MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. D. P. Gojamgunde, Joint Commissioner of State Tax, (Member)

(2) Ms. Himani Dhamija, Joint Commissioner of Central Tax, (Member)

ARN		**AD270223005473I**
GSTIN Number, if any/ User-id		**27AAHCS0308R1ZZ**
Legal Name of Applicant		**M/s. Saffron Art Private Limited**
Registered Address/Address provided while obtaining user id		Ground Floor, Industry Manor, Near Century Bazar, Appasaheb Marathe Marg, Prabhadevi, Mumbai, Maharashtra, 400025.
Details of application		GST-ARA, Application No. 104 Dated 09.02.2023
Concerned officer		**Division & Charge – Azad Nagar-503**
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	**Retail Business, Service Provision**
B	Description (in brief)	The applicant is an Auctioneer. It procures the specified goods on approval basis from unregistered and registered persons (Sellers) and sale the same by auction to the highest bidder.
Issue/s on which advance ruling required		• Classification of any goods or services or both • Applicability of a notification issued under the provisions of the Act • Determination of time and value of supply of goods or services or both • Admissibility of input tax credit of tax paid or deemed to have been paid • Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below

PROCEEDINGS

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

The present application has been filed under Section 97 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" respectively] by **M/s**. **Saffron Art Private Limited,** the applicant, seeking an advance ruling in respect of the following questions.

(I) Classification of goods and/or services or both Classification of following goods i.e. The classification and HSN code of goods listed in table given in 'Issues for Determination' tabulation mentioned below with GST rates applicable to such goods.

a. Old Prints, Engravings, Lithographs, Sculptures
b. Old Jewelry
c. Antique Jewelry
d. Antique Jewelry of an age exceeding 100 years
e. Collectible / Rare Books (Printed Books)
f. Antique Books of an age exceeding 100 years
g. Old Furniture (made from wood / metal)
h. Antique Furniture of an age exceeding 100 years
i. Used Carpets and Rugs
j. Carpets of an age exceeding 100 years
k. Old Watches
l. Antique Watches
m. Antique Watches of an age exceeding 100 years
n. Used/Old Bags
o. Used / Old Camera
p. Old Pens/Writing instruments
q. Old Instruments
r. Old Cars
s. Used Cars
t. Collectibles
u. Memorabilia

(II) Determination of value of the goods /services for discharging GST as per the provisions mainly Rule 32(5) of CGST Rules, 2017 read with MSGST Rules 2017 - under Margin Scheme - for the goods procured from un-registered Dealer - tax is to be paid on the value determined as difference between selling price and purchase price as stipulated in Rule 32 (5) of CGST Rules, 2017. [As per Section 97 (2) (c)].

(III) Whether applicant is allowed to opt two method /schemes i.e.

1. To discharge the GST liability under Rule 32(5) under margin Scheme if the goods are procucred from un-registered dealer – where no GST is charged by the seller to applicant.
2. Where the Seller charges GST to applicant the existing process to discharge the liability after availaing the ITC on the purchases [As per Section 97 (2) (g)]

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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

1. FACTS AND CONTENTION – AS PER THE APPLICANT

1.1 The Applicant is Saffron Art Private Ltd having CIN-U22219MH1999PTC123237 and is registered under the Goods and Service Tax Act, 2017 vide GSTIN-27AAHCS0308R1ZZ.

1.2 The Applicant is an auctioneer dealing in various goods such as Old Cars, Used Cars, Old Jwellery, Antique Jwellery, Antique Jwellery of an age exceeding 100 years, Old Watches Antique Watches, Antique Watches of an age exceeding 100 years, Collectibles, Memorabilia, Collectible Books, Antique Books. The Applicant also offers these goods otherwise than by way of auction, **viz**., Exhibition Sale, Private Sale and Fixed Price Sale (hereinafter referred to as '**Goods**').

1.3 The Applicant is predominantly dealing in goods mentioned above including personal effects received from **the** users or **collectors** from the market which is divided into two main segments i.e. primary market and secondary market.

1.4 A primary market **refers** to when any goods comes to the market for the first time at a retail shop or any other way. This is the time when the price for the

goods is established for the first time and if the seller is registered then the said seller discharges the GST liability on the goods being sold by them.

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

1.6 The Applicant is a mainly player in the secondary market, as these goods have been purchased from the primary market by the applicant.

1.7 The Applicant usually procures the abovementioned goods on approval basis from GST- unregistered as well as GST-registered persons who are either users/consumers, collectors or dealers in the abovementioned goods (hereinafter referred to as 'Sellers'). The Applicant displays all such goods on its website and /or on any other digital /offline platforms such as exhibitions and the Applicant conducts the auction sale in respect of such goods. The goods are sold to the highest bidder in the auction. In the case of non-auction business, **the** goods are sold at a fixed price determined by the Applicant.

1.8 The standard business process of the Applicant business is as under:

i. The Sellers /Owners of the above specified goods and the Applicant enters into an agreement /contract wherein sellers/owners agree to display /exhibit their goods on the digital/offline platforms such as exhibitions for sale to the intending end buyers by way of an auction sale by the Applicant on approval basis at an agreed price as per contract. The Sellers/owners of the above goods also indicate the consideration expected to be received by them. The Applicant submits that agreements are generally binding for a term of 3-6 months with the various sellers/owners for such used or second-hand goods.

ii. The Applicant on the basis of the agreements as stated above, facilitates to the various Sellers/ owners to exhibit the goods on a digital / offline platform including facilitating them to display and/or sell through the process of the digital /physical auction.

iii. The Applicant uses their vast experience in the field, their network and various marketing techniques to engage the prospective buyers.

iv. A prospective buyer who wants to participate in the online/offline auction, register themselves on the Applicant's website. On receipt of application, the Applicant is at the liberty to accept or reject the registration made by prospective buyer.

Once the prospective buyer is registered on the Applicant's website, they can freely participate in the auction conducted by the Applicant. The highest bidder in the auction only has a claim over the goods. However, the Applicant reserves right to cancel the transaction even after the fall of hammer.

v. The ownership of the goods (title of goods) is transferred from the seller to the end buyer at the close of bidding. The Applicant being intermediary or facilitator issues invoices to end customer /buyer who is highest bidder in the auction for **the** bid price (hammer price) as well as for Applicant's fees for services rendered to such highest bidder (Buyers Premium). Additionally, the Applicant issues one more invoice to the owner (Seller) of the goods for commission agreed in the contract.

vii. In case of non-auction business, the ownership of the goods (title of goods) is transferred from the Seller to the end Buyer after completion of payment by the Buyer. The Applicant being intermediary or facilitator issues invoice to end customer /buyer for the price fixed for the goods. Additionally, the Applicant issues one more invoice to the owner (Seller) of the goods for commission agreed in the contract.

viii. The GST liability is being discharged by the applicant by issuing two invoices viz. first Invoice for the goods and Second invoice for the commission agreed by the buyers / seller. The value of goods for the first invoice is the Hammer Price as determined in the auction.

ix. In case the goods are bought from registered dealer then the said dealer discharges the GST liability and Input tax credit is availed by the applicant. While discharging the liability the GST is back to back paid on

the hammer price of the said goods on the first invoice. For the overall services the GST liability is discharged **@18**% under SAC code No 9962 on second invoice. The applicant craves leave to submit the sample copies of the said sales and purchase invoices of the applicant on or before personal hearing as the applicant is in the process of collating **the** same.

x. In the case if the goods are procured from un-registered dealer then the said dealer does not discharge the GST liability and there is no question of availing the Input tax credit by the applicant. However, while discharging the liability on the auction sale where the applicant is intermediary or faciliatory, the GST is paid on the hammer price of the said goods on the first invoice. For the overall services **the** GST liability is discharged @18% as SAC code No 9962 on second invoice The applicant craves leave to submit the sample copies of the said sales and purchase invoices of the applicant on or before personal hearing as the applicant is in the process of collating the same.

xi. In other words the Applicant is mainly dealing and acting as a facilitator to various Sellers/owners through an auction related to the above goods.

xii. The detailed list of the above goods along with their classification (HSN) and method of valuation along with applicable GST rate (prevailing trade practices in respect of the said goods) as per the Applicant's understanding, the same is appended below: -

