
 सत्यमेव जयते	<b>RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX</b>  <b>KAR BHAWAN, AMBEDKAR CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN)</b>	
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**ADVANCE RULING NO. RAJ/AAR/2018-19/35**

J.P.Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Shambhu Traders Private Limited 41, Large Industrial Area, Kota, Rajasthan 324003
GSTIN of the applicant	:	08AAFCS9741J1ZU
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	e. determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	28.01.2019
Present for the applicant	:	Mr. Ramesh Agarwal, Director
Date of Ruling	:	15.02.2019



*Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.*

The issue raised by M/s Shambhu Traders Private Limited situated at 41, Large Industrial Area, Kota, Rajasthan 324003 (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (e), which is given as under :

- e. determination of the liability to pay tax on any goods or services or both

Further, the applicant being a registered person (GSTIN is 08AAFCS9741J1ZU, as per the declaration given by him in Form ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.

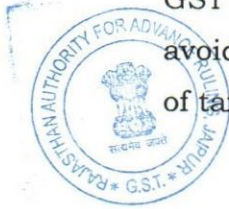


#### **SUBMISSION AND INTERPRETATION OF THE APPLICANT:**

- a. The Applicant is engaged in the business of selling used lead acid batteries to various manufacturers.
- b. The Applicant is registered with the jurisdictional authorities under the Rajasthan Goods and Service Tax Act, 2017 ("Rajasthan GST Act, 2017") bearing GSTIN No. 08AAFCS9741J1ZU.
- c. The Applicant is operating under the Margin Scheme notified under Rule 32(5) of the Central Goods and Service Tax Rules, 2017 ("CGST Rules").
- d. The Applicant purchases these used lead acid batteries from unregistered suppliers in small quantity [50 to 100 kg approximately]. The unregistered suppliers may be located in the same State as the dealers or even a different State. On purchase of used lead acid batteries from unregistered suppliers, the Applicant subsequently sells them to various manufacturers and charges GST on the difference between the sale price and purchase price of lead acid batteries in accordance with Rule 32(5) of the CGST Rules.
- e. It is in this aforesaid background, the Applicant seeks determination on the question as to whether the used lead acid batteries qualify as 'second hand goods' and thus covered under the Margin Scheme notified under Rule 32(5) of the CGST Rules, 2017.

f. Applicant's interpretation with respect to first question:-

1. It is submitted that normally GST is charged on the transaction value of the goods. 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. 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.



2. Rule 32(5) CGST Rules, 2017 specifies 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. The relevant extract of Section 32(5) of the CGST Rules, 2017 is reproduced below:

*“(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.”*

3. As provided in Rule 32(5) of the CGST Rules, 2017, the margin scheme is available in case of purchase and subsequent sale of second hand goods. In the present case, the Applicant is primarily engaged in the activity of procuring the second hand 'lead acid batteries' (hereinafter referred to as 'batteries') in small quantities (50 to 100kg approx.) from various unregistered suppliers situated within the State of Rajasthan and outside Rajasthan.
4. For goods to qualify as second hand goods as per Rule 32(5) of the CGST Rules, 2017 such goods need be (1) used goods as such or goods after minor processing that does not change the nature of goods (2) goods on which no Input Tax Credit has been availed.
5. It is submitted that used lead acid batteries are used goods and no processing is done on such goods. Therefore, these used lead acid batteries qualify as second hand goods in as much as these goods are 'used goods as such'. Further, the Applicant does not avail Input Tax Credit on such used lead acid batteries.
6. In this regard, reference may also be placed on the Press Release dated 15<sup>th</sup> July, 2017 of the GST Council wherein it has been clarified as under in respect of old and used bottles:

*Doubts have been raised regarding the applicability of the margin scheme under GST for dealers in second hand goods in general and for dealers in old and used empty bottles in particular.*

*2. Rule 32(5) of the Central Goods and Services Tax 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. This is known as the margin scheme.

...

4. Thus, margin scheme can be availed of by any registered person dealing in buying and selling of second hand goods [including old and used empty bottles] and who satisfies the conditions as laid down in rule 32(5) of the Central Goods and Services Tax Rules, 2017.



