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| GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009. |  |
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ADVANCE RULING NO. GUJ/GAAR/R/2025/05
(IN APPLICATION NO. Advance Ruling/SGST& CGST/2024/AR/09)

Date: 21.03.2025

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| Name and address of the applicant | : | Jitendra Equipment, 8-B, National Highway, Opp. Tulip Party Plot, Gondal Road, Kothariya, Rajkot, Gujarat- 360 022. |
| GSTIN of the applicant | : | 24AAFFJ5518D1ZP |
| Jurisdiction Office | : | Office of the Assistant Commissioner of State Tax, Unit-93, Range -23, Division – 10, Rajkot. |
| Date of application | : | 23.04.2024 |
| Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised. | : | (c),(d) |
| Date of Personal Hearing | : | 04.12.2024 |
| Present for the applicant | : | Shri Ankit C Kachhadia and Shri Ketan P Bhalodia. |

Brief facts:

Jitendra Equipment, 8-B, National Highway, Opp. Tulip Party Plot, Gondal Road, Kothariya, Rajkot, Gujarat- 360 022 [for short – ‘applicant’] is engaged in the business of trading of construction machineries & equipment like bulldozers, JCB, etc. The applicant’s GST registration number is 24AAFFJ5518D1ZP.

2. The applicant is planning to introduce a new business *ie* dealing in second hand goods in the field of equipment and machineries via the same registration number. Presently, the applicant is not dealing in second hand goods. The applicant intends to take benefit of margin scheme to discharge GST as per rule 32(5) of the CGST Rules, 2017. They also wish to rely on the FAQs issued in respect of the margin scheme.

3. In view of the aforesaid, the applicant has sought advance ruling on the below mentioned questions *viz*



"1. Can the applicant opt for valuation of outward supply as per rule 32(5) of the CGST Rules, 2017 for the new line of business solely [ie only for dealing in second hand goods] besides following regular rules for their existing business?

2. Can the applicant opt for valuation of outward supply only for acquisition made from unregistered dealer and for acquisition from registered dealer they continue to pay GST as regular mode [ie by discharging GST on full amount of sales consideration and claim ITC on acquisition cost]?

3. What will be the amount of difference as per Rule 32(5) for dealing in second hand goods? Does purchase price as per Rule 32(5) include cost of repair/improvement?

4. If the purchase price does not include cost of repair/improvement than can ITC of such repair/improvement cost can be claimed?

5. Does e way bill and e-invoicing applicable for appellant if they follow margin scheme? If yes then which value should be shown in e-way bill and e-invoice and in which section as the data of e-way bill and e-invoice are getting auto populated in GSTR-1.

6. For purchase of second hand goods from registered/unregistered dealer, do appellant need to pay any tax on reverse charge/forward charge basis?"

4. Personal hearing in the matter was held on 04.12.2024 wherein the applicant was represented by Shri Ankit C Kachhadia and Shri Ketan P Bhalodia. They reiterated their submissions made in the application.

Discussion and findings

5. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

6. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

7. Before moving on to the contentions raised, we would like to reproduce the relevant rules, FAQs, flyer, for ease of reference viz



- **CGST Rules, 2017** [relevant extracts]

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.

(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.

- **Relevant extracts of the flyer [Margin Scheme in GST]**

Chapter Thirty

Margin Scheme in GST

Normally GST is charged on the transaction value of the goods. However, in respect of second hand goods, a person dealing in such goods may be 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. 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.

Valuation of Second Hand Goods: As per Rule 32(5) of the CGST Rules, 2017, 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.

The proviso to the above rule further provides that in case of the purchase value of goods repossessed from an unregistered defaulting borrower, 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.

In this regard, Notification No.10/2017-Central Tax (Rate) New Delhi, dated 28th June, 2017 exempts intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5) of rule 32 of the CGST Rules, 2017, from any unregistered supplier, from the whole of the central tax levied under the CGST Act, 2017. Similar exemptions are also there in respective SGST Acts.