Description of goods	HSN	Rate / Value
Old Prints, Engravings, Lithographs, Sculptures		(ITC is availed if the goods are procured from registered dealer)
Old Prints, Engravings, Lithographs	9702	12% on sale value
Old Sculptures	9703	12% on sale value
Jewellery:		

Old Jewellery	7102, 7113, 7114, 7116	3% on sale value
Antique Jewellery of an age exceeding one hundred years	9706	12% on sale value
Antique Jewellery		
Books:		
Collectible / Rare Books	4901, 4902, 4905	0% on the sale value
Antique Books of an age exceeding 100 years	9706	12% on sale value
Furniture		
Old Furniture (made from wood / metal / glass)	4414, 4419, 7013, 7326, 8302, 8303, 8306, 8310, 9403	18% on sale value
Old Furniture (made from wood / metal / glass)	4420, 4421, 6802, 6815, 6911, 6912, 6913, 7009, 7020, 7323, 7419, 8452	12% on sale value
Antique Furniture of an age exceeding 100 years	9706	12% on sale value
Carpets:		
Used Carpets and Rugs	5701, 5702, 5703, 5705, 6301, 6302, 6304, 9404	18%/12% / 5% on sale value
Carpets of an age exceeding 100 years	9706	12% on sale value
Watches:		
Old Watches	9101, 9102, 9103, 9105	18% on sale value
Antique Watches of an age exceeding 100 years	9706	12% on sale value

Bags		
Used / Old Bags	4202	18% on sale value
Camera		
Used / Old Camera	9007	18% on sale value
Old Pens Writing Instruments		
Old Pens	9608	18% on sale value
Old Writing Instruments	9609	12% on sale value
Old Instruments		
Old Instruments such as typewriters, discs, etc.	8213, 8469, 8521, 8523, 9017, 9018, 9201, 9402, 9405	12% / 18% on sale value
Other Antiques:		
Other than jewellery, watches and books such as idols, sculptures, furniture, etc., of an age exceeding one hundred ears	9706	12% on sale value
Old Cars / Used cars	8703 read with notification no.8/2018 CT, UT (rate), 9/2018 (IGST rate) dtd 25.01.2018	18%/12% on sale value
Collectibles/Memorabilia:		
Articles such as clothing, sporting equipments, books, autographs, photographs and such other items	(HSN Code: Residuary Entry-Serial No. 453 of Schedule III-Goods which are not specified in Schedule I, II, IV, V or VI)	Residuary Rate 18% by treating collectibles and memorabilia as separate class of goods-however the valuation on sales value

1.9 The Applicant further states that vide Order No. GST -ARA-51/2020-21/B-62, Mumbai dated 20th May 2022, passed **by** the Maharashtra Authority for Advance Ruling has already passed the order/ advance ruling related to classification and valuation of second-hand or used paintings under Section-97(2) (a) read with Rule 32(5) of CGST Act /Rules. The copy of the advance ruling/order dated 20th May 2022 is enclosed and marked as Exhibit -A. However, the Applicant in spite of the said Ruling still not adopted the Margin Scheme and continued to pay the GST as specified in para no. (h) (x), (xi) and (xii) above as the applicant is seeking present advance ruling for all class of articles /goods dealt by them in respect of valuation and determination of tax liability and availability of input tax credit.

1.10 The Applicant further states that besides used or second-hand paintings they are also dealing in the goods **as** specified above. In order to obtain a clarity as to whether the principles laid down in the above-mentioned advance ruling **passed** can be applied to goods as specified only to above goods **or** otherwise also for the goods procured from un-registered dealer without payment of GST. The Applicant is preferring the present Advance Ruling Application in respect of questions raised as specified above in respect of the goods mentioned above including clarification on Order No. GST -ARA-51/2020-21/B-62, Mumbai dated 20th May 2022.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION

2.1 Section 15 of CGST Act, 2017 prescribes value of taxable supply. Section 15(5) of CGST Act reads as follows**:**

"Notwithstanding anything contained in sub-section (1) or sub-section (4), ***the*** *value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed"*

2.2 Based on the above the government has notified Rule 32(5) of CGST Rules prescribed the manner of determination of value in respect of specified goods and services. By way of 'Margin Scheme' under No.10/2017 dated

28/06/2017 which namely deals with determination of value of **all second hand goods** i.e. used goods. The extract of the said rule is as under :

" *32. Determination of value* in *respect of certain supplies*. –

……

(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, 56 between the date of purchase and the date of disposal by the person making such repossession*.

2.3 As per the above provisions, when there is a taxable supply 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.

2.4 All the goods which are listed above are being offered for sale to prospective buyers through online/offline platforms, auctions where the Applicant does not even modify or process or make any minor change/s in such goods. These goods are the second hand or used goods.

2.5 Presently the Applicant is claiming input tax credit of GST charged by the seller/owner/registered dealer and discharging the GST liability on hammer price. In other words applicant would continue to avail the Input Tax Credit and shall discharge the GST liability on the basis of sale price agreed with end customer without opting the Margin Scheme as above.

2.6 If the second-hand goods are procured from unregistered persons, there is no question of claiming any input tax credit. In such cases since the goods are '*second hand goods*' as defined under Rule 32(5) of CGST Rules, 2017. As per the provisions as stated above effectively the GST should be charged at

an applicable rate on such differential value between Sale price and purchase price. In other words, the the normal valuation method would not be applicable and the Margin Scheme method would be adopted.

2.7 As stated, the Applicant had filed an application for advance ruling on 18th November 2020 along with statement of facts, issues for determination of valuation viz. in respect of second-hand Paintings.

2.8 The Applicant had received an order/ ruling dated 20th May 2022 bearing ARN- AD271120008652M wherein the Hon'ble Maharashtra Authority for Advance Ruling has allowed to use Margin Scheme for the Old Paintings under the provisions of Rule 32(5).

2.9 Now the Applicant wishes to seek similar advance ruling in respect of goods as specified in above table and dealt in by the Applicant.

2.9 The Applicant primarily deals in second hand or used goods and hence Rule 32(5) of CGST Rules, 2017 applies to goods dealt by them.

i. The terms "second hand goods" and "used goods" are explained below. The Applicant, being an auction dealer, mainly sells "personal effects" which are used by the original owners or persons selling such goods to the Applicant. Most Of above goods sold by the Applicant is by very nature old and used items.

ii. Rule 32(5) of CGST Rules applies to the "second hand goods" or "used goods". The term "second hand goods" or "used goods" is not defined in the CGST Act or CGST Rules. It is not defined under General Clauses Act. Hence, one has to go by the dictionary meaning or common parlance meaning of the word "second hand goods" or "used goods". 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)

iii. Applicant strongly contends that in absence of statutory definition, the meaning of the term "second hand goods" or "used goods" should be taken as per dictionary meaning or common parlance and Rule 32(5) should be construed accordingly. Rule 32(5) of CGST Rules clearly and unambiguously applies to person dealing in second hand goods.

iv. 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". The applicant is not eligible for the Input Tax Credit when the said goods are purchased from un-registered dealer. Hence the condition for not availing the input tax credit is duly satisfied.

v. 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 as in majority of transactions as such second hand or used goods are normally purchased from individuals not liable to tax.

vi. If this interpretation is taken, most of the dealers in second hand goods will not be entitled to take the benefit of valuation as prescribed under Rule 32(5) of the CGST Rules. This will defeat the purpose of legislation.

vii. Moreover, the second hand goods when it is purchased for the first time from primary market it would suffer the levy of indirect tax i.e. excise, VAT, GST, etc. It therefore means that when the tax is paid on margin on sale of second hand goods, these goods have suffered full tax. 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.

viii. 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.

ix. The applicant therefore, undertake that where the input tax credit is availed by them they will not opt the Margin Scheme and shall pay the tax as per the valuation method under Section 15 of the CGST Act'2017 and rules made thereunder.

x. The Applicant hereby relies and reiterates submissions made by **it** in the application filed with ARA application dated 18th/19th November 2020 decided vide order bearing no. GST ARA-51/2020-21/B-62 dated 20th May 2022.

xi. Applicant seeks the clarification on above ruling that where the Input tax credit is availed by them, the above Advance Ruling would not be applicable, however, where the input tax credit is not availed the above advance Ruling would be applicable or not?

