
	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	KERALA  <small>State Goods & Services Tax</small>
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BEFORE THE AUTHORITY OF: Dr S.L. Sreeparvathy, IRS &
: Shri Abraham Renn S, IRS

Legal Name of the applicant	M/s. Best Money Gold Jewellery Ltd.
GSTIN	32AAGCB1247B1ZF
ARN No.	AD3210210025531
Address	TC 38/1445-2, 2 nd Floor, Power House Road, Thiruvananthapuram – 695036.
Advance Ruling sought for	In case the applicant has purchased used/ second-hand gold jewellery or ornaments from persons who are not registered under GST and that at the time of sale of such goods there is no change in the form/nature of such goods and ITC will also not be availed on such purchase, if so the case, whether GST is to be paid only on the difference between the selling price and purchase price as stipulated under Rule 32(5) of CGST Rules, 2017?
Date of Personal Hearing	20.07.2022



Authorized Representative	Mr. J. Balasubramanian
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ADVANCE RULING No. KER/06/2023 Dated 02-03-2023

1. M/s. Best Money Gold Jewellery Limited, Thiruvananthapuram (hereinafter referred to as 'The applicant') is engaged in the business of buying and selling old/used/second-hand gold jewellery/ornament from unregistered persons.

2. At the outset, it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are the same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules, and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules, and the notifications issued there under.

3. Applicant requested an advance ruling on the following:

3.1. In case the applicant has purchased used / second-hand gold jewellery or ornaments from persons who are not registered under GST and that at the time of sale of such goods there is no change in the form/nature of such goods and ITC will also not be availed on such purchase, if so the case, whether GST is to be paid only on the difference between the selling price and purchase price as stipulated under Rule 32(5) of CGST Rules, 2017?

4. The contentions of the Applicant

4.1. The applicant submits that they purchase gold from unregistered persons who are all general public and the ornaments purchased will be sold 'as such' to the end consumers without making any further processing, in other words, sold in the same form in which the ornaments were purchased, to another



registered or unregistered person, except for some minor processing in the form of cleaning and polishing but without altering the nature of such ornament/jewellery. It is further submitted that since the applicant had purchased the old / used / second-hand gold ornaments/jewellery predominantly from unregistered persons there is no scope for availing of the input tax credit as per Section 16 of the CGST Act. Presently, the applicant is charging GST at the rate of 3% on the entire consideration received from the customers on account of the sale of such old/used/second-hand gold ornaments/jewellery. The applicant based on the facts discussed above required clarification to determine the value of supply as per Sec.15(5) of Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) read with Rule 32(5) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as CGST Rules, 2017). Generally, Sec.15 of the CGST Act deals with the value of the supply of goods or services. In the case of used / second-hand goods, the value of supply will be determined as per Sec.15(5) of the CGST Act, in the manner prescribed by the government on the recommendation of the Council through a Notification. Relevant excerpts of Sec.15(5) of the Act reads as below:

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

4.2. Thus, Rule 32(5) of CGST Rules prescribes the manner of determining of the value of such second-hand goods. As such, Rule 32(5) 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. A relevant excerpt of Rule 32(5) of CGST



Rules states, "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".

4.3. The term 'second-hand goods' specified in Rule 32(5) is being interpreted to mean the goods which are used as such or after minor processing the nature of such goods should not alter and where no input tax credit has been availed on purchase of such goods. The term 'second-hand goods' or 'used goods' are not defined by either under CGST Act or CGST Rules. Similarly, the term second-hand goods or used goods is also not defined in General Clauses Act. Since there is no statutory definition for second-hand goods as well as used goods, it is submitted that the dictionary meaning or trade parlance meaning of second-hand goods or used goods has to be construed for its interpretation in Rule 32(5), which are as below:

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)



4.4. Further it is also submitted that it is settled jurisprudence that when the words of a statute are clear, plain, and unambiguous, i.e., they are reasonably 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 explicate those words in their natural and ordinary sense. This rule of interpretation is followed in a plethora of judgments. A few of the judgments are as under:

- Nelson Motis Vs. Union of India (AIR 1992 sc 1981) = 1992 (9) TMI 355 – SC
- Gurudevattt VKSSS Maryadit Vs. State of Maharashtra(AIR 2001 SC 1980) = 2001 (3) TMI 976 – SC
- Swedish Match AB Vs. Securities and Exchange Board of India (AIR 2004 SC 4219) = 2004 (8) TMI 389 – SC
- Govt. of Andhra Pradesh Vs. Road Rollers Owners Welfare Assn. [(2004) (6) SCC 210] = 2004 (4) TMI 602 – SC