Illustration: For instance, a company say M/s First Source Ltd, which deals in buying and selling of second hand cars, purchases a second hand Maruti Celerio Car of March, 2014 make (Original price Rs. 5 lakh) for Rs. 3 lakhs from an unregistered person and sells the same after minor refurbishing in July, 2017 for Rs. 3,50,000/-. The supply of the car to the company for Rs. 3 lakh shall be exempted and the supply of the same by the company to its customer for Rs. 3.5 lakh shall be taxed and GST shall be levied. The value for GST purpose shall be Rs. 50000/-, i.e. the difference between the selling and the purchase price of the company.

In case any other value is added by way of repair, refurbishing, reconditioning etc., the same shall also be added to the value of goods and be part of the margin.

If margin scheme is opted for a transaction of second hand goods, the person selling the car to the company shall not issue any taxable invoice and the company purchasing the car shall not claim any ITC.

- **FAQs on GST: 3rd Edition: 15th December, 2018**

Q 11. How will value be determined where supply is made by a dealer dealing in second hand goods?

Ans. As per Rule 32(5) of the CGST Rules, 2017, 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

Q 34. How will supplies being made by a person dealing in second hand goods be valued under GST?

Ans. 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 purchase of such goods, the value of supply shall be the difference between the selling price and purchase price and where the value of such supply is negative it shall be ignored. 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.

• **Notification No. 10/2017-CT (R) dated 28.06.2017**

Notification No.10/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5) of rule 32 of the Central Goods and Services tax Rules, 2017, from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Good and Services Tax Act, 2017 (12 of 2017).

2. This notification shall come into force with effect from the 1st day of July, 2017.

8. The applicant as is already mentioned *supra*, is planning to introduce a new business vertical *ie* dealing in second hand goods using same GST registration number.

9. A conjoint reading of the rule, the GST flyer, GST FAQs and the notification reproduced *supra*, reveals the following, as far as second-hand goods are concerned *viz*

- that the term second hand goods are not defined under the CGST Act, 2017;
- that second hand goods are not specifically excluded from the definition of 'goods' as defined under section 2(52) of the CGST Act, 2017;
- that in terms of notification No. 10/2017-CT (Rate), *ibid*, any intra-state supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods, from an unregistered supplier is exempt from the whole of central tax leviable u/s 9(4), *ibid*;
- that in terms of rule 32(5), *ibid* read with section 15(5) of the CGST Act, 2017, in case of taxable supply by a person dealing in buying and selling of second-hand goods, no ITC can be availed on purchase of such goods & the value of supply shall be the difference between the selling price and purchase price and where the value of such supply is in negative, it shall be ignored;
- that no ITC shall be availed on purchases meaning thereby that the taxes paid on forward charge basis or on RCM [reverse charge mechanism] basis shall not be claimed as ITC;
- that losses cannot be set off;
- that since there is no distinction between new goods and second-hand goods under the GST laws, the rates applicable to new goods are to be applied even in case of second hand goods.

10. Based on the aforementioned, we wish to answer the questions posed before the authority. The first question raised by the applicant is - whether they can opt for valuation of outward supply as per rule 32(5), *ibid* for dealing in second hand goods, while following regular rules for their existing business?



11. Since nothing is produced before us which takes a contrary view, we hold that the applicant can opt for valuation of outward supply in terms of Rule 32(5), *ibid* for dealing in second hand goods while simultaneously following the normal valuation practice for their existing business.

12. Moving on to the second question, raised by the applicant *viz* - whether the applicant can opt for valuation of outward supply only for acquisition made from unregistered dealer and for acquisition from registered dealer they continue to pay GST as regular mode [ie by discharging GST on full amount of sales consideration and claim ITC on acquisition cost].

13. What is understood from the aforementioned question is that the applicant wishes to

[a] follow rule 32(5), valuation procedure for supply in respect of goods purchased from un-registered persons; and

[b] follow the regular/normal valuation mode, [*ie* not to opt for rule 32(5), *ibid*] for supply in respect of goods purchased from registered persons. Rule 32(1) of the CGST Rules, 2017, proposes determination of the value in respect of certain supplies, *viz*

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.

[emphasis supplied]

Thus, it is clear that the valuation proposed in terms of Rule 32(5), *ibid*, is at the option of the supplier and is not mandatory in terms of rule 32(1), the text of which is reproduced above.