2.10 Classification **of goods** as specified above.

As far as classification of the goods are concern, the Applicant humbly submits as under:

- The term "antique" is defined under section 2 (1)(a) of Antiquities and Art Treasures Act, 1972 as any article, Object or thing which has been existence for not less than one hundred years. The extract of relevant definition is enclosed herewith at Annexure.
- Since there is a specific entry for "Antiques of an age exceeding one hundred years" in the rate schedule prescribed by Notification 1/2017 Central Tax (Rate), the same should prevail over general entries prescribing HSN code and rates for jewellery, watches, books and other items sold as antiques.
- Collectibles and memorabilia generally includes article like clothing, sport equipment, books, autographs, photographs, music instruments, idols, footwear, furniture, utensils, etc.
- Since there is no specific entry for collectibles and memorabilia in rate schedules as specified by Notification No. 1/2017- Central Tax (Rate), HSN code and rate applicable to specific goods (sold as collectibles and memorabilia) should be applied. The same should not be classified under residuary entry no. 453 of Schedule III as there is specific entry

for the goods sold. Therefore, HSN code and rate applicable to specific goods sold i.e. clothing, sport equipment, books, autographs, photographs, music instruments, idols, footwear, furniture, utensils, etc. should be applied.

- For example, cricket bat of Sachin Tendulkar (with his autograph thereon) is sold or costume of film character (Actress Deepika Padukones costume in film "Padmavat") is sold, the same should be classified under "sports equipment" or "clothes/ garments". The same should not be classified under residuary entry as there are specific entries in the rate notification for the said goods.

2.11 The relevant extract of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017 specifying the HSN codes and the tax rate of respective goods is enclosed herewith with this submission, Explanation (iv) to the Rate Notification No. 1/2017 - Central Tax(Rate) dated 28.06.2017 clearly states that the rules for interpretation of the first schedule to the Customs Tariff Act, 1975 shall, so far as may be, apply to the interpretation of this notification.

2.12 Notification No. 8/2018 - Central Tax (Rate) dated 25.01 2018 prescribes the tax rate for old and used car. The copy of said notification is enclosed herewith this application.

2.13 Rule 3(a) of The General Rules For The Interpretation Of Import Tariff **of** the Customs Tariff Act, 1975 is relevant in Applicant's case. It provides that the heading providing most specific description shall be preferred to heading providing a more general description. The copy of relevant extract of Customs Tariff A**c**t, 1975 is enclosed herewith and marked as Exhibit-D.

Case Laws

2.14 Applicability of Margin scheme under similar business as decided by Advance Ruling authorities:

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 statue book, it is

mandatory for assessee as well as tax authorities to follow it in letter and sprit, 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.

2.15 Applicant humbly submits that it is settled jurisprudence principle that when the words of a statue 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 judgments. The few such judgments are as under:

i. Nelson Motis v/s Union of India (AIR 1992 SC 1981) =1992 (9) TMI 355 - SUPREME COURT

ii. Gurudevantt VKSSS Maryadit v/s State of Maharashtra (AIR 2001 SC 1980) = 2001 (3) TMI 976 - SUPREME COURT.

iii. Swedish Match AB v/s Securities and Exchange Board of India (AIR 2004 SC 4219) = 2004 **(8)** TMI **389 -** SUPREME COURT

iv. Government of Andhra Pradesh v/s Road Rollers Owners Welfare association [2004 (6) SCC 210**]** = 2004 (4) TMI 602 - SUPREME COURT

In light of above submissions, Applicant humbly submits that valuation **of** supply of old cars, old watches, old jewellery, old books, paintings, antiques and memorabilia should be done in accordance with Rule 32(5) of CGST Rules where input tax credit is not availed.

2.16 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.

2.17 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.

2.18 It is settled principle of interpretation that if a statutory provision is open to more than one interpretations, 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 sententia 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) = 1965 (4) TMI 122 - SUPREME COURT
- District Mining Officer vs Tata Iron and steel co. (AIR 2001 SC 3134) = 2001 (7) TMI 1277 **-** SUPREME COURT
- Bhatia International vs. Bulk Trading SA (AIR 2002 SC 1432) = 2002 (3) TMI 824 - SUPREME COURT
- South Asia Industries (Pvt**)** Ltd vs. Sarup Singh (AIR 1966 SC **346)** = 1965 (4) TMI 112 **-** SUPREME COURT
- Kartar Singh vs. State of Punjab **[**JT (1994)2 SC 423] = 1994 (3) TMI 379 - SUPREME COURT
- Narayanaswami vs. G. Panneersevlam (AIR 1972 SC **2284**) SUPREME COURT 1972 (4) TMI 95

2.19 The Applicant specifically clarifies and undertake that following are not subject matter of the present Advance ruling:

a. New cars

*b. New **jewellery***

c. New watches

*d. New **books***

e. Paintings bought from Painter (artist) or other art dealers

*f. Any other new goods (not **used or** second hand goods**)***

2.20 The Applicant is presently paying and will continue to pay GST at applicable rate on full sale value on supply of such new goods and shall take credit of input tax paid on purchase of such goods.

2.21 The Applicant further states that where the GST is paid by the supplier of the goods, the applicant shall not opt the Margin Scheme and shall pay the GST as per the valuation provisions prescribed under the statue.

2.22 The Applicant is not dealing in standard set of goods. The Applicant gets variety of second hand or used articles for sale ranging from antiques, memorabilia or collectibles, paintings, sculptures, art pieces, books, watches, clocks, utensils, so on and so forth. The Applicant deals in the numerous items that vary from each other. Advance ruling is sought for class of goods generally dealt with by the Applicant and not for any standard set of goods.

2.23 The advance ruling is sought for dealings of goods that might come for auction in future. The advance ruling is not sought for historical transactions. Hence, it is difficult to provide invoices of items for which advance ruling is sought.

2.24 However, the applicant is enclosing herewith copies of sample invoices (along with description and offer as portrayed on website of the Applicant) for few goods recently auctioned by it. This will give fair idea of class of goods dealt with by the Applicant.

3. CONTENTION – AS PER THE CONCERNED OFFICER:

This office received ARA in case of M/s. Saffron Art Private Limited, GSTIN-27AAHCS0308RIZZ. Please find below is the explanation regarding point No. 14.

14. Question(**s**) on which advance ruling is required:		
(1) Classification of goods and/or services or both Classification of following goods:		
Particulars	**HSN Code and Tax Rate**	**Jurisdictional officer remarks**
a. Old Prints, Engravings, Lithographs, Sculptures		

Old Prints, Engravings, Lithographs	HSN-9702 - Tax Rate 12% on sale value	12% on difference between sale price and purchase price considering old prints, Engravings and Lithographs as second-hand goods as provided under Rule 32(5) of CGST Rules
Old Sculptures	HSN-9703 - Tax Rate 12% on sale value	12% on difference between sale price and purchase price considering Sculptures as second-hand goods as provided under Rule 32(5) of CGST Rules
Jewellery		
b. Old Jewellery	HSN 7102,7113,7114,7116 Tax Rate-3% on sale value	Decision already given by AAR in case of M/s. Astaguru Auction House Private Limited vide order No. GST-ARA- 40/2020-21/B-27, Mumbai, Dt. 08.03.2022
c. Antique Jewellery	HSN 9706 Tax Rate- 12% on sale value	12% on difference between sale price and purchase price considering Antique Jewellery as second-hand goods as provided under Rule 32(5) of CGST Rules
d. Antique Jewellery of age exceeding 100	HSN 9706 Tax Rate- 12% on sale value	Decision already given by AAR in case of M/s. Astaguru Auction House

