

**THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 35/ 2021

Dated 09-07- 2021

Present:

1. Dr.M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes . . . Member (State)
2. Sri.Mashhood Ur RehmanFarooqui,
Joint Commissioner of Customs & Indirect Taxes. . .Member (Central)

1.	Name and address of the applicant	M/s. Aadhya Gold Private Limited, Flat No.37/38, 1 st Floor, SBI Colony, 80 Feet Road, 3 rd Block, Koramangala, Bengaluru-560 034.
2.	GSTIN or User ID	29AAPCA3170M1Z5
3.	Date of filing of Form GST ARA-01	20-04-2021
4.	Represented by	Ms. Seetha Lakshmi, Chartered Accountant &Duly Authorised Representative
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Customs & Indirect Taxes, Bangalore South GST Commissionerate,
6.	Jurisdictional Authority - State	ACCT, LGSTO-15, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act & Rs.5,000-00 under SGST Act vide CIN HDFC21022900153173 Dated 16.02.2021

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

1. M/s. Aadhya Gold Private Limited (called as the 'Applicant' hereafter) No.37/38, 1st Floor, SBI Colony, 80 Feet Road, 3rd Block, Koramangala, Bengaluru-560 034 having GSTIN 29AAPCA3170M1Z5, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



2. The Applicant is a Private Limited company registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively) engaged in the business of buying and selling of second hand gold jewellery.

3. The applicant has sought advance ruling in respect of the following question:

- a. *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, if applicant purchases used/second hand gold jewellery from individuals who are not dealers under the GST and at the time of sale there is no change in the form / nature of goods?*

4. **Admissibility of the application:** The question is about “determination of the liability to pay tax on any goods or services or both” and hence is admissible under Section 97(2)(e) of the CGST Act 2017.

5. **BRIEF FACTS OF THE CASE:** The applicant furnishes some facts relevant to the issue:

5.1 The Applicant states that they are engaged in the process of buying used / second hand gold jewellery from unregistered persons who are not dealers registered under GST (i.e., from common man).

5.2 The Applicant states that they sell the used / second hand gold jewellery which has been purchased from unregistered persons, ‘as such’, without making any further processing. In other words, the used gold ornaments are sold in the same form in which they are originally purchased, to another registered person (buyer) after minor processing such as cleaning and polishing but without altering the nature of the ornament / jewellery.

5.3 The Applicant states that at present he is charging GST at the rate of 3% (CGST 1.5% and KGST 1.5%) to the buyer, on the entire sale consideration received from the buyer on sale of used ornaments / second hand goods.

5.4 The Applicant states that he purchases used/second hand gold jewellery mostly from unregistered persons and hence there is no input tax credit available in the hands of the Applicant.

5.5 The Applicant states that as per Rule 32(5) of the CGST Rules, 2017, the value of supply shall be the difference between selling price and purchase price. Further, if the said difference is negative, then GST is not applicable on such transaction. The relevant portion of Rule 32(5) of the CGST Act, 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.”

6.

Applicant's Interpretation of Law:

6.1 The Applicant submits that all the conditions mentioned in Rule 32(5) of the CGST Act, 2017 are satisfied and the same shall be applicable to them on the following grounds:

6.1.1 **No ITC claimed:** The Applicant submits that they purchase used/ second hand gold from unregistered persons. Therefore, there is no question of claiming any input tax credit on purchase of such goods;

6.1.2 **Goods sold 'as such':**The Applicant states that they do not indulge in further processing of used/ second hand gold which has been purchased by them, before selling the same to the buyer. In other words, where they have purchased second hand jewellery for e.g., gold chain, it is sold in the same form i.e., gold chain, to the buyer without making any alterations or further processing. The used ornaments once purchased, are not melted into bullion before selling the same to the buyer. In some cases, they may sell the jewellery after cleaning or polishing the second hand ornaments to the buyer. However, the said process does not alter the nature or form of the jewellery. In other words, the nature and form of goods remain the same at the time of purchase and sale in the hands of the Applicant.

