

WEST BENGAL AUTHORITY FOR ADVANCE RULING GOODS
AND SERVICES TAX

14 Beliaghata Road, Kolkata–700015

(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Dr Tanisha Dutta, Joint Commissioner, CGST & CX Joyjit Banik, Additional Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

| | |
|-----------------------------------|--|
| Name of the applicant | KUNDAN KUMAR PRASAD |
| Address | On Road, 93, Grand Trunk Road, Howrah, Howrah, West Bengal, 711101 |
| GSTIN | 19BOOPP0772B1ZS |
| Case Number | WBAAR 05 of 2024 |
| ARN | AD1903240101140 |
| Date of application | March 8th, 2024 |
| Jurisdictional Authority(State) | Shibpur Charge |
| Jurisdictional Authority(Central) | Shibpur Division, Howrah Commissionerate |
| Order number and date | 07 /WBAAR/2024-25 dated 10.09.2024 |
| Applicant's representative heard | Mr. Aman Harlalka, Authorized Representative |

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a

reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant submits that it proposes to be a manufacturer and general order supplier of gold and diamond ornaments. The applicant proposes to be a *karigar* and wants to provide order-based services required by the customer.

1.3. According to the applicant, the business activities being carried out by him may be summarized as follows:

(a) The applicant purchases second hand gold or diamond jewellery from unregistered individuals and thereafter repairs or reshapes these items by melting the old jewellery and transforming those into new pieces, such as changing a gold bangle into a bracelet or an earring into a locket. The final product is supplied according to the customer's requirements or order. Throughout this process, the nature of the ornaments remains the same, either as gold or diamond jewellery, depending on the customer's specifications.

(b) The applicant purchases old / second hand gold or diamond jewellery from unregistered individuals without GST. The applicant then reshapes the old jewellery as provided by the buyer into a new one, which is considered a change in shape rather than a change in the nature of the goods. The making charges for this process include the cost of reshaping and any gold loss incurred. Additionally, the applicant does not engage in selling old /second hand jewellery. Instead, he purchases remaining gold and diamonds from registered dealers to meet the requirements when the individuals cannot provide enough materials for their orders.

(c) The applicant purchases second hand gold or diamond jewellery from unregistered individuals and transforms them into new or refurbished pieces, charging only for the making process. The reshaping involves a change in shape but not in the nature of the jewellery. The gold and diamonds used are entirely provided by the buyer, and the making charges do not include the value of any gold loss.

1.4 Questions raised by the applicant vide serial number 14 of the application in FORM GST ARA-01 are as under:

(1) Whether the applicant falls under the category of a person dealing in buying and selling of second hand goods where tax is to be paid on the difference between the selling and purchase price as stipulated in Rule 32(5) of the CGST Rules, 2017.

(2) Whether the transaction of purchases of old / second hand gold jewellery / ornaments or diamond jewellery / ornaments from individuals who are not dealers / registered under GST

would tantamount to supply of goods or supply of services and whether the applicant is liable to pay tax on reverse charge basis against such purchases ?

(3) Whether the transaction would be classified as supply of goods and/or services under the act?

(4) Whether it shall be classified as supply of goods and chargeable to tax @ 3% under HSN: 7108/7113 or whether it shall be classified as supply of service and chargeable to tax @ 5% under SAC: 9988?

(5) Whether the applicant is liable to pay GST on the goods received from the buyer?

1.5 The aforesaid questions on which the advance ruling is sought for are found to be covered under clause (b) of sub-section (2) of section 97 of the GST Act.

1.6 The applicant states that the questions raised in the application have neither been decided by nor are pending before any authority under any provision of the GST Act.

1.7 The officer concerned from the revenue has raised no objection to the admission of the application.

1.8 The application is, therefore, admitted.

Submission of the Applicant

2.1 The applicant submits that his business activities comprises of following scenarios:

Case 1: The applicant supplies new gold jewellery or diamond jewellery and raises invoice on full value of the goods after procuring certain portion of old or second hand jewellery from the buyer.

Case 2: New gold jewellery or diamond jewellery is provided and invoiced on making charge basis where making charges include value of gold loss and making / karigar charges.

Case 3: New gold jewellery or diamond jewellery is supplied and invoiced on making charge basis where making charges include making / karigar charges only.