years		Private Limited vide order No. GST-ARA- 40/2020-21/B-27, Mumbai, Dt. 08.03.2022
Books **e.** Collectible/ Rare Books (Printed Books)		0% on difference between sale price and purchase price considering Collectible/Rare Books **(**Printed Books) as second-hand goods as provided under Rule 32(5) of CGST Rules
f. Antique Books of age exceeding 100 years	HSN 9706 Tax Rate- 12% on sale value	**Decision already given by AAR in case of M/s. Astaguru Auction House Private Limited vide order No. GST-ARA- 40/2020-21/B-27, Mumbai, Dt. 08.03.2022**
Furniture		
g. Old Furniture (Made from wood/metal/glass)	HSN-4420,4421,6802,6815,6911,6912,6913,7009,7020,7323,7419,8452 Tax Rate- 12% on sale value	12% on difference between sale price and purchase price considering Old Furniture (Made from wood/metal/glass) as second-hand goods as provided under Rule 32(5) of CGST Rules
Old Furniture (Made HSN	HSN-4414,4419,7013,7326,8302,8303,8306, 8310,9403 Tax Rate- 18% on Sale value	18% on difference between sale price and purchase price considering Old Furniture

from wood/metal/glass **)**		(Made from wood/metal/glass) as second-hand goods as provided under Rule 32(5) of CGST Rules
h. Antique Furniture of age exceeding 100 years	HSN 9706 Tax Rate- 12% on Sale value	12% on difference between sale price and purchase price considering Antique Furniture of age exceeding 100 years as second-hand goods as provided under Rule 32(5) of CGST Rules
Carpets		
i. Used Carpets and Rugs	1.Handmadewool/silk carpets HSN-5701, Tax Rate - 5% on Sale value	1.5% on difference between sale price and purchase price considering Handmade wool/silk carpets as second-hand goods as provided under Rule 32(5) of CGST Rules
	2.Machine-made synthetic carpets, HSN -5702, Tax Rate 12% on Sale value	2.12% on difference between sale price and purchase price considering Machine- made synthetic carpets as second-hand goods as provided under Rule 32(5) of CGST Rules
	3.Tufted or woven carpets, HSN 5703 Tax Rate 12% on sale value	3.12% on difference between sale price and purchase price considering Tufted or

		woven carpets as second-hand goods as provided under Rule 32(5) of CGST Rules
	4. Mats and floor coverings (coir/jute/cotton) HSN - 5705, Tax Rate 12& or 5% on sale value	4. 12% or 5% on difference between sale price and purchase price considering Mats and floor coverings (coir/jute/cotton) as second-hand goods as provided under Rule
	5. Plastic or PVC mats HSN-9404, Tax rate-5%, 12%, 18% on sale value.	5.5%/12%/18% on difference between sale price and purchase price considering material falls under HSN 9404 as second- on Sale value hand goods as provided under Rule 32(5) of CGST Rules
j. Carpets of age exceeding 100 years	HSN 9706 Tax Rate- 12% on sale value	12% on difference between sale price and purchase price considering Carpets of age exceeding 100 years of age exceeding 100 years as second-hand goods as provided under Rule 32(5) of CGST Rules
Watches		
k. Old watches	HSN 9101,9102, 9103,9105 Tax Rate- 18% on sale value	**Decision already given by AAR in case of M/s. Astaguru Auction House**

		Private Limited vide order No. GST-ARA- 40/2020-21/B-27, Mumbai, Dt. 08.03.2022
1. Antique watches m. Antique Watches of age exceeding 100 years	HSN 9706 Tax Rate- 12% on sale value	**Decision already given by AAR in case of M/s. Astaguru Auction House Private Limited vide order No. GST-ARA- 40/2020-21/B-27, Mumbai, Dt. 08.03.2022**
Bags		
n. Used/old Bags	HSN 4202 Tax Rate- 18% on sale value	18% on difference between sale price and purchase price considering old/used bags as second-hand goods as provided under Rule 32(5) of CGST Rules.
Camera		
o. Used/old Camera	HSN 9007 Tax Rate- 18% on sale value	18% on difference between sale price and purchase price considering old/used camera as second hand goods as provided under Rule 32(5) of CGST Rules
Old pens/ writing instruments		
p. Old pens	HSN 9608 Tax Rate- **18**% on sale value	18% on difference between sale price and purchase price considering Old pens as second hand goods as

		provided under Rule 32(5) of CGST Rules
Old Writing instruments	HSN 9609 - Tax Rate 12% on sale value	12% on difference between sale price and purchase price considering Old writing instruments as second hand goods as provided under Rule 32(5) of CGST Rules
Old Instruments		
q. Old Instruments such as typewriters, discs etc.	HSN - 8213,8469,8521,8523,90 17,9201, 9202,9205 Tax Rate- 18% on sale value	18% on difference between sale price and purchase price considering Old Instruments as second-hand goods as provided under Rule 32(5) of CGST Rules
Old Instruments and appliances used in medical, surgical, dental or veterinary sciences etc.	HSN-9018 Tax Rate- 12% on sale value	12% on difference between sale price and purchase price considering Old Instruments as second-hand goods as provided under Rule 32(5) of CGST Rules
Other Antiques		
Other that jewellery, watches and books such as idols, sculptures, furniture etc of an age exceeding one hundred years	HSN 9706 Tax Rate- 12% on Sale value	12% on difference between sale price and purchase price considering Antiques such as idols, sculptures, furniture etc of age exceeding 100 years as second-hand goods as provided under Rule 32(5) of CGST Rules

Cars		
r. Old Cars	HSN 8703 Tax Rate- **18**% on sale value	**Decision already given by AAR in case of** M/**s. Astaguru Auction House Private Limited vide order No. GST-ARA- 40/2020-21/B-27, Mumbai, Dt. 08.03.2022**
s. Used Cars	HSN 8703 Tax Rate- 18% on sale value	18% on difference between sale price and purchase price considering Used cars as second-hand goods as provided under Rule 32(5) of CGST Rules
Collectibles and Memorabilia		
t. Collectibles	18% on sale value (HSN Code Residuary Entry Sr. No. 453 of Schedule III - Goods which are not Specified in Schedule I,II,IV,V and VI)	**18**% on difference between sale price and purchase price considering collectibles as second-hand goods as provided under Rule 32(5) of CGST Rules
u. Memorabilia	18% on sale value (HSN Code Residuary Entry Sr. No. 453 of Schedule **III** - Goods which are not Specified in Schedule **I**, II,IV,V and VI)	18% on difference between sale price and purchase price considering Memorabilia as second-hand goods as provided under Rule 32(5) of CGST Rules

(II) Determination of value of the goods/services for discharging GST as per the provisions mainly Rule 32(5) of CGST Rules, 2017 read with MSGST Rules 2017- under margin scheme- for the goods procured from unregistered Dealer.

Remarks.: - For the goods procured from unregistered dealer and Taxpayer willing to pay liability under Margine Scheme then he can discharge liability as per provisions mainly Rule 32(5) of MGST /CGST Rules, 2017 and AAR in case of M/s. Astaguru Auction House Private Limited vide order No. GST-ARA-40/2020-21/B-27, Mumbai, Dt. 08.03.2022

(III) Whether applicant is allowed to opt two method/schemes i.e.

1. To discharge the GST liability under Rule 32(5) under margin scheme if the goods are procured from unregistered dealer - where no GST is charged by the seller to applicant.
2. Where the seller charges GST to applicant the existing process to discharge the liability after availing the ITC on the purchases [As per Section 97(2)(g)]

   Remarks: - If the Taxpayer opts for Margin Scheme, he cannot opt for ITC on the purchase of second hand Goods.

4. HEARING

Virtual preliminary hearing in the matter was held on 25.06.2025. Authorized Representatives of the applicant, Mr. Sanjay Apte, (Advocate), attended the hearing while jurisdictional officer was absent.

The application was admitted and called for final e-hearing on 21.01.2026 Authorized Representatives of the applicant, Mr. Sanjay Apte, (Advocate) and the Jurisdictional officer Ms. Kavita Patil Deputy Commissioner of SGST were present. We heard both the sides.

5. OBSERVATIONS AND FINDINGS:

5.1 BRIEF FACTS OF THE CASE: M/s. Saffron Art Private Limited (hereinafter referred to as "the Applicant") is engaged in the business of auctioning and facilitating sale of various goods, such as antiques, paintings, jewellery, watches, books, furniture, collectibles, memorabilia, used cars, carpets and other personal effects.

The Applicant conducts auctions through online platforms, exhibitions and private sales. In the course of its business, the Applicant receives goods from owners/sellers on an approval basis and facilitates sale to buyers.

