

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:

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX
Mr Joyjit Banik, Senior Joint 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 thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Aabhushan Jewellers Pvt. Ltd.
Address	Shree Centre Arcade, 4th Floor, Room No. 414, 39, Kali Krishna Tagore Street, Malapara, Burrabazar, Kolkata-700007
GSTIN	19AACCA1524C1ZA
Case Number	WBAAR-25 of 2022
ARN	AD190822014290C
Date of application	September 08, 2022
Jurisdictional Authority (State)	Postabazar Charge, Kolkata North Circle
Jurisdictional Authority (Central)	Shyambazar Division, Kolkata North Commissionerate
Order number and date	23/WBAAR/2022-23 dated 09.02.2023
Applicant's representative heard	Mr. Yash Baid, FCA

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 as a job worker he expects to receive an order for manufacture of gold ornaments from a registered person in the state of West Bengal (the principal). The business model, as illustrated by the applicant, is as follows:

- (i) The applicant will be provided 1000 grams of pure gold by the principal for manufacturing of gold ornament;
- (ii) The applicant will be allowed a provision for wastage of 40 gms by the principal i.e., the applicant has to return gold ornaments weighing 960 gms to the principal;
- (iii) The applicant, thereafter, would sub-contract the order to another job-worker on agreed provision of allowing wastage of 30 gms;
- (iv) The applicant, thus, would stand to gain 10 gms of pure gold in addition to the making charges for manufacturing of gold ornaments.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

- (1) Whether the gain of the assessee of 10 grams of pure gold would result in supply of goods or services under section 7 of the CGST/WBGST Act, 2017?
- (2) Whether the assessee is liable to pay GST in respect of gain of 10 grams of Pure Gold?
- (3) In case the assessee is liable to pay GST then what shall be the time and value of Supply?
- (4) In case the assessee is liable to pay GST then whether it shall be classified as goods and chargeable to tax @ 3% under HSN: 7108/7113 or whether it shall be classified as service and chargeable to tax @ 5% under SAC: 9988?

1.4 However, in course of personal hearing, the applicant has withdrawn the question raised under serial number (1) above and has sought advance ruling for the remaining questions. The aforesaid questions on which the advance ruling is sought for are found to be covered under clause (a), (c) and (e) of sub-section (2) of section 97 of the GST Act.

1.5 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.

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

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant submits that to carry out of activities as a job worker, he has received an order for manufacture of gold ornaments from a registered person i.e., the principal. The principal has provided 1000 grams of pure gold for manufacturing the gold ornament and allowed a provision for wastage of 40 grams of pure gold. The final weight of the gold ornaments (in terms of 24 Carat Purity) that would be manufactured by the applicant and returned to the principal thus comes at 960 grams. The consideration for providing this manufacturing service would be Rs.50,000/- on which GST would be levied @ 5%.

2.2 The applicant submits that the provision for allowing such wastage by the principal is in the nature of normal loss that occurs during the course of manufacturing and it is an industry-wide practice to allow such provision for wastage or normal loss.

2.3 According to the applicant, the consideration for providing the manufacturing services is the making charge of the gold ornaments, whereas the provision for wastage of 40 grams of pure gold is to meet the normal loss that would occur during the course of manufacture. Further, these terms of consideration and provision for wastage would be expressly accepted by the applicant and the principal in the work order. It is thus imperative to distinguish the provision for wastage from consideration for supply of services.

2.4 The applicant, upon receipt of the pure gold from his principal, sub-contracts this job to another job worker wherein on the basis of the applicant's experience, internal efficiency and bargaining power, the provision for wastage allowed to the job worker is 30 grams of pure gold. The applicant, thus, is ultimately left with 10 grams of pure gold which, according to the applicant, is not a consideration for supply of services but self-generated based on applicant's experience, internal efficiency and bargaining power.

2.5 The applicant contends that an activity cannot be termed as supply under section 7 of the GST Act, other than the activities specified in Schedule I, unless it has a consideration element, whether in monetary terms or in kind. According to the applicant, the 10 grams of pure gold that is left with the applicant cannot be termed as consideration because of the following:

- i. It is not given as a consideration. Rather, it is given to meet the normal loss that would occur in the course of manufacturing the gold ornaments.
- ii. It is internally generated based on the applicant's experience, efficiency and bargaining power.
- iii. It is subjective i.e. whether a manufacturer of gold ornaments saves anything from the normal loss totally depends on its internal factors. In case it would have been someone else and not the applicant there is reasonably high chance that nothing would have been saved from normal loss.

2.6 The applicant thus is of the view that the 10 grams of pure gold which is left with the applicant cannot be termed as consideration. Hence the applicant is not liable to pay GST on the 10 grams of pure gold.

3. Submission of the Revenue

The officer concerned from the revenue has not expressed any view on the issue raised by the applicant.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised representative of the applicant during the course of personal hearing.

4.2 The core issue which arises for our consideration is to determine taxability of 10 grams of pure gold, retained by the applicant, in the course of manufacture of gold jewellery from 1000 gm of pure gold provided to the applicant by his principal. The contention of the applicant in this regard is that the provision for allowing such wastage is in the nature of normal loss that occurs during the course of manufacturing and it is an industry-wide practice to allow such provision for wastage or normal loss.

4.3 As per clause (68) of section 2 of the GST Act, "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. A job worker thus undertakes the work for any treatment or process on the goods belonging to another registered person. In the instant case, the applicant undertakes the work of manufacturing of gold ornaments on pure gold that belongs to another registered person. Hence, the activities being carried out by the applicant comes under the purview of job work as defined in the GST Act.

