

**THE AUTHORITY FOR ADVANCE RULING  
IN KARNATAKA  
GOODS AND SERVICES TAX  
VANIJA THERIGE KARYALAYA, KALIDASA ROAD  
GANDHINAGAR, BENGALURU – 560 009**

**Advance Ruling No. KAR ADRG 15/2020**

**Date : 23-03-2020**

Present:

1. **Dr. Ravi Prasad M.P.**  
Additional Commissioner of Commercial Taxes . . . . Member (State Tax)
2. **Sri. Mashhood Ur Rehman Farooqui,**  
Joint Commissioner of Central Tax . . . . Member (Central Tax)

1.	Name and address of the applicant	M/s Attica Gold Pvt. Limited # 11/4, Ground Floor, Suvarna Bhavan, Queen's Road, Bengaluru-560052
2.	GSTIN or User ID	29AANCA2059B1ZS
3.	Date of filing of Form GST ARA-01	05.12.2019
4.	Represented by	Sri Muniraju P.R. Chartered Accountant & DAR
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Bangalore North Commissionerate.
6.	Jurisdictional Authority – State	LGSTO-20, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act vide CIN HDFC19112900475022 dated 30.11.2019 .

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017  
& UNDER 98(4) OF THE KGST ACT, 2017**

1. M/s Attica Gold Private Limited (hereinafter called the 'Applicant'), having GSTIN number 29AANCA2059B1ZS, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 and Section 97 of the KGST Act, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.
2. The Applicant is a private limited company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:



- a) Whether applicant dealing in second hand goods and tax is to be paid on the difference between the selling price and purchase price as stipulated in Rule 32(5) of CGST Rules, 2017 if dealer purchases used / second hand gold jewellery from individuals who are not dealers under the GST and at the time of sale there is no change in the form/ nature of goods?
  - b) Whether ITC is allowed to be claimed if purchases are made from the dealer from whom marginal scheme is applicable?
3. The applicant furnishes some facts relevant to the stated activity:
- a. The applicant states that he is in the business of sale of used (second-hand goods). He states that he is purchasing used gold jewellery from unregistered persons and selling the same to others.
  - b. The applicant states that as per Rule 32(5) of the CGST Rules, 2017, if a person engaged in supply of second hand goods, he can avail the benefit of marginal scheme as per Notification No.10/2017- Central Tax (Rate) dated 28.06.2017 under GST provided that he shall satisfy all the conditions prescribed in the above said rule.
  - c. The applicant states that Rule 32(5) of the CGST Rules, 2017 provides valuation for taxable supply by a person dealing in buying and selling of second-hand goods. In such case, value of supply shall be the difference between selling price minus purchase price. To opt for the said valuation, conditions are required to be met are:
    - i. Used goods are sold as such; or after minor processing which does not change the nature of the goods; and
    - ii. Where no input tax credit has been availed on the purchase of such goods.If under the margin scheme, difference between selling price minus purchase price is negative, then GST is not applicable on such transaction.
  - d. The applicant states that this issue is already heard in the case of Safset Agencies Private Limited by the Maharashtra Advance Ruling Authority [Order no. GST-ARA-86/2018-19B Mumbai dated 15.01.2019] where the dealer who deal in old jewellery and that jewellery falls under Heading 7113 of the GST Tariff, which covers Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal. The provisions of Rule 32(5) of CGST Rules are applicable to them in respect of old jewellery which are purchased by them. It is clarified that he can avail the benefit of Margin Scheme.



- e. The applicant states that his contention is that he is also engaged in sale of second hand goods having GST Tariff 7113, he can also avail the benefit of Margin Scheme under GST.
- f. The applicant explains that Rule 32(5) of the CGST 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.
- g. A person dealing in second hand goods is allowed to pay the tax on 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.
- h. The applicant states that the term “second hand goods” as per rule 32(5) of CGST Rules would mean used goods as such or after such minor processing which does not change the nature of goods and where no input tax has been availed on purchase of such goods.
  - i. Second hand things are not new and have been owned by some one else (Collins Dictionary)
  - ii. Having had a previous owner; not new (English Oxford Dictionary)Rule 32(5) of CGST Rules clearly and unambiguously applies to person dealing in second hand goods. As states in facts of the case, applicant is dealing in old jewellery.
- i. The applicant states that it is settled jurisprudence principle that when the words of a statute is clear, plain and unambiguous, i.e. they are reasonable susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. Moreover, if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. This rule of interpretation is followed in plethora of judgements. A few of the judgements are as under:
  - i. Nelson Motis v. Union of India (AIR 1992 SC 1981)
  - ii. Gurudevanti VKSSS Maryadit v. State of Maharashtra (AIR 2001 SC 1980)

- iii. Swedish Match AB v. Securities and Exchange Board of India (AIR 2004 SC 4219)
  - iv. Government of Andhra Pradesh v. Road Rollers Owners Welfare Association [2004 (6) SCC 210]
- j. The applicant, as said in the earlier paragraphs, quotes the ruling issued by the Maharashtra Advance Ruling Authority in support of his contentions.
4. Sri Muniraju.P.R., Chartered Accountant and duly authorised representative of the above concern appeared and made the following submissions:
- a. That the applicant is involved in the purchase and sale of second hand jewellery and is no conversion is made using the above materials. Further he stated that the applicant is only cleaning and polishing the old used second hand jewellery and selling the same as such.
  - b. He also brought to the notice that a press release issued bearing date 13.07.2017 captioned "Further Clarification on tax in reverse charge on gold ornaments". The contents are reproduced and the same reads as under:

*"In the GST master class held on 13.07.2017, in one of the replies given to an on-the-spot question, it was informed that purchase of old gold jewellery by a jeweller from a consumer will be subject to GST @ 3% under reverse charge mechanism in terms of the provisions contained in Section 9(4) of the CGST Act, 2017.*
2. On further examination, it is felt that the issue needs to be clarified.
3. Section 9(4) of the said Act mandates that tax on supply of taxable goods (gold in this case) by an unregistered supplier (an individual in this case) to a registered person (the jeweller in this case) will be paid by the registered person (the jeweller in this case) under reverse charge mechanism. This provision, however, has to be read in conjunction with section 2(105) read with section 7 of the said Act. Section 2(105) defines supplier as a person supplying goods or services. Section 7 provides that a supply is a transaction, for a consideration by a person in the course or furtherance of business.
4. Even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (as selling old gold jewellery is not the business of the said individual), and hence does not qualify to be a supply per se. Accordingly, the sale of old jewellery by an individual to a jeweller will not attract the provisions of



*section 9(4) and jeweller will not be liable to pay tax under reverse charge mechanism on such purchases. However, if an unregistered supplier of gold ornaments sells it to registered supplier, the tax under RCM will apply”.*

- c. The learned representative stated that the applicant is presently paying taxes on the entire value without availing marginal scheme, but intends to avail the benefit of marginal scheme and hence applied. He stated that the applicant has advertised himself in media that he is purchasing old used jewellery and since he is selling the same as it is, i.e. after cleaning and polishing, without changing the nature of the ornament, he would be dealing only in second hand goods and hence not a dealer in first hand goods and hence would be eligible to utilise the benefit of marginal scheme for valuation of supply.

#### FINDINGS & DISCUSSION:

5. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

6. The application for advance ruling and the arguments made by the applicant and also the submissions made by the learned representative during the time of hearing were all verified and the issues that needs to be addressed is related to whether the applicant is eligible to utilise the sub-rule (5) of rule 32 of Central Goods and Services Tax Rules, 2017.

6.1 Rule 32 of the CGST Rules, 2017 reads as under:

***“Rule 32. Determination of value in respect of certain supplies.-***

*(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter.*

*(2) . . . . .*

*(3) . . . . .*

*(4) . . . . .*

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





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

6.2 This rule stipulates the method of working of the taxable value of a supply and is applicable if the following conditions are satisfied:

(a) the supply made by the supplier must be a taxable supply  
(b) the supplier shall be a person dealing in buying and selling of second-hand goods that means

(i) used goods as such or after such minor processing which does not change the nature of the goods and

(ii) where no input tax credit has been availed on the purchase of such goods.

6.3 In the instant case, the supplier, i.e. the applicant is effecting the supply of second-hand jewellery which is taxable under the GST Act as it is covered under entry no.13 of Schedule V to the Notification No.01/2017 – Central Tax (Rate) dated 28<sup>th</sup> June, 2017 which is taxable at 1.5% under the CGST Act and similarly taxable under the KGST Act, 2017 also at 1.5%. Hence the supplier satisfies the condition that the supply made by him must be a taxable supply.

6.4 Regarding the next condition, the supplier must be a person dealing in buying and selling of second-hand goods. It is seen that the applicant has admitted that he is purchasing used gold jewellery from individuals and selling the same, after cleaning and polishing them. He must not avail any input tax credit on the purchase of such goods. The goods so purchased must be supplied as such and if at all any process is involved, that must not change the nature of the product. The applicant has stated that he is not melting the jewellery to convert it into bullion and then remaking it to new jewellery but only cleaning the old jewellery and polishing it without changing the nature and form of the jewellery so purchased. These goods are then supplied to other persons. Further, he shall have to invoice the goods as "second hand jewellery" to differentiate them from the "first hand jewellery". Hence it is clear that, subject to the condition of invoicing them as "second hand jewellery", the applicant satisfies the second condition also.

6.5 In view of the applicant satisfying both the aforesaid conditions, the valuation of the supply of second hand jewellery may be made as prescribed in sub-rule (5) of rule 32 of the Central Goods and Services Tax Rules, 2017

7. Regarding the other question, whether ITC is allowed to be claimed if purchases are made from the dealer whom marginal scheme is applicable, the following are noticed:

7.1 The applicant, if he purchases the second hand goods from other registered persons, then the applicant can claim the input tax credit on such purchases if he is eligible to claim under section 16 of the GST Act, 2017 and in that case, he would become ineligible to apply marginal scheme for supplies of such second hand goods.

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

### **R U L I N G**

1. In the case of applicant dealing in second hand goods and invoicing his supplies as "second hand goods", the valuation of supply of second hand gold jewellery which are purchased from individuals who are not registered under GST and there is no change in the form and nature of such goods, can be made as prescribed under sub-rule (5) of rule 32 of the Central Goods and Service Tax Rules.
2. In case the applicant purchases second hand jewellery from registered person, the applicant is eligible to claim input tax credit on such inward supplies but if he claims the input tax credit against such inward supplies he would not be eligible for the margin scheme of valuation as prescribed in sub-rule (5) of rule 32 of the Central Goods and Services Tax Rules for the outward supplies of such second hand jewellery.

  
(Dr. Ravi Prasad M.P.)

Member

Karnataka Advance Ruling Authority  
Place : Bengaluru  
Date : 23.03.2020  
Bengaluru - 560 009

  
(Mashhood Ur Rehman Farooqui)

Member

Karnataka Advance Ruling Authority  
Bengaluru - 560 009

To,

The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Central Tax, Bangalore North Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-20, Bengaluru

5. Office Folder