The Applicant has sought an Advance Ruling under Section 97 of the CGST Act, 2017 on the following issues:

1. Classification and applicable GST rate for various categories of goods such as old prints, sculptures, jewellery, books, furniture, carpets, watches, collectibles, memorabilia etc.
2. Applicability of valuation under Rule 32(5) of CGST Rules (Margin Scheme) for second-hand goods procured from unregistered persons.
3. Whether the Applicant can adopt two taxation methods, namely:
4. Margin scheme under Rule 32(5) where goods are purchased from unregistered persons.
5. Normal valuation under Section 15 where GST is charged by registered suppliers and ITC is availed.

5.2 **ISSUES FOR DETERMINATION:** The following issues arise for determination:

1. What is the appropriate classification and GST rate for the goods dealt by the Applicant?
2. Whether the Applicant is eligible to adopt valuation under Rule 32(5) of CGST Rules for second-hand goods.
3. Whether the Applicant can simultaneously adopt margin scheme and normal valuation depending upon the nature of procurement.

After considering the submissions made by the Applicant that they are only raising their questions in respect of second hand or used goods and the submission made by the jurisdictional officer, relevant statutory provisions, notifications, and judicial precedents, the issues are discussed as follows.

5.3 ISSUE 1: CLASSIFICATION OF GOODS

5.3.1 We have carefully gone through the application, statement of facts, written submissions filed by the Applicant, additional submissions

made during the course of personal hearing, sample invoices, copies of agreements entered into with sellers/owners of goods, and the submissions made by the jurisdictional officer. We have also examined the relevant provisions of the CGST Act, 2017, the MGST Act, 2017, Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, the General Rules for Interpretation of the Customs Tariff Act, 1975 and the judicial precedents relied upon by the Applicant. The Applicant is primarily engaged in facilitating auction sales, private sales and exhibition sales of second-hand/used goods such as paintings, jewellery, watches, books, furniture, carpets, memorabilia, collectibles, old cars and various personal effects.

5.3.2 At the outset, it is observed that the Applicant is not dealing in a single standardized commodity. The Applicant receives numerous categories of second-hand and used goods from different sellers/owners for the purpose of auction and sale. The goods vary substantially in nature, composition, age, utility, historical significance and commercial identity. The Applicant has sought advance ruling not in respect of one specific transaction but in respect of classes of goods generally dealt with by them in the course of business. Further, the Applicant has submitted that many goods may be auctioned in future and therefore exact invoices and detailed specifications of every product cannot be furnished at this stage.

5.3.3 We find merit in the submission of the Applicant that classification of goods under GST is required to be determined with reference to the Customs Tariff Act, 1975 read with Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017. Explanation (iv) to the said Notification specifically provides that the Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975 shall apply, insofar as may be, for interpretation of the rate notification. Therefore, the principles contained in the General Rules for Interpretation (GRI)

become relevant while determining the classification of goods involved in the present proceedings.

5.3.4 The Applicant has heavily relied upon Rule 3(a) of the General Rules for Interpretation, which states that the heading providing the most specific description shall be preferred to a heading providing a more general description. We agree with the said legal proposition. Accordingly, where a specific tariff entry exists for a particular article, the same must ordinarily prevail over any general or residuary entry. However, such classification can be conclusively determined only when complete description, essential character, composition and commercial identity of the goods are available on record.

5.3.5 The Applicant has also relied upon various judgments of the Hon'ble Supreme Court relating to principles of statutory interpretation including the judgments in Nelson Motis Vs. Union of India, Gurudevdatta VKSSS Maryadit Vs. State of Maharashtra, Swedish Match AB Vs. SEBI and other decisions. The Applicant has argued that where the language of the statute is clear and unambiguous, the same must be interpreted in its ordinary and natural meaning. We find that the said principle is well settled in law and applicable in the present matter while interpreting Rule 32(5), tariff headings and rate notifications.

5.3.6 We further observe that pursuant to restructuring of GST rate schedules with effect from 22.09.2025, the earlier multiple slab structure of 5%, 12%, 18% and 28% underwent substantial rationalisation. Same has also been considered while determining appropriate classification for the goods dealt by the Applicant.

5.4 We now discuss the issue of classification in respect of the goods as under:-

5.4.1 OLD PRINTS, ENGRAVINGS, LITHOGRAPHS AND SCULPTURES

The Applicant has submitted that old prints, engravings and lithographs are classifiable under Heading 9702 of the GST Tariff

which covers "Original engravings, prints and lithographs". We have examined the tariff entry and find that Heading 9702 specifically covers original engravings, prints and lithographs executed by hand by the artist. Therefore, where the goods dealt with by the Applicant satisfy the description of Heading 9702, the same would appropriately fall under the said heading. Such goods would attract GST at the applicable rate prescribed under Notification No. 1/2017-Central Tax (Rate), which is 12% (6% CGST + 6% SGST) as per the Notification No.1/2017 Schedule II and with Sr. No. 237 up to 21.09.2025 and @ 5% (2.5% CGST + 2.5% SGST) as per the Notification No.9/2025 Schedule I and with Sr. No. 509 from 22.09.2025.

Similarly, old sculptures and statuary are claimed to be classifiable under Heading 9703. We observe that Heading 9703 specifically covers "Original sculptures and statuary, in any material". Therefore, where the articles sold by the Applicant qualify as original sculptures or statuary, classification under Heading 9703 would be legally appropriate and GST would be payable at the rate applicable to such heading, presently 12% (6% CGST + 6% SGST) as per the Notification No.1/2017 Schedule II and with Sr. No. 238 up to 21.09.2025 and @ 5% (2.5% CGST + 2.5% SGST) as per the Notification No.9/2025 Schedule I and with Sr. No. 510 from 22.09.2025.

5.4.2 JEWELLERY

The Applicant has submitted that old jewellery may fall under Chapters 7102, 7113, 7114 and 7116 depending upon the nature and composition of the goods. We observe that Chapter 71 covers natural or cultured pearls, precious stones, precious metals and articles thereof. Different tariff entries apply depending upon whether the goods are gold jewellery, silver articles, imitation jewellery or articles studded with precious stones.

However, the Applicant has not furnished complete description, composition, purity, material specifications or sample catalogues in respect of old jewellery proposed to be auctioned. In absence of specific details, a conclusive classification cannot be determined. Classification of jewellery is highly fact specific and depends upon the essential character and composition of the article. Therefore, the question relating to classification of old jewellery cannot be answered in a generalized manner and the same shall depend upon the exact nature of goods involved in each transaction.

5.4.3 BOOKS

The Applicant has submitted that collectible and rare books may fall under Chapters 4901, 4902 and 4905 of the GST Tariff. We observe that Chapter 49 covers printed books, newspapers, manuscripts, maps and other printed matter. The applicable GST rate depends upon the exact nature of the printed material. If description of goods in which applicant deals is matched with the description of these Chapter heading, then the goods will be covered under this heading and will attract a rate as per the chapter heading. Since the specific details and description has been not provided by the applicant, the question cannot be answered.

5.4.4 FURNITURE

The Applicant has submitted multiple HSN entries for old furniture depending upon whether the goods are made from wood, metal, stone, ceramic, glass or mixed material. We observe that furniture and decorative articles may fall under different tariff headings depending upon the constituent material and use of the product. In absence of detailed description and sample specifications, classification cannot be conclusively determined in advance for all categories of furniture proposed to be auctioned in future.

Accordingly, where the description of goods matches the description under specific tariff headings such as 9403, 4420, 4421, 7009, 7323 etc.,

classification shall be under the respective heading and GST shall apply accordingly. Therefore, the question relating to classification of furniture cannot be answered in a generalized manner and the same shall depend upon the exact nature of goods involved in each transaction.

5.4.5 CARPETS AND RUGS

The Applicant has submitted that used carpets and rugs may fall under Headings 5701, 5702, 5703 or 5705 depending upon whether they are handmade, machine-made, tufted or woven. We find that classification of carpets depends upon manufacturing method and constituent material. Therefore, classification can only be determined based on detailed product description.

Accordingly, if the goods correspond to the tariff description under the above headings, GST shall be payable at the rate prescribed against such entries in Notification No. 1/2017-Central Tax (Rate). Therefore, the question relating to classification of used carpets and rugs cannot be answered in a generalized manner and the same shall depend upon the exact nature of goods involved in each transaction.