2.2 The applicant states that he is a manufacturer and general order supplier (karigar) of gold and diamond ornaments. The applicant works purely on order basis where it purchase used old / second hand gold jewellery from unregistered persons and melt the same owing to outdated design / model or excessively damaged article beyond repairing or as required by the customer. The applicant does not pay GST on RCM on the purchase of these old jewelleryes / parts as per Notification. 10/2017-Central Tax (Rate) dated 28.06.2017 although pays the GST on outward supplies of customized ornaments supplied to the buyers as per their requirements under Rule 32(5) as stipulated below. The applicant does not take any

input on these purchases.

2.3 According to the applicant, the above rule stipulates the method by which the value of supply of second hand goods is to be arrived and is applicable only in 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 used goods as such or after such minor processing, which does not change the nature of the goods, and
- c. Where no input tax credit has been availed on the purchase of such goods

2.4 The applicant submits that he purchases second hand gold jewellery / ornaments or diamond jewellery / ornaments from unregistered individuals and supplies it to registered / unregistered persons in the form of gold jewellery / ornaments or diamond jewellery / ornaments as per the requirement (like old bangle to bracelet or ear ring to locket). According to the applicant, applicability of rule 32(5) in order to determine value of supply requires fulfillment of all the three conditions as stated above. The applicant thus argues as follows:

- Condition a - One of the conditions is to be applied under rule 32(5) for their outward supply is that the supply made by the supplier must be a taxable supply. The applicant is into supply of gold jewellery / ornaments or diamond jewellery / ornaments which is a taxable supply and has the first condition is satisfied.
- Condition b – The applicant is purchasing second hand gold jewellery / ornaments or diamond jewellery / ornaments from unregistered individuals and supply it to registered / unregistered persons in the form of gold jewellery / ornaments or diamond jewellery / ornaments as per the requirement (like old bangle to bracelet or earring to locket) where nature of the product remains the same.

Scenario I: As per dictionary meaning of “Nature” vide Oxford Languages:

“Nature means the qualities or character of a person or thing”

In the present case, old gold jewellery / ornaments or diamond jewellery / ornaments remain gold jewellery / ornaments or diamond jewellery / ornaments (like old bangle to bracelet or earring to locket). Nature of the product remains the same as quality and character remains the same.

Scenario II: Tariff heading 7113 covers article of Jewellery and parts thereof, of precious metal or of metal clad with precious metal whether or not plated or clad with precious metal.

| Tariff term | Description of Goods |
|-------------|--|
| 7113 | Articles of Jewellery and parts thereof, of precious metal or of metal clad with precious metal - Of precious metal whether or not plated or clad with precious metal |
| 711311 | - Of silver, whether or not plated or clad with other precious metal |
| 711319 | of other precious metal, whether or not plated |
| 71131110 | Jewellery with filigree work |
| 71131120 | Jewellery studded with gems |
| 71131130 | Other articles of Jewellery |
| 71131190 | Parts |
| 71131910 | Of gold, unstudded |
| 71131920 | Of gold, set with pearls |
| 71131930 | Of gold, set with diamonds |
| 71131940 | Of gold, set with other precious and semi- precious stones |
| 71131950 | Of platinum, unstudded |
| 71131960 | Parts |
| 71131990 | HS Codes Classification of Other |
| 71132000 | Of base metal clad with precious metal |

From the above, it is clear that tariff heading 7113 covers the articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal or of precious metal whether or not plated or clad with precious metal. When the applicant converts the old gold jewellery into a new one, the nature of goods as well as the characteristic and classification of the goods does not change. Tariff heading of the goods also remains the same i.e. 7113. Thus, the processing done by the applicant satisfies the second condition.

- Condition c – Since the applicant makes purchases from unregistered individuals, there is no question of availment of input tax credit.

2.5 The applicant is therefore of the view that GST shall be charged on margin difference between purchase price and sale price for the cases 1 and 2. Further, the applicant proposes to invoice the same as second hand jewellery. Diamond presence in old second hand diamond jewellery / ornaments may be valued at the prevailing market rate depending on the condition of diamond and purity of gold.