That the aforesaid clarification issued in respect of the used bottles shall squarely be applicable in respect of the used lead acid batteries as just like used bottles no processing is done on the used lead acid batteries. Therefore, in the Applicant's view, these used lead acid batteries qualify to be second hand goods. Accordingly, the Applicant dealer is entitled to operate under the Margin Scheme in respect of the used lead acid batteries.

g. Applicant's interpretation with respect to second question:-

When the Applicant is selling goods under the Margin Scheme notified under Rule 32(5) of the Central Goods and Service Tax Rules, 2017. The Tax on Outward Supply under the Margin Scheme would be qualified under which of the following heading in GSTR-3B

a. As per Section 2(108) of the CGST Act –Taxable Supplies means a supply of goods or services or both which is liable to tax under this act. Accordingly all the supply of goods and services except the following shall be taxable supply:-

- Supply of Alcohol for human consumption since the
- Non taxable Supplies which shall include supplies whose place of supply is in non taxable territories

It is pertinent to mention that Exempt supplies / Nil rated supplies shall be taxable supply since they are leviable to tax but have been exempted or their rate is zero

- b. As supplies by the applicant is made to registered person not working under the Composition Scheme nor having UIN Number.

Therefore as per the Applicant view the person working under the Margin Scheme whether selling goods within the state or outside the state will classify the Taxable Supply under Point 3.1(a) while filing the Return GSTR

3B i.e. outward taxable Supplies



h. Applicant's interpretation with respect to third question:-

1. In terms of Rule 2 of the Integrated Goods and Service Tax Rules, 2017, the Central Goods and Service Tax Rules, 2017, for carrying out the provisions specified in Section 20 of the Integrated Goods and Service Tax Act, 2017 shall, so far as may be, apply in relation to integrated tax as they apply in case of central tax. Section 20 of the IGST Act prescribes that the provisions of the CGST Act shall mutatis mutandis apply to various subjects which have been provided under Section 20. The subject pertaining to 'time and value of supply' is also covered under Section 20, hence the rules made under CGST Act in relation to valuation of a supply is applicable to IGST Act as well.
2. Therefore, Rule 32(5) of the CGST Rules, 2017 which provides for Margin Scheme in case of intra-state supplies shall also be applicable in case of inter-state supplies.

Therefore, the Applicant is of the view that it is entitled to make inter-state supplies of used lead acid batteries while operating under the Margin Scheme.

## 2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

1. When the Applicant is operating under the Margin Scheme notified under Rule 32(5) of the Central Goods and Service Tax Rules, 2017 (“CGST Rules, 2017”) by selling the used lead acid batteries to other manufacturers whether such used lead acid batteries qualify as ‘second hand goods’ and thus covered under the Margin Scheme notified under Rule 32(5) of the CGST Rules, 2017?
2. When the Applicant is selling goods under the Margin Scheme notified under Rule 32(5) of the Central Goods and Service Tax Rules, 2017. The Tax on Outward Supply under the Margin Scheme would be qualified under which of the following heading in GSTR-3B in following cases:-
  - a) When Applicant selling the goods within the state?
  - b) When Applicant selling the goods outside the state?



### “3.1 Tax on Outward and reverse charge Inward Supplies

Nature of Supplies	Total Taxable Value
a) Outward taxable supplies (other than zero rated, nil rated and exempted)	
(b) Outward taxable supplies(zero rated)	
©Other Outward Supply ( nil rated, exempted )	
(d) Inward Supply (liable to reverse charge)	
(e)Non GST Outward Supply	

### 3.2 Inter State Supply

Nature of Supply	Total Taxable Supply
"Supplies made to Unregistered Persons	
Supplies made to	

Composition Taxable Person	
Supplies made to UIN Holders	

3. When the Applicant is operating under the Margin Scheme notified under Rule 32(5) of the Central Goods and Service Tax Rules, 2017 ("CGST Rules, 2017") by selling the used lead acid batteries to manufacturers whether the goods when sold outside the state or when sold within the state of Rajasthan qualifies under the Margin Scheme.



### **3. PERSONAL HEARING**

In the matter personal hearing was given to the applicant on 28.01.2019 at Room no. 2.22 NCRB, Statue Circle, Jaipur. Mr. Ramesh Kumar Agarwal appeared for PH. During the PH, he reiterated the submissions made in the application. He further requested that the case may be decided at the earliest.

### **4. COMMENTS OF THE JURISDICTIONAL OFFICER**

The jurisdiction officer has stated that on the basis of submissions submitted it is found that the activities undertaken by the applicant is a composite supply of goods and GST is as applicable to it.

### **5. FINDINGS, ANALYSIS & CONCLUSION:**

#### **I.**

- a. We find that, 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.
- b. Rule 32(5) CGST Rules, 2017 specifies 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.