5.4.6 WATCHES

The Applicant has submitted that old watches may fall under Headings 9101, 9102, 9103 and 9105. We observe that Chapter 91 covers clocks and watches and their parts. The classification depends upon whether the watch contains precious metal casing, mechanical movement or other specifications.

Since the Applicant has not provided complete specifications of the watches proposed to be sold, no conclusive ruling can be issued for all categories collectively. However, where the goods satisfy the description of the relevant headings, GST shall apply as per the applicable rate notification. Therefore, the question relating to classification of old watches cannot be answered in a generalized

manner and the same shall depend upon the exact nature of goods involved in each transaction.

5.4.7 BAGS

Used and old bags are claimed to fall under Heading 4202. We observe that Heading 4202 covers trunks, suitcases, handbags, wallets and similar containers. Therefore, where the goods proposed to be sold answer the description under Heading 4202, the same would attract GST at the applicable rate prescribed under the notification. As there are various types which may cover under HSN Chapter 42 which covers leather goods, travel items and saddler.

Key HSN Codes in Chapter 42:

1. 4201: Saddlery and harness for any animal (e.g., dog coats, saddle bags).
2. 4202: Trunks, suitcases, vanity cases, briefcases, school satchels, handbags, wallets, and similar containers.
3. 4203: Articles of apparel and clothing accessories, of leather or composition leather.
4. 4204: Articles of leather used in machinery or technical applications.
5. 4205: Other articles of leather (e.g., leather straps, luggage tags).

Therefore, the question relating to classification of used /old bags cannot be answered in a generalized manner and the same shall depend upon the exact nature of goods involved in each transaction.

5.4.8 CAMERAS

The Applicant has submitted that used and old cameras are classifiable under Heading 9007 of the GST Tariff, 2017 which covers cinematographic cameras and projectors, including those with sound recording or reproducing apparatus. This chapter includes equipment for film widths less than 16 mm or for double 8 mm film. If the description provided by the applicant is matched with the description of Chapter heading 9007, then the goods will be covered

under this heading and will attract a rate of 18% (SGST 9% and CGST 9%) as per the Notification No.41/2017 Schedule III and with Sr. No. 411 C before 22.09.2025 as amended by the notification no. 41/2017 central tax(rate) dt. 14.11.2017 and also 18% (SGST 9% and CGST 9%) as per the Notification No.9/2025 Schedule II and with Sr. No. 561 after 22.09.2025.

5.4.9 WRITING INSTRUMENTS

Applicant has submitted that old pens may fall under Heading 9608 whereas old writing instruments such as pencils and crayons are claimed under Heading 9609. As per the notification no. 01/2017 central tax (rate) entries for headings 9608 and 9609 are under:-

Schedule	Sr. No.	Tariff Item	Description of Goods	Tax Rate (%)
II	232	9608	Pens [other than Fountain pens, stylograph pens]	12
III	447	9608	Fountain pens, stylograph pens and other pens	18
II	233	9608, 9609	Pencils (including propelling or sliding pencils), crayons, pastels, drawing charcoals and tailor's chalk	12

Said notification is amended by notification no. 09/2025 central tax(rate) and entries for headings 9608 and 9609 are under: -

Schedule	Sr. No.	Tariff Item	Description of Goods	Tax Rate (%)
II	626	9608	Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens; stylograph pens and other pens; duplicating stylos; pen holders, pencil holders and	18

			similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609	
Exempted Goods Schedule	163	9608, 9609	Pencils (including propelling or sliding pencils), crayons, pastels, drawing charcoals, writing or drawing chalks and tailor's chalk; Slate pencils and chalk sticks	Nil

From above both the notifications, it is seen that specific description of pens and writing instruments are required. Since the Applicant has not provided complete specifications of the old pens and old writing instruments proposed to be sold, no conclusive ruling can be issued for all categories collectively. However, where the goods satisfy the description of the relevant headings, GST shall apply as per the applicable rate notification. Therefore, the question relating to classification of old watches cannot be answered in a generalized manner and the same shall depend upon the exact nature of goods involved in each transaction.

5.4.10 OLD writing INSTRUMENTS

The Applicant has submitted that old writing instruments such as typewriters, discs and other vintage instruments may fall under different chapters including Chapters 8213, 8469, 8521, 8523, 9017, 9018, 9201 and others. Since no precise description has been furnished, classification cannot be determined conclusively in a generalized manner. Therefore, the question relating to classification of old instruments such as typewriters, discs etc. cannot be answered in a generalized manner and the same shall depend upon the exact nature of goods involved in each transaction.

5.4.11 OLD/USED CARS

The Applicant has submitted that old and used motor vehicles are classifiable under Heading 8703 read with Notification No. 8/2018-Central Tax (Rate) dated 25.01.2018. We observe that the said notification specifically prescribes concessional rates for old and used motor vehicles subject to fulfillment of prescribed conditions including non-availment of input tax credit. The notification further provides that in cases where depreciation has been claimed under the Income Tax Act, the value representing margin shall be the difference between sale consideration and depreciated value. In other cases, margin shall be the difference between selling price and purchase price. Negative margin is to be ignored. Therefore, where the Applicant fulfills all conditions prescribed in Notification No. 8/2018-Central Tax (Rate), concessional taxation on margin would be available.

With effect from September 22, 2025, GST on HSN 8703 (motor cars/vehicles) was restructured, generally reducing rates for small cars to 18% and increasing tax on larger, luxury, and SUVs to 40%. Before this date, most passenger cars were charged at a base rate of 28% plus varying cess (1-22%), totaling up to 50%. But applicant is dealing with second hand/used cars and as per notification no. 08/2018 CT(Rate) dated 25.01.2018, 18% GST is applicable to (a) Old and used, petrol Liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven motor vehicles of engine capacity of 1200 cc or more and of length of 4000 mm or more. (b) Old and used, diesel driven motor vehicles of engine capacity of 1500 cc or more and of length of 4000 mm (c) Old and used motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles. The explanation to this Notification is follows: -

(i) in case of a registered person who has claimed depreciation under section 32 of the Income-Tax Act,1961(43 of 1961) on the said goods, the value that represents the margin of the supplier shall be the difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply, and where the margin of such supply is negative, it shall be ignored; and (ii) in any other case, the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored.

This notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the input tax credit of Value Added Tax or any other taxes paid, on such goods.

So, to avail the benefit of lower rate under this notification, the condition laid down in said notification must be fulfilled. If applicant fulfils all the conditions as per the said notification, he is elegible to tax @ 18% on old/used cars upto 21.09.2025. Revised GST structure applicable with effect from 22.09.2025, GST rates relating to motor vehicles under Heading 8703 underwent restructuring whereby rates for certain small passenger vehicles were rationalized while higher tax incidence was prescribed for luxury vehicles and SUVs.

However, insofar as taxation of old and used motor vehicles is concerned, Notification No. 8/2018-Central Tax (Rate) continues to govern the concessional taxation mechanism subject to satisfaction of prescribed conditions. Therefore, where the Applicant fulfills all conditions prescribed under the said notification including non-availment of input tax credit, GST would continue to be payable on margin basis at the concessional rate applicable to such old and used vehicles.

We therefore hold that classification of old and used motor vehicles shall continue under Heading 8703 and concessional taxation under Notification No. 8/2018-Central Tax (Rate) shall be available subject to fulfillment of statutory conditions.

5.4.12 COLLECTIBLES AND MEMORABILIA

The Applicant has argued that collectibles and memorabilia should be classified according to the underlying goods and not under residuary entry. Examples given include cricket bats signed by famous sports personalities and costumes used by film actors. We have carefully considered the submission.