2.6 The applicant, in support of his submission, has placed his reliance on the following three Advance Rulings given by the Authority for Advance Rulings, Karnataka: -

- White Gold Bullion (P.) Ltd - [2023] 151 taxmann.com 45 (AAR - KARNATAKA)
- Attica Gold (P.) Ltd [2020] 116 taxmann.com 411 (AAR - KARNATAKA)
- Aadhya Gold (P.) Ltd., [2021] 128 taxmann.com 254 (AAR - KARNATAKA)

2.7 In respect of Case 2 & 3, as referred to in Para 2.1 earlier, the applicant submits as follows:

Case 2: New gold jewellery or diamond jewellery is provided and invoiced on making charge basis where making charges include value of gold loss and making / karigar charges.

- The value of gold and making charges, including the value of gold loss, are considered a composite supply. The principal supply is the gold ornaments, with the job work being an integral part of the service provided,

Case 3: New gold jewellery or diamond jewellery is supplied and invoiced on making charge basis where making charges include making / karigar charges only.

- The making charges do not include the value of gold loss. Therefore, the charges are classified as a supply of services, and GST at 5% is applicable.

2.8 The applicant concludes stating that if the supply is classified as goods, then the GST rate will be 3% and if the supply is classified as services then the GST rate will be 5%.

Submission of the Revenue

3.1 The officer concerned from the revenue has not expressed any view in this regard.

Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorized representative of the applicant during the course of personal hearing. We have considered the questions as raised in the application on which advance ruling are sought by the applicant and the relevant facts along with the arguments made by the authorized representative and also the submissions made during the time of hearing.

4.2 In terms of sub-section (1) of section 9 of the GST Act, tax on intra-State supplies of goods or services or both is levied on the value determined under section 15 of the Act *ibid*. Further, as per sub-section (1) of section 15 of the GST Act, *the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.* However, in respect of second-hand goods, a person dealing in such goods is allowed to pay tax on the margin i.e. the difference between the value at which the goods are supplied and the price at which the goods are purchased subject to certain restrictions.

4.3 The relevant rule 32(5) thus may be reproduced for reference:

“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.”

4.4 In the instant case, the applicant purchases second-hand(old) gold in the form of jewellery/ornaments or diamond jewellery / ornaments of various purities from unregistered individuals and supplies to registered/unregistered persons in the form of new finished product as per the requirement after melting the same. One of the conditions to apply rule 32(5) for their outward supplies is that supply made by the supplier must be a taxable supply. The applicant is into supply of gold ornaments which is taxable supply and hence the first condition is satisfied.

4.5 We now proceed to examine whether the conditions mentioned in para 2.3 (b) supra gets satisfied or not in the instant case. The benefit of margin scheme, as prescribed in rule 32(5), is available where the second-hand goods is sold after minor processing only and where the nature of the goods do not change. The applicant contends that when the old gold jewellery is converted into a new one, the nature of goods as well as the characteristic and classification of the goods does not change. Tariff heading of the goods also remains the same i.e. 7113. However, we do not incline to accept the argument of the applicant. In the instant case, the applicant has submitted that he purchases second-hand gold or diamond jewelleryes from unregistered individuals and thereafter repairs or reshapes these items by melting the old jewelleryes and transforming those into new pieces, such as changing a gold bangle into a bracelet or an earring into a locket. There can be no denying that the item namely bangle is different from a bracelet. Similarly, when an earring is melted to convert it into a locket, it loses it's nature and characteristics to emerge as a new commodity. The process is nothing but manufacturing as per clause (72) of section 2 of the GST act which states that, "*manufacture*" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "*manufacturer*" shall be construed accordingly. In the instant case, the purchased gold is used as a raw material or input to make a new commodity.

4.6 In Attica Gold (P.) Ltd [2020] 116 taxmann.com 411 (AAR - KARNATAKA) and Aadhya Gold (P.) Ltd., [2021] 128 taxmann.com 254 (AAR - KARNATAKA) it was the submission of the applicant that he was not melting the jewellery to convert it into bullion and then remaking it to new jewellery but only cleaning the old jewelry and polishing it without changing the nature and form of the jewellery so purchased. We find that though the applicant has placed his reliance on the aforesaid rulings, the process being undertaken by the applicant is different from the cases, as referred to.