6.1.3 **Buying and selling of 'second hand goods':**applicant states that in the backdrop of the above facts, it is obvious thatthey arein the business of buying and selling of 'second hand goods'. The fact that the ornaments are originally purchased from common man, being unregistered persons and not from registered dealer/shops is itself proof that the goods purchased are used / second hand goods in nature. Second hand goods are goods which are not new and which are pre-owned by someone else. The said goods are pre-owned and pre-used by the unregistered persons before selling it to the Applicant.

6.2 Since all the conditions laid down under Rule 32(5) of the CGST Rules, 2017 are satisfied by the Applicant, the Applicant is of the opinion that margin scheme is applicable and GST shall be payable only on the profit element being selling price minus purchase price. The Applicant states that this issue is already heard in the following cases.



1. Attica Gold (P) Limited by the Advance Ruling Authority, Karnataka.
2. Safest Agencies (P) Limited by the Advance Ruling Authority, Maharashtra.

PERSONAL HEARING: / PROCEEDINGS HELD ON 30-06-2021

7. M.S . Seethalakshmi, Chartered Accountant & Authorised Representative of the applicant appeared for personal hearing proceedings held on 30-06-2021 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. The application for advance ruling and the arguments made by the applicant and also the submissions made by the learned representative during the time of hearing were all verified and the issues that needs to be addressed is related to whether the applicant is eligible to utilize the sub-rule (5) of rule 32 of Central Goods and Services Tax Rules, 2017.

9.1 Rule 32 of the CGST Rules, 2017 reads as under:

“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.*
- (2)
- (3)
- (4)
- (5) *Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used good 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.”

9.2 This rule stipulates the method of working of the taxable value of a supply and is applicable if 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
 - Where no input tax credit has been availed on the purchase of such goods.

9.3 In the instant case, the supplier, i.e., the applicant is effecting the supply of second-hand jewellery which is taxable under the GST Act as it is covered under entry no.13 of Schedule V to the Notification No.01/2017-Central Tax (Rate) dated 28th June, 2017 which is taxable at 1.5% under the CGST Act and similarly taxable under the KGST Act, 2017 also at 1.5%. Hence, the supplier satisfies the condition that the supply made by him must be a taxable supply.

9.4 Regarding the next condition, the supplier must be a person dealing in buying and selling of second-hand goods. It is seen that the applicant has admitted that he is purchasing used gold jewellery from individuals and selling the same, after cleaning and polishing them. The applicant has also admitted that he is not availing any input tax credit on the purchase of such goods and the goods so purchased are supplied 'as such'. The applicant has stated that he is 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. These goods are then supplied to other persons. Further, the applicant admits that they are invoicing the goods as "used gold ornaments". Hence, the applicant satisfies the second condition also.

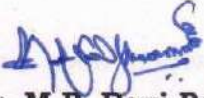
9.5 In view of the applicant satisfying both the aforesaid conditions, the valuation of the supply of second hand jewellery may be made as prescribed in sub-rule (5) of rule 32 of the Central Goods and Services Tax Rules, 2017.

10. In view of the foregoing, we rule as follows



RULING

In the case of applicant dealing in second hand goods and invoicing his supplies as "second hand goods", the valuation of supply of second hand gold jewellery which are purchased from individuals who are not registered under GST and there is no change in the form and nature of such goods, can be made as prescribed under sub-rule (5) of rule 32 of the Central Goods and Service Tax Rules.



(Dr. M.P. Ravi Prasad)

**Member
MEMBER**

Karnataka Advance Ruling Authority
Place : Bengaluru - 560 009



09.07.2021

(Mashhood Ur Rehman Farooqui)

**Member
MEMBER**

Karnataka Advance Ruling Authority
Bengaluru - 560 009

Date : 09-07-2021

To,
The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Customs & Indirect Taxes, Bangalore South GST Commissionerate.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-15, Bengaluru.
5. Office Folder.