We observe that classification cannot be determined solely on the basis of material composition. In many cases, memorabilia derives its predominant value not from functional utility but from historical, cultural, commemorative or celebrity association. Therefore, the essential character and commercial identity of such goods become relevant. **Articles such as clothing, sporting equipments, books, autographs, photographs and such other items (**Collectibles and memorabilia) generally includes article like clothing, sport equipment, books, autographs, photographs, music instruments, idols, footwear, furniture, utensils, etc. The applicant contended that Since there is no specific entry for collectibles and memorabilia in rate schedules as specified by Notification No. 1/2017- Central Tax (Rate), HSN code and rate applicable to specific goods (sold as collectibles and memorabilia) should be applied. For example, cricket bat of Sachin Tendulkar (with his autograph thereon) is sold or costume of film character (Actress Deepika Padukones costume in film "Padmavat") is sold, the same should be classified under "sports equipment" or "clothes/ garments". The same should not be classified under residuary entry as there are specific entries in the rate notification for the said goods. In relation to the example given by the applicant, in auction of bat signed by Sachin Tendulkar or costume of

actress Deepika Padukones in film "Padmavat", we have to state that in such case it is not only the bat or costume is sold but also intrinsic value of a legendary sportsperson or actress also comes into play. In this case, the cost of bat or costume is reasonable but probably will be auctioned off in lakhs of rupees due to its intrinsic value.

The classification of goods must be determined based on:

1. Essential character
2. Commercial identity
3. Tariff description

Where an item derives its primary value from historical, cultural or commemorative significance, the classification may not necessarily follow the underlying material.

In several cases, collectibles and memorabilia are traded primarily because of their collectible value rather than their functional utility.

Where the article is traded primarily because of collectible or commemorative significance and cannot be appropriately classified under a specific tariff entry, the same may merit classification under the residuary entry i.e. Serial No. 453 of Schedule III to Notification No. 1/2017-Central Tax (Rate) which cover 'Any Chapter ' where goods which are not specified in schedule I, II, III, IV, V or VI and such goods will be covered under this heading and will attract a rate of 18% (SGST 9% and CGST 9%) before 22.09.2025 and the same may merit classification under the residuary entry i.e. Serial No. 639 of Schedule II to Notification No. 9/2025-Central Tax (Rate) which cover 'Any Chapter ' where goods which are not specified in schedule I, III, IV, V, VI or VII and such goods will be covered under this heading and will attract a rate of 18% (SGST 9% and CGST 9%) after 22.09.2025.

5.4.13 ANTIQUES EXCEEDING 100 YEARS

The Applicant has strongly relied upon Section 2(1)(a) of the Antiquities and Art Treasures Act, 1972 which defines "antiquity" as

an object which has been in existence for not less than one hundred years. We find substance in the said submission.

Heading 9706 specifically covers "Antiques of an age exceeding one hundred years". Therefore, where jewellery, books, watches, furniture, idols, sculptures, carpets or other artefacts satisfy the criterion of being more than one hundred years old, classification under Heading 9706 is legally sustainable irrespective of the material composition of such goods.

Accordingly, antiques exceeding one hundred years shall be classifiable under HSN 9706 and attract GST at the applicable rate, presently 12% (6% CGST + 6% SGST) as per the Notification No.1/2017 Schedule II and with Sr. No. 240 up to 21.09.2025 and @ 5% (2.5% CGST + 2.5% SGST) as per the Notification No.9/2025 Schedule I and with Sr. No. 513 from 22.09.2025. However, goods which are merely old or second-hand but not exceeding one hundred years shall continue to be classified under their respective tariff headings.

5.5 ISSUE 2: APPLICABILITY OF RULE 32(5)

5.5.1 The Applicant has sought clarification regarding applicability of Rule 32(5) of the CGST Rules, 2017 to second-hand goods procured from unregistered persons. The Applicant has contended that since no input tax credit is available in such transactions, GST should be payable only on the margin i.e. difference between selling price and purchase price.

5.5.2 Rule 32(5) provides a special valuation mechanism for dealers engaged in buying and selling second-hand goods. The Rule states that where second-hand goods are sold as such or after minor processing and where no input tax credit has been availed on purchase of such goods, the value of supply shall be the difference between selling price and purchase price.

5.5.3 The Applicant has argued that the purpose of Rule 32(5) is to avoid double taxation and to ensure that dealers operating in the secondary market are taxed only on value addition made by them. We find merit

in the said submission. GST is fundamentally a value added tax and the margin scheme has been introduced to prevent cascading effect in transactions involving second-hand goods.

5.5.4 Rule 32(5) of CGST Rules: Where a taxable supply is provided by a person dealing in buying and selling second-hand goods, and:

1. Goods are sold as such or after minor processing, and
2. No input tax credit has been availed on the purchase,

The value of supply shall be: Selling price – Purchase price (margin)

With reference to this issue, the Applicant has submitted that:

1. Most goods are second-hand goods purchased from individuals.
2. ITC is not available in such cases.
3. Therefore, valuation should be restricted to margin.

5.5.5 The Applicant's interpretation requires qualification for the following reasons.

1. Margin Scheme Applies Only Where Applicant Acts as Trader Rule 32(5) applies only where the taxpayer is: "a person dealing in buying and selling second-hand goods".

   However, the Applicant's own submissions indicate that the goods are owned by the sellers and ownership of the goods (title of goods) is transferred directly from seller to the end buyer at the close of bidding. Applicant issues invoice to owner (seller) and charges premium and commission to facilitate the sale proceeding. If goods owned by the applicant then there is no question of issuing invoice for commission to owner of goods. Thus, the Applicant is primarily acting as an auctioneer or intermediary.

   In such situations:

   1. The Applicant may not be considered the supplier of goods
   2. The supply of goods may occur between seller and buyer

   This distinction becomes crucial.

2. Margin Scheme Not Applicable in Pure Agency Model, where the Applicant does not purchase the goods but provides the

auctioneering / intermediary services and such services fall under SAC 9962 and GST is payable on commission / buyer's premium. Therefore, the margin scheme cannot be applied where the Applicant merely facilitates sale.

3. Margin Scheme Requires Actual Purchase as the Rule 32(5) presupposes:
   - Purchase price
   - Selling price

   If goods are sold on consignment basis, the Applicant cannot compute margin. Hence margin scheme is applicable only where the Applicant purchases the goods and subsequently sells them.

   The interpretation aligns with earlier rulings such as:

   AAR Maharashtra – Astaguru Auction House Pvt. Ltd. Order No. GST-ARA-40/2020-21/B-27 dated 08.03.2022

   The ruling clarified that, Auctioneers may apply margin scheme only where they purchase goods and resell them.

   Similarly, AAR Maharashtra – Saffron Art Private Limited Order dated 20.05.2022 allowed margin scheme specifically for second-hand paintings where the conditions of Rule 32(5) were satisfied.

5.5.6 However, applicability of Rule 32(5) depends upon the nature of transaction undertaken by the Applicant. From the submissions placed on record, it is observed that in many cases the Applicant merely acts as an auctioneer, intermediary or facilitator between the owner of goods and the end buyer. The ownership of goods is transferred directly from seller to buyer upon completion of auction.

5.5.7 In such cases, the Applicant is not purchasing and reselling goods on principal-to-principal basis. Rather, the Applicant is facilitating sale and earning commission and buyer's premium. Therefore, the Applicant cannot be treated as supplier of goods for the purpose of Rule 32(5) in pure agency transactions.

5.5.8 Where the Applicant merely facilitates sale of goods belonging to third parties, the services rendered by the Applicant are classifiable under SAC 9962 and GST is payable on commission and buyer's premium charged by the Applicant.

5.5.9 The margin scheme under Rule 32(5) presupposes existence of:

(i) purchase price,

(ii) selling price, and

(iii) subsequent resale by the dealer.

In absence of actual purchase of goods by the Applicant, computation of margin itself becomes impossible. Therefore, Rule 32(5) cannot apply in pure consignment or agency transactions.

5.5.10 We therefore conclude that the Applicant may adopt the margin scheme under Rule 32(5) only in those transactions where:

(a) the Applicant acts as principal and not merely as intermediary;

(b) the Applicant actually purchases and resells second-hand goods;

(c) goods are sold as such or after minor processing;

(d) no ITC is availed on purchase of such goods; and

(e) proper records are maintained.

5.5.11 In cases where the Applicant merely facilitates auction/sale of goods belonging to third-party owners and charges commission or buyer's premium, the Applicant shall be treated as supplier of auctioneering/intermediary services and GST shall be payable on such services under the applicable SAC classification.