4.7 In White Gold Bullion (P.) Ltd - [2023] 151 taxmann.com 45 (AAR - KARNATAKA), it is observed by the Advance Ruling Authority that "*when the applicant melts the gold jewellery into gold lumps, the nature of goods changes in as much as the characteristics of the articles and the classification changes. Since the processing done by the applicant changes the nature of goods, they do not satisfy the second condition mentioned supra at para 10.2 and hence not eligible to avail the benefits of Rule 32(5) of CGST Rules, 2017*".

4.8 Where the applicant uses the purchased old / second hand jewelleryes/ornaments as a raw material or input for manufacturing a new article is not entitled to pay GST on the margin value, i.e. difference between the sale price and purchase price as stipulated in Rule 32(5) of CGST Rules, 2017. Hence, in this scenario, applicant cannot avail of the benefit of provisions stated under sub-rule (5) of rule 32 of CGST rules, 2017.

4.9 We are therefore of the view that in cases where the applicant, after making purchases of old / second-hand jewellery/ornaments, carries out the process of melting it to manufacture a new/different ornament, the applicant cannot adopt the valuation method as prescribed in rule 32(5). However, where the old gold ornaments/jewellery are purchased and subsequently supplied after minor processing that does not change the nature of the ornaments so purchased, the applicant can pay tax on the value as determined under rule 32(5).

4.10 We are also of the opinion that rule 32(5) is available only when a registered person dealing with buying and selling of second hand goods only. In other words where the registered person deals with different business activities such as engage in supply of services, manufacturing or selling new articles apart from dealing with buying and selling of second hand goods cannot avail the benefit of rule 32(5). In such a case GST is payable at applicable rate on actual value of the commodity and not on margin value.

In view of the above discussions, we rule as under:

RULING

Question 1: Whether the applicant falls under the category of a person dealing in buying and selling of second hand goods where tax is to be paid on the difference between the selling and purchase price as stipulated in Rule 32(5) of the CGST Rules, 2017.

Answer: The applicant can avail the valuation method as prescribed in sub-rule (5) of rule 32 of the Central Goods and Service Tax Rules, 2017 only in cases where the old gold ornaments/jewellery are purchased and subsequently supplied after minor processing that does not change the nature of the ornaments so purchased. In cases where the applicant, after making purchases of old / second-hand jewellery/ornaments, carries out the process of melting it to manufacture a new/different ornament, the applicant cannot adopt the valuation method as prescribed in rule 32(5).

Question 2: Whether the transaction of purchases of old / second hand gold jewellery / ornaments or diamond jewellery / ornaments from individuals who are not dealers / registered under GST would amount as supply of goods or supply of services and applicant is liable to pay tax on reverse charge basis?

Answer: No, the applicant shall not be liable to pay tax under reverse charge mechanism in such cases.

Question 3: Whether the transaction would be classified as supply of goods and/or services under the act?

Answer: (i) Where the applicant purchases old / second hand gold jewellery or diamond jewellery from individuals and subsequently makes supply of it to a different person after minor processing that does not change the nature of the ornaments, such shall be treated as supply of goods.

(ii) Where the applicant purchases old / second hand gold jewellery or diamond jewellery from individuals and subsequently makes supply of it to a different person converting it into a new item, such shall be treated as supply of goods.

(iii) Where the applicant purchases old / second hand gold jewellery or diamond jewellery from individuals and subsequently makes supply of it to the same person after minor processing or converting it into a new item, such shall be treated as supply of services.

Question 4: Whether it shall be classified as supply of goods and chargeable to tax @ 3% under HSN: 7108/7113 or whether it shall be classified as supply of service and chargeable to tax @ 5% under SAC: 9988?

Answer: Already given against question 3.

Question 5: Whether the applicant is liable to pay GST on the goods received from the buyer?

Answer : Already given against question 2.

(Dr. Tanisha Dutta)
Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 10th September, 2024

To,

KUNDAN KUMAR PRASAD

On Road, 93, Grand Trunk Road, Howrah,

West Bengal-711101

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector,
Kolkata-700107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Charge Officer, Shibpur Charge, 7/1, Mackenzie Lane, Howrah-711101
- (4) The Commissioner, CGST & CX, Howrah Commissionerate, 15/1, Strand Road,
M.S.Building, Kolkata-700001
- (5) Office Folder