14. Now, as far as simultaneous availment of valuation procedure enumerated in rule 32(5), in respect of second hand goods, where the same are purchased from an unregistered person, and opting out of the valuation prescribed under rule 32(5), *ibid*, in respect of purchases from registered persons wherein the applicant wishes to discharge GST on full amount of sales



consideration and claims ITC on the purchase, - we find that this is not something which is barred either by the Act or the Rules.

15. Moving on to the third question, raised by the applicant viz - what will be the amount of difference as per Rule 32(5) for dealing in second hand goods? Does purchase price as per Rule 32(5) include cost of repair/improvement?

16. As per rule 32(5), computation of value in respect of margin scheme, shall be difference between the selling price and the purchase price, provided no input tax credit has been availed on the purchase of such goods. The procedure set forth in the rule is unambiguous. It does not provide for inclusion of cost of repair/improvement. We therefore, hold that the amount of difference as per Rule 32(5) for dealing in second hand goods would be the difference between the selling price and the purchase price and would not include the cost of repair/improvement. The above finding stands substantiated by the ruling of Appellate Authority in the case of Tej Kumar Jain¹.

17. Moving on to the fourth question, raised by the applicant viz - If the purchase price does not include cost of repair/improvement then can ITC of such repair/improvement, be availed?

18. The wordings of Rule 32(5), also known as 'margin rule', clearly states that no ITC can be availed on the purchase. The rule provides for minor processing on the second hand goods *ie* used goods, provided it does not change the nature of the product. If the Legislature intended on allowing ITC in respect of such minor processing, rule 32(5), *ibid*, would have provided for availment of ITC in respect of such minor processing. That not being the case, we hold that the applicant is not eligible for availment of ITC in respect of the cost of repair/improvement.

19. Moving on to the fifth question, raised by the applicant viz - whether e-way bill and e-invoicing is applicable for appellant if they follow margin scheme? If yes then which value should be shown in e-way bill and e-invoice

¹ Rajasthan Appellate Authority for Advance Ruling order No. Raj/AAAR/2/21-22 dtd 10.12.21



and in which section as the data of e-way bill and e-invoice are getting auto populated in GSTR-1.

20. The question at best is vaguely framed. Before adverting to answering the question, we find it prudent to reproduce the relevant extract of Section 97(2) of the Central Goods and Services Tax Act, 2017, viz

Section 97. Application for advance ruling

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,-

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

As is evident, e-way bill and e-invoicing does not find a mention under serial No. 2(a) to (g), *supra*. We therefore, refrain from answering this question.

21. Moving on to the sixth question, raised by the applicant *viz* - for the purchase of second hand goods from registered/unregistered dealer, does appellant require to pay any tax on reverse charge/forward charge basis.

22. Again, as far as purchase of second hand goods, from registered person is concerned, we find that the question of the applicant paying tax under reverse /forward charge simply does not arise. This part of the question, is vaguely framed. As far as the question relates to purchase of second hand goods from unregistered dealers is concerned, we find that the same is exempt from payment of tax under RCM in terms of notification No. 10/2017-CT (R) dated 28.06.2017, provided the supply falls within the ambit of intra-state supply.



23. In the light of the above, we rule as under:

RULING

1. The applicant can opt for valuation of outward supply as per rule 32(5) of the CGST Rules, 2017 for the new line of business solely [ie for dealing in second hand goods] besides following regular valuation procedure for their existing business.

2. The applicant can opt for valuation of outward supply in terms of Rule 32(5), ibid, for purchases made from unregistered dealer and for purchases from registered dealer they can pay GST by following the regular mode [ie by discharging GST on full amount of sales consideration and claim ITC]

3. The purchase price as per Rule 32(5) will not include cost of repair/improvement.

4. ITC of repair/improvement cost cannot be availed by the applicant in case they are availing the benefit of Rule 32(5), ibid.

5. No ruling for question no. 5 in terms of para 20 above.

6. No GST is to be paid under RCM for purchase of second hand goods from unregistered dealer if the supply falls within the ambit of intra state supply.


(Kamal Shukla)
Member (SGST)


(P.B.Meena)
Member (CGST)



Place: Ahmedabad
Date: 21.03.2025