5.6 ISSUE 3: WHETHER TWO METHODS CAN BE ADOPTED

5.6.1 The Applicant has sought permission to adopt two different methods of taxation depending upon the nature of procurement of goods, namely:

(i) Margin scheme under Rule 32(5) where goods are purchased from unregistered persons and no ITC is available; and

(ii) Normal valuation under Section 15 where goods are purchased from registered suppliers charging GST and ITC is availed.

5.6.2 We observe that Rule 32(5) itself contains a clear condition that the margin scheme shall apply only where no input tax credit has been availed on purchase of such goods. Therefore, the statute itself contemplates two distinct situations.

5.6.3 Where goods are purchased from registered suppliers on payment of GST and the Applicant avails input tax credit, valuation has to be done under Section 15 of the CGST Act and GST is payable on the transaction value.

5.6.4 Conversely, where goods are purchased from unregistered persons and no input tax credit is available, the Applicant may opt for valuation under Rule 32(5), subject to fulfillment of conditions prescribed therein.

5.6.5 The Applicant has specifically undertaken that wherever ITC is availed, they shall not claim benefit of the margin scheme. We find that such undertaking is in consonance with statutory provisions.

5.6.6 We further observe that there is no provision under the GST law prohibiting selective application of Rule 32(5) transaction-wise depending upon nature of procurement. Similar view has been taken in the ruling of the Gujarat Authority for Advance Ruling in the case of M/s. Jitendra Equipment, wherein it was held that the taxpayer may adopt margin scheme for purchases from unregistered persons and normal GST mechanism with ITC for purchases from registered dealers.

5.6.7 Accordingly, we hold that the Applicant may adopt:

(a) valuation under Rule 32(5) where conditions prescribed therein are fulfilled and no ITC is availed; and

(b) normal valuation under Section 15 where ITC is availed on purchases from registered suppliers.

Accordingly, the issues raised by the Applicant are answered in terms discussed hereinabove.

6. In view of the extensive deliberations as held hereinabove, we pass an order follows:

ORDER

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

NO.GST-ARA- 104/2022-23/B-160 Mumbai, dt. 28.09.2026

For reasons as discussed in the body of the order, the question is answered thus –

Q.1 What is the classification and applicable GST rate for various categories of goods dealt with by the Applicant?

ANSWER:

1. **Old Prints, Engravings and Lithographs** are classifiable under Heading 9702 and attract GST @ 12% (6% CGST + 6% SGST) as per the Notification No.1/2017 Schedule II with Sr. No. 237 up to 21.09.2025 and @ 5% (2.5% CGST + 2.5% SGST) as per the Notification No.9/2025 Schedule I with Sr. No. 509 from 22.09.2025.
2. **Old Sculptures and Statuary** are classifiable under Heading 9703 and attract GST @ 12% (6% CGST + 6% SGST) as per the Notification No.1/2017 Schedule II with Sr. No. 238 up to 21.09.2025 and @ 5% (2.5% CGST + 2.5% SGST) as per the Notification No.9/2025 Schedule I with Sr. No. 510 from 22.09.2025.
3. **Old Jewellery** may fall under Chapter Headings 7102, 7113, 7114 or 7116 depending upon the nature and description of goods. Since complete specifications/details are not available, no specific ruling on classification and rate can be issued.
4. **Collectible/Rare Books** may fall under appropriate headings of Chapter 49 depending upon the nature and description of books. Applicable GST rate shall be as per the relevant tariff entry. Since complete specifications/details are not available, no specific ruling on classification and rate can be issued.
5. **Old Furniture**, **Used Carpets and Rugs**, **Old Watches**, **Used/Old Bags**, **Old Instruments**, and similar second-hand goods shall be classifiable under their respective tariff headings depending upon the exact nature, description and essential character of the goods and attract GST at the applicable rates prescribed under Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 9/2025- Central Tax (Rate) dated 17.09.2025. Since

complete specifications/details are not available, no specific ruling on classification and rate can be issued.

6. **Used/Old Cameras** classifiable under Heading 9007 attract GST @ 18% (9% CGST + 9% SGST) as per the Notification No.1/2017 Schedule IV with Sr. No. 181 before 22.09.2025 and also @ 18% (9% CGST + 9% SGST) as per the Notification No.9/2025 Schedule II with Sr. No. 561 after 22.09.2025.
7. **Old Pens and Old Writing Instruments** shall be classifiable under their respective tariff headings depending upon the exact nature, description and essential character of the goods and attract GST at the applicable rates prescribed under Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 9/2025- Central Tax (Rate) dated 17.09.2025. Since complete specifications/details are not available, no specific ruling on classification and rate can be issued.
8. **Old/Used Cars** falling under Heading 8703 shall be governed by Notification No. 8/2018-Central Tax (Rate) dated 25.01.2018 and corresponding notifications, subject to fulfillment of conditions prescribed therein, including conditions relating to non-availment of input tax credit. So, to avail the benefit of lower rate under this notification, the condition laid down in said notification must be fulfilled. If applicant fulfils all the conditions as per the said notification, he is elegible to tax @ 18% on old/used cars before and after 22.09.2025.
9. **Collectibles and Memorabilia** shall be classified on the basis of their essential character, commercial identity and tariff description. Where no specific tariff entry exists and the goods derive their predominant value from historical, commemorative or collectible significance, the same may merit classification under the residuary entry i.e. Serial No. 453 of Schedule III to Notification No. 1/2017-Central Tax (Rate) which cover 'Any Chapter ' where goods which are not specified in schedule I, II, III, IV, V or VI and such goods will be covered under this heading and will attract a rate of 18% (SGST 9% and CGST 9%) before 22.09.2025 and the same may merit classification under the residuary entry i.e. Serial No. 639 of Schedule II to Notification No. 9/2025-Central Tax (Rate) which cover 'Any Chapter ' where goods which are not specified in schedule I,

III, IV, V, VI or VII and such goods will be covered under this heading and will attract a rate of 18% (SGST 9% and CGST 9%) after 22.09.2025.

10. the same may fall under Residuary Entry Serial No. 453 of Schedule III and attract GST @ 18% (9% CGST + 9% SGST) before and after 22.09.2025.
11. **Antique goods of an age exceeding one hundred years**, including antique jewellery, books, watches, furniture, carpets, idols, sculptures and similar artefacts, are classifiable under Heading 9706 and attract GST @ 12% (6% CGST + 6% SGST) as per the Notification No.1/2017 Schedule II with Sr. No. 240 up to 21.09.2025 and @ 5% (2.5% CGST + 2.5% SGST) as per the Notification No.9/2025 Schedule I with Sr. No. 513 from 22.09.2025, subject to satisfaction of the condition that such goods are antiques exceeding one hundred years in age.

Q.2 Whether the Applicant is eligible to adopt valuation under Rule 32(5) of the CGST Rules, 2017 in respect of second-hand goods procured from unregistered persons?

ANSWER:

The Applicant is eligible to adopt valuation under Rule 32(5) of the CGST Rules, 2017 only in cases where:

1. the Applicant purchases and sells second-hand goods on principal-to-principal basis;
2. the goods are sold as such or after minor processing which does not change the nature of the goods;
3. no input tax credit has been availed on the purchase of such goods; and
4. proper records relating to purchase price and selling price are maintained.

However, where the Applicant merely acts as an auctioneer/intermediary/facilitator and ownership/title of goods passes directly from seller to buyer, Rule 32(5) will not apply, and GST shall be payable on commission/buyer's premium/facilitation charges under SAC 9962.

Q.3 Whether the Applicant can simultaneously adopt:

1. valuation under Rule 32(5) for goods procured from unregistered persons where no ITC is availed; and

2. normal valuation under Section 15 where goods are procured from registered suppliers charging GST and ITC is availed?

ANSWER:

Yes. The Applicant can adopt both methods simultaneously depending upon the nature of transaction, namely:

1. valuation under Rule 32(5) of the CGST Rules, 2017 where second-hand goods are procured without availment of input tax credit; and
2. valuation under Section 15 of the CGST Act, 2017 where goods are procured from registered suppliers charging GST and input tax credit is availed.
3. The Applicant shall maintain proper segregation and documentary records for both categories of transactions.

D.P. GOJAMGUNDE
(MEMBER)

HIMANI DHAMIJA
(MEMBER)

PLACE - Mumbai

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.