- c. The relevant extract of Section 32(5) of the CGST Rules, 2017 is reproduced below:-

*“(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.”*

- d. As provided in Rule 32(5) of the CGST Rules, 2017, the margin scheme is available in case of purchase and subsequent sale of second hand goods. In the present case, the Applicant is primarily engaged in the activity of procuring the second hand 'lead acid batteries' (hereinafter referred to as 'batteries') in small quantities (50 to 100 kg approx.) from various unregistered suppliers situated within the State of Rajasthan and outside Rajasthan.
- e. For goods to qualify as second hand goods as per Rule 32(5) of the CGST Rules, 2017 such goods need be (1) used goods as such or goods after minor processing that does not change the nature of goods (2) goods on which no Input Tax Credit has been availed.



- f. It is observed that used lead acid batteries are used goods and no processing is done on such goods. Therefore, these used lead acid batteries qualify as second hand goods, further, the Applicant does not avail Input Tax Credit on such used lead acid batteries.

Therefore, we find that, the used lead acid batteries qualify to be second hand goods. Accordingly, the Applicant dealer is entitled to operate under the Margin Scheme in respect of the used lead acid batteries.

**II.**

The query raised by the applicant is regarding GSTR-3B. The advance ruling can be pronounced only on the subjects mentioned in Section 97(2) of CGST/RGST Act, 2017 which is reproduced below:

- (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 the query raised by the applicant is not specified in Section 97(2) of CGST Act/RGST Act, 2017, therefore, no advance ruling can be given on this aspect.

**III.**

In terms of Rule 2 of the Integrated Goods and Service Tax Rules, 2017, the Central Goods and Service Tax Rules, 2017, for carrying out the provisions specified in Section 20 of the Integrated Goods



and Service Tax Act, 2017 shall, so far as may be, apply in relation to integrated tax as they apply in case of central tax. Section 20 of the IGST Act prescribes that the provisions of the CGST Act shall mutatis mutandis apply to various subjects which have been provided under Section 20. The relevant portion of Section 20 of the IGST Act is reproduced as under:-

*20. subject to the provisions of this Act and the rules made there under, the provisions of Central Goods and Services Tax Act relating to,—*

*(i) scope of supply; (ii) composite supply and mixed supply; (iii) time and value of supply; (iv) input tax credit; (v) registration; (vi) tax invoice, credit and debit notes; (vii) accounts and records; (viii) returns, other than late fee; (ix) payment of tax; (x) tax deduction at source; (xi) collection of tax at source; (xii) assessment; (xiii) refunds; (xiv) audit; (xv) inspection, search, seizure and arrest; (xvi) demands and recovery; (xvii) liability to pay in certain cases; (xviii) advance ruling; (xix) appeals and revision; (xx) presumption as to documents; (xxi) offences and penalties; (xxii) job work; (xxiii) electronic commerce; (xxiv) transitional provisions; and (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:*




The subject pertaining to 'time and value of supply' is covered under Section 20, hence the rules made under CGST Act in relation to valuation of a supply is applicable to IGST Act as well.

In accordance with the above facts of law, we find that, Rule 32(5) of the CGST Rules, 2017 which provides for Margin Scheme in case of intra-state supplies shall also be applicable in case of inter-state supplies and the applicant is entitled to make inter-state supplies of used lead acid batteries while operating under the Margin Scheme.


6. In view of the foregoing, we rule as follows:-

**RULING**

1. The used lead acid batteries qualify to be second hand goods. Accordingly, the Applicant dealer is entitled to operate under the Margin Scheme in respect of the used lead acid batteries.
2. The query raised by the applicant is not specified in Section 97(2) of CGST Act/RGST Act, 2017, therefore, no advance ruling is given.
3. The Rule 32(5) of the CGST Rules, 2017 which provides for Margin Scheme in case of intra-state supplies shall also be applicable in case of inter-state supplies. The Applicant is entitled to make inter-state supplies of used lead acid batteries while operating under the Margin Scheme.

  
J.P. MEENA 15/12/19  
Member  
(Central Tax)



  
HEMANT JAIN 15/12/19  
Member  
(State Tax)

**SPEED POST**

M/s Shambhu Traders Private Limited  
41, Large Industrial Area, Kota,  
Rajasthan 324003

F.No. AAR/07/Shambhu/2018-19

Dated:

Copy to:-

1. Commissioner, SGST & Commercial Taxes, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005
2. Commissioner, CGST and Central Excise Udaipur Commissionerate, 142-B, Sector-11, Hiran Magri, Udaipur 313002.
3. Deputy/Assistant Commissioner, CGST Division-H, Kota, Central revenue Building, near CAD circle, Kota, Rajasthan 324009

Superintendent