4.4 Now we take the issue of allowing of wastage to the applicant for the purpose of manufacturing of gold ornaments. The applicant contends that the provision for allowing such wastage is in the nature of normal loss and it is an industry-wide practice to allow such provision for wastage or normal loss. We find that Government of India, Ministry of Commerce and Industry, Department of Commerce, Director General of Foreign Trade, in the HANDBOOK OF PROCEDURES [1st April, 2015 – 31st March, 2020] has prescribed the Wastage Norms for the Gems and Jewellery Sector. It would be pertinent to mention that in course of personal hearing, the authorised representative of the applicant has been asked to provide a certificate from the competent authority in respect of quantum/percentage of wastage allowed in manufacturing of gold ornaments. The authorised representative, in response, has also referred the aforesaid Handbook of Procedures. Relevant para 4.60 from the Handbook is reproduced herein under for reference:

Maximum wastage or manufacturing loss on gold/silver/ platinum jewellery and articles thereof is as follows:

Sl No	Items of export	Percentage of wastage by weight with reference to Gold/ Platinum / Silver content in export item	
		Gold / platinum	Silver
a)	Plain jewellery, articles, and ornaments like Mangalsutra containing gold and black beads /imitation stones, cubic zirconia diamonds, precious, semi-precious stones	2.5 %	3.2 %
b)	Studded jewellery and articles thereof	5.0 %	5.0 %
c)	Mountings and findings manufactured (by nonmechanised process) indigenously	2.5 %	3.2 %
d)	Any jewellery/ articles manufactured by a fully mechanised process and unstudded.	0.9 %	0.9 %
e)	Mountings, whether imported or indigenously procured/ manufactured, used in studded jewellery	1.8 %	1.8 %
f)	Gold / silver / platinum medallions and coins (excluding coins of nature of legal tender)	0.2%	0.2%

g)	Findings and mountings manufactured by mechanized process	0.9%	0.9%
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4.5 It therefore transpires that percentage of wastage that may be allowed for gold ornament manufacturing process has been specified by Government of India, Ministry of Commerce and Industry. The wastage norms, though meant for items of export, may also be accepted as a general guideline for domestic market. In the instant case, the applicant submits that the principal allows him a wastage of 4% (40 gm wastage is agreed to be allowed against 1000 gm of pure gold) and the applicant, out of such wastage allowed to the extent of 4%, retains 1% of pure gold i.e., 10 gm of pure gold. In other words, the applicant delivers to his job worker 990 gm of pure gold thereby allowing 3% of wastage to his job worker.

4.6 Now the question arises whether any wastage claimed which is in excess of the specified limit can be treated as 'consideration' for the purpose of value of taxable supply under sub-section (1) of section 15 of the GST Act. As per sub-clause (a) of clause 38 of section 2, "consideration" in relation to the supply of goods or services or both includes-
(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government; [emphasis supplied]

4.7 Further, sub-section (1) of section 15 of the GST Act speaks that "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".

4.8 In the instant case, the applicant agrees to provide job work services for manufacturing of gold ornaments to his principal against consideration which is in money. At the same time, the applicant has been allowed wastage by his principal on account of manufacturing loss which exceeds the wastage norm limit that enables the applicant to retain certain amount of pure gold. The process of making gold jewellery involves melting, cutting, moulding, polishing etc. which may result in some amount waste of gold. However, retaining a certain amount from the input (10 gm of pure gold for the instant case) before it put into the manufacturing process cannot be treated as 'wastage' or 'normal loss'. We are, therefore, of the view that here the price is not the sole consideration for the supply and the value of such excess wastage allowed to the applicant shall be considered as non-monetary consideration for the purpose of determination of value of supply of job work services provided by the applicant to his principal. Therefore, the value of supply of services, i.e., making charges on which the applicant is liable to pay tax @ 5% would be determined as per provision of section 15 of the GST Act read with rule 27 of the CGST/ WBGST Rules, 2017. Since the applicant admittedly retains 10 gm of pure gold on account of wastage which is beyond the permissible limit of wastage in the nature of normal loss, the value of pure gold so retained by the applicant shall form a part of value of supply of job work services.

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

RULING

- (1) Question: Whether the applicant is liable to pay GST in respect of gain of 10 grams of pure gold?

Answer: In the present case, the value of 10 gm of pure gold shall form a part of value of supply of job work services provided by the applicant and therefore the applicant is liable to pay tax on such value.

- (2) Question: In case the applicant is liable to pay GST then what shall be the time and value of Supply?

Answer: In the instant case, value of the supply shall be determined under rule 27 of the CGST/WBGST Rules, 2017 and time of supply would be determined under sub-section (2) of section 13 of the GST Act.

- (3) Question: In case the applicant is liable to pay GST then whether it shall be classified as goods and chargeable to tax @ 3% under HSN: 7108/7113 or whether it shall be classified as service and chargeable to tax @ 5% under SAC: 9988?

Answer: In the instant case, the value of 10 gm of gold shall be a part of value of job work services and accordingly would be taxable @ 5%.

(BRAJESH KUMAR SINGH)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date:09.02.2023

To,

Aabhushan Jewellers Pvt. Ltd., Shree Centre Arcade, 4th Floor, Room No. 414, 39, Kali Krishna Tagore Street, Malapara, Burrabazar, Kolkata- 700007

Copy to:

1. The Principal Chief Commissioner, CGST & CX, GST Bhavan, 180, Shantipally, R.B. Connector, Kolkata-7000107
2. The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
3. The Deputy/Assistant Commissioner, CGST & CX, Postabazar Charge, Kolkata North Circle, 14, Beliaghata Road, Kolkata-700015

4. The Commissioner of CGST& CX, Kolkata North Commissionerate, GST Bhavan,
180, Shantipally, R.B. Connector, Kolkata-7000107

5. Office Folder