4.5. Thus, it is submitted that since the applicant is engaged in the business of buying and selling old/used/second-hand ornaments/jewellery under HSN Code 7113, they are very much eligible to avail the benefit of the Margin Scheme for determination of the value of supply as per Rule 32(5) of CGST Rules read with Notification no.10/2017 – CT(R) dtd.28-06-2017. It is also submitted that the applicant has complied with all the conditions specified in Rule 32(5) of CGST Rules which are discussed below:

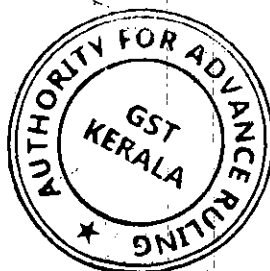
Input tax credit not claimed: - The applicant is predominantly purchasing the old/used/second-hand ornaments/jewellery only from unregistered persons and hence there is no clear-cut scope for availing input tax credit in this aspect, as such suppliers will not charge GST on their bills.



Goods sold either 'as such' or 'with minor modifications: - The applicant is buying the old / used gold ornaments viz., necklace, ring, bangles, etc. from the unregistered persons and may sell some time as such to their customers or if the customers prefer, they may clean or polish such gold ornaments without changing its nature. As such, the applicant is selling those used gold ornaments as second-hand goods without melting, altering or changing its form, instead, the goods bought will be sold 'as such'. The gold necklace bought will be sold only as a gold necklace. Similarly, the gold ring bought will be sold only as a gold ring, just polishing or cleaning will alone be done. Thus, the applicant is selling the old / used / second-hand gold ornaments/jewellery only as 'as such'.

4.6. It is further added that the applicant is a dealer in the secondary market dealing in second-hand goods. Generally, the jewellery market is divided into two segments i.e., the primary market and the secondary market. A primary market means where goods come for the first time at a retail shop or any other way for reaching ultimate consumers. This is the time when the price for the goods is established for the first time. Once the goods are purchased from the primary market and when such purchaser or consumer decides to sell it, such goods enter the secondary market either as used goods or as second-hand goods. The applicant is one such dealer in the secondary market procuring second-hand or used jewellery or gold ornament from unregistered persons or end users.

4.7. Further it is also submitted that if Rule 32(5) is being interpreted to take a view that Rule 32(5) applies only to the 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 in the majority of transactions as such second-hand or used goods are normally purchased from individuals not liable to tax as such goods are not sold by them in the course or furtherance of business. If



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

4.8. Moreover, second-hand goods when it is purchased for the first time from the primary market would suffer the levy of indirect tax i.e., VAT, GST, etc. It, therefore, means that when the tax is paid on the margin on the sale of second-hand goods, these goods have suffered full tax. The question may arise in which circumstances the phrase used in Rule 32(5) "where no input tax credit has been availed on the purchase of such goods shall apply. The purpose of this phrase used in Rule 32(5) seems to prevent the dealer from purchasing second-hand goods or used goods from a registered person on payment of GST and availing the dual benefit of paying the tax on margin and claiming input tax credit simultaneously.

4.9. 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 an unorganized sector (buying second-hand or used goods from unregistered persons or non-business entities) is not burdened with tax liability disproportionate to value addition done by him in the supply chain. In the majority of the cases, the margin of such second-hand goods dealer is less than the tax leviable on such goods under a normal scheme of taxation and hence the need for such provision.

4.10. It is a settled principle of interpretation that if a statutory provision is open to more than one interpretation, one has to choose that interpretation that represents the true intention of the legislature. A statute is to be construed according to the intent of them that makes it and the duty of judicature is to act upon the true intent of the legislature i.e., mens or sententia legis (Salmond.

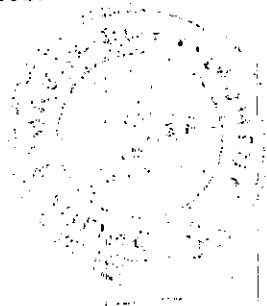


"jurisprudence" 11th Edition). This principle of interpretation has been enshrined in various judicial pronouncements including the following:

- *Venkataswami Naidu .R Vs. NarasramNaraindas (AIR 1966 SC 361) = 1965 (4) TMI 122 – SC*
- *District Mining Officer Vs. Tata Iron and Steel Co. (AIR 2001 SC 3134) = 2001 (7) TMI 1277 – SC*
- *Bhatia International Vs. Bulk Trading SA (AIR 2002 SC 1432) = 2002 (3) TMI 824 – SC*
- *South Asian Industries (Pvt) Ltd. Vs. Sarup Singh (AIR 1966 SC 346) = 1965 (4) TMI 112 – SC*
- *Kartar Singh Vs. State of Punjab [JT (1994) 2 SC 423) = 1994 (3) TMI 379 – SC*
- *Narayanaswami Vs. Panneerselvam (AIR 1972 SC 2284) = 1972 (4) TMI 95 – SC Rule 32(5)*

4.11. Such presumptive schemes are promulgated for trade facilitation or convenience of tax administration. Once such a valuation scheme is on the statue book, it is mandatory for the assessee as well as tax authorities to follow it in letter and spirit, irrespective of revenue considerations. Once the goods are second-hand or used goods, Rule 32(5) is applicable irrespective of the value of such goods and irrespective of the nature of such goods.

4.12. In the backdrop of the above discussions, since the applicant has fulfilled all the conditions specified in Rule 32(5) of the CGST Rules, the applicant is stating that, the applicant is very much eligible to adopt the margin scheme for the determination of the value of supply of such old / used / second-hand jewellery and thereby they can arrive at the value of such goods are supplied and the price at which the goods are purchased. If there is no margin, no GST is charged for such supply. Further the applicant submits that their view was based on the decision of various authorities for advance ruling in the following cases having similar issues:



- i. *M/s. Attica Gold Pvt. Ltd. [2020 (4) TMI 690 – AAR, Karnataka] KAR ADRG 15/2020*
- ii. *M/s. Aadhya Gold Pvt. Ltd. [2021 (7) TMI 548 – AAR, Karnataka] KAR ADRG 35/2021*
- iii. *M/s. Safset Agencies Pvt. Ltd. [2019 (6) TMI 822 – AAR, Maharashtra] GST ARA 86/2018-19/B-07*
- iv. *M/s. Safset Agencies Pvt. Ltd. [2020 (6) TMI 678 – AAR, Maharashtra] GST-AAAR-SS-RJ/08/2019-20*

4.13. Accordingly, the applicant submitted before the Authority for Advance Ruling to issue a ruling that, the applicant is eligible for determination of value of supply as prescribed under Rule 32(5) of CGST Rules.

5. Comments of the Jurisdictional Officer:

5.1. The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The jurisdictional officer has not submitted any remarks and hence it is presumed that the jurisdictional officer has no specific comments to offer. It is also construed that no proceedings are pending on the issue against the applicant.

6. Personal Hearing:

6.1. The applicant was granted an opportunity for a personal hearing on 20/07/2022 via virtual mode. Sri Balasubramaniam, authorized representative of the applicant attended the personal hearing. The representative reiterated the contentions made in the application.

7. Discussion and Findings:

7.1. The issue was examined in detail. The application is admissible as per subsection (2) of section 97 of the Act. The issue to be decided by the Authority is whether the determination of the value of supply as envisaged under sub rule



(5) of rule 32 is applicable for the supply effected by the applicant. It is submitted that the applicant purchases second hand / used jewellery from the customers and after minor processing effect the supply of the same to other customers. The question raised before the authority is whether the value of such supply will be the difference between the selling price and purchase price and whether the GST liability of the applicant will be limited to the difference value.

Section 15 of the Act which provides for the value of taxable supply reads:

Section 15. Value of taxable supply--

- 1. 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. The section further provides that,*
- 2. The value of supply shall include, —*
 - a. any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017) and the Goods and Services Tax (Compensation to States) Act, 2017 (Central Act 15 of 2017) if charged separately by the supplier;*
 - b. any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*
 - c. incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*



- d. interest or late fee or penalty for delayed payment of any consideration for any supply; and (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation: —For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

3. The value of the supply shall not include any discount which is given, —
- a. before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
 - b. after the supply has been effected, if, —
 - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
 - (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.
4. Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.
5. 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.

7.2. Now coming to Rule 32 of the CGST, 2017, the said Rules states about the Determination of value in respect of certain supplies. Accordingly, it is stated that :



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.

Further Sub rule (5) to rule 32 states that

(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.

7.3. The crucial aspect to be examined through the ruling is whether gold is a commodity whose/ which value changes when the ownership changes.

