divisional Kar Bhawan Bikaner, Rajasthan

o/c