7.4. Given the context, it will be appropriate to analyse gold as a commodity which has universal usage. It is pertinent to note that almost all central banks hold and manage gold in their foreign reserves portfolios. It played a dominant role in the international monetary system when currency rates were linked to the price of gold. Though the fixed currency system ended in 1973, diminishing gold's role, it still remains as an important reserve asset. Coming to retail gold, as per World Gold Council, "retail gold is global — with private investors holding approximately 45,000 tonnes of gold in bars and



coins (that's around 22% of all the gold mined throughout history)."In the present scenario, where global economic outlook is not that optimistic, gold is faring better than any other investment instruments and its market price is steadily increasing day after day. As per Indian income tax laws, profit realized on the sale of gold and gold products are treated as Capital gains which are taxable. These aspects which are very well known to the public are scripted once again to bring out the unique nature of gold. It is more than a usual commodity which is brought from the market to satisfy the short term or even long-term consumption needs of an individual.

7.5 If the consumer behaviour related to gold purchase/holding in India is examined, one can safely conclude that marginal utility derived from purchasing and holding gold and gold products never diminishes. It either increases or remain same.

7.6. In India, gold jewellery is transferred from generation to generation as part of family traditions. Possession of old gold jewellery is also a matter of family prestige in many parts of India. If gold jewellery gets older say 50 to 100 years, it becomes vintage jewellery and if it is more than that, say more than 100 years, it becomes antique jewellery. Needless to say that both categories are costlier.

7.7 It is also worth mentioning that normally, value of gold will not diminish even if it is exchanged among 10 different users in a span of 2 years as a jewellery piece of 22 carats remains 22 carats even after changing hands. Given the daily market price; Content, Carat (purity) and fineness determine the value of gold jewellery and not the duration of use or holding. Since the duration of use does not affect the value of the commodity in question, the concept of depreciation is not applicable in the case of gold and gold jewellery. By the same logic, dealing with exchange of gold cannot



be construed as dealing in second hand goods and the rule 32 (5) is not applicable and Section 15 of the CGST Act 2017, holds good.

7.8. In the case of usual goods, the peak value in its life span will normally be at the point of retail primary sales to end customers. Such goods will suffer tax at all the value addition points till the peak of its value, i.e., up to the retail sales to the end consumer. The intention of Sub rule (5) to Rule 32 of the CGST Rules, 2017 is to reduce the tax burden on such goods, which have already suffered tax on its highest value, when supplied at a reduced price in the secondary market after usage. But this is not the case with goods such as gold and gold ornaments, where the value is determined primarily by the content, purity and fineness of the material contained therein. With the passage of time, not only does the value of gold decrease but moves upwards, showing a trend opposite to what sub rule (5) envisages. Because of the aforesaid reason and other similar factors, the term 'second hand' does not hold any meaning when it comes to items such as gold, land, currency etc. In order to qualify for inclusion under the valuation of supply as envisaged under sub-rule (5) of rule 32, it has to be proved that the applicant is dealing in second-hand goods. Unfortunately, gold in any form fails to pass the test of 'second-hand goods'.

7.9. Thus, the supply made by the applicant fails to comply with all the requirements specified under Rule 32 (5) of the CGST, Rules 2017. Hence cannot avail of the benefit of provisions stated under sub-rule (5) of CGST rules 2017.

In view of the observations stated above following rulings are issued


RULING

Question: In case the applicant has purchased used/ second-hand gold jewellery or ornaments from persons who are not registered under GST and that at the time of sale of such goods there is no change in the form/nature of such



goods and ITC will also not be availed on such purchase, if so the case, whether GST is to be paid only on the difference between the selling price and purchase price as stipulated under Rule 32(5) of CGST Rules, 2017?

Ruling: In view of the foregoing reasons, the applicant cannot determine the value as per Sub Rule 5 of Rule 32 of the CGST, Rules 2017 for the supplies mentioned in the question sought for this advance ruling.


Dr. S.L. Sreeparvathy, IRS
Additional Commissioner, Central Tax
Member


Abraham Renn S, IRS
Additional Commissioner, State Tax,
Member

To

M/s. Best Money Gold Jewellery Ltd.
TC 38/1445-2, 2nd Floor,
Power House Road,
Thiruvananthapuram – 695036.

Copy to

- The Chief Commissioner of Central Tax and Central Excise,
Thiruvananthapuram Zone, C.R. Building, I.S.Press Road, Cochin-
682018. [E-mail ID: cccocchin@nic.in; ccu-cexcok@nic.in]
- The Commissioner of State Goods and Services Tax Department,
Tax Towers, Karamana, Thiruvananthapuram - 695002.
- The State Tax Officer, Tax Payer Services Circle, Poojappura.



- d. The Superintendent of Central GST and Central Excise, Chalai Range, Thiruvananthapuram South Division.

