

Whether the applicant purchasing second hand gold in the form of jewellery / parts of jewellery, from unregistered individuals and sells to registered / unregistered dealers, after melting the same, in the form of lumps / irregular shapes of gold, without changing the nature, (i.e.,) Gold remains gold, has to pay GST on the margin difference between the sale price and purchase price as stipulated in Rule 32(5) of CGST Rules, 2017? HELD The applicant purchasing second hand gold in the form of jewellery / parts of jewellery, from unregistered individuals and selling to registered / unregistered dealers, after melting the same, in the form of lumps / irregular shapes of gold, cannot pay GST on the margin difference between the sale price and purchase price as stipulated in Rule 32(5) of CGST Rules, 2017. (2) Whether the HSN Code for Old Gold Jewellery purchased and after melting the purchased old gold jewellery is 7113? HELD The HSN Code for Old Gold Jewellery is 7113 and after melting into gold lumps or irregular shapes of gold the HSN Code is 7108.

Advance Ruling No. KAR ADRG 20/2023, Dated 15th May, 2023

THE AUTHORITY FOR ADVANCE RULINGS

IN KARNATAKA

GOODS AND SERVICES TAX

VANIJYA THERIGE KARYALAYA, KALIDASA ROAD

GANDHINAGAR, BENGALURU - 560 009

Present:

1. Dr. M.P.Ravi Prasad

Additional Commissioner of Commercial Taxes Member (State)

2. Sri. Kiran Reddy T

Additional Commissioner of Customs & Indirect TaxesMember (Central)

1.	Name and address of the applicant	M/s. White Gold Bullion Private Limited No.75, House of White First Floor, Hosur Road, Koramangala, Bengaluru-560 095.
2.	GSTIN or User ID	29AAPCA3170M1Z5
3.	Date of filing of Form GST ARA-01	03.02.2023
4.	Represented by	Sri V. Sudhindranath, Advocate
5.	Jurisdictional Authority -Centre	The Principal Commissioner of Central Taxes, Bengaluru South GST Commissionerate, South Division-5, RANGE-ASD5, Benagaluru.
6.	Jurisdictional Authority - State	ACCT, LGSTO-017, 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 and Rs.5,000-00 under SGST Act vide debit of Electronic Cash Ledger Reference No. DC2901230238688 Dated 19.01.2023

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND

UNDER SECTION 98(4) OF THE KGST ACT, 2017

M/s. White Gold Bullion Private Limited, No.75, House of White, First Floor, Hosur Road, Koramangala, Bengaluru-560 095 (hereinafter referred to as The applicant'), 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). The applicant is engaged in the business of purchase and sale of used gold (Second hand goods).

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

i. Whether the applicant purchasing second hand gold in the form of jewellery / parts of jewellery, from unregistered individuals and sells to registered / unregistered dealers, after melting the same, in the form of lumps / irregular shapes of gold, without changing the nature, (i.e.,) Gold remains gold, has to pay GST on the margin difference between the sale price and purchase price as stipulated in Rule 32(5) of CGST Rules, 2017?

ii. Whether the HSN Code for Old Gold Jewellery purchased and after melting the purchased old gold jewellery is 7113?

4. Admissibility of the application: The question is about the "Classification of any goods or services or both" and the "determination of the liability to pay tax on any goods or services or both" and hence is admissible under Section 97(2)(a) and 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 has stated that they are engaged in the business of purchase and sale of used gold (second hand goods). They purchase the used old gold jewellery from the unregistered persons and sells the same to others after cleaning and polishing it.

5.2 The applicant has stated that they also melt the unsold Old used Jewellery / parts which remain unsold because of being outdated design / model or because of being excessively damaged beyond repair and they do not charge GST on the purchase of these old Jewelleries / parts as per Notification No. 10/2017- Central Tax (Rate) dated 28-06-2017 and pays the GST on outward supplies as per Rule 32(5) as stipulated in this Notification. The applicant does not take any input on these purchases.

5.3 The applicant states that the Rule 32(5) of the CGST Rules, 2017 provides for the valuation of taxable supply by a person dealing in buying and selling of second-hand goods.

Extract of Rule 32 (5) is being produced below, which states that-

(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 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 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, is 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. "

As per the paragraph above, this rule provides for the method by which the taxable value of a second

hand goods supply is arrived and is applicable only if the following conditions are satisfied: ^

- (a) The Supply made by the supplier is a taxable supply.
- (b) The Supplier deals in buying and selling of second hand goods.
- (c) The Supplier has done minor processing on such goods.
- (d) The Supplier has not claimed Input Tax Credit on the purchase of such goods.
- (e) The Supplier has not changed the nature of the goods.

6. Applicant's Interpretation of Law:

6.1 The applicant states that condition (a) i.e the supply should be a taxable supply, is fulfilled by the applicant as the supply of second hand goods is taxable under the GST Act and is covered under Chapter 71 under Tariff Item No. 13. As per Notification No. 01/2017- Central Tax (Rate) dated 28th June, 2017, the said item is taxable at 1.5% under the CGST Act and similarly taxable under the KGST Act, 2017 also at 1.5%.

6.2 The condition stipulated at point (b), (c), (d) & (e) i.e. the supplier should be dealing in buying and selling of second hand goods, minor processing should be done, no Input Tax credit should have been claimed on the purchase of such goods and there should not be any change in nature, the applicant as stated above is clarifying that they are only dealing in second hand goods and are not claiming any GST Input credit on the purchases. On the Old Jewellery which are marketable, they are only cleaning and

polishing them. On the other hand, the jewellery / parts which are non-marketable, the applicant is doing minor processing and is melting it into gold lump / irregular shapes and selling it as it, without doing any much process on it. The applicant is not changing the nature rather only changing the form by melting it to a different form i.e. lump / irregular shapes. This lump / irregular shape is further processed by the other party i.e. buyer and is made into a jewellery which is sold by them after charging GST. The applicants work ends at melting and nothing beyond that. The applicant is not doing any further process on these melted lumps and is selling it as it is. The applicant is invoicing these supplies to the other person as "Second hand Ornaments".

6.3 The applicant further states that the purpose of the Margin scheme, stipulated under Rule 32(5) of the CGST Rules, 2017 is to avoid double taxation of the goods. Once the goods have borne the incidence of tax, the tax should not be re-applied on the same component when it re-enters the economic supply chain. The applicant also refers to Notification No. 10/2017- Central Tax (Rate) dated 28-06-2017 wherein the Central Government, on being satisfied that it is necessary in the public interest to do so, exempted intra-state supplies of second hand goods received by a registered person dealing in second hand goods and paying GST as per Rule 32(5) from a supplier who is not registered. The very purpose of this notification was to maintain the purpose of GST for which it has been bought i.e. No Cascading effect, Taxing at destination.

6.4 The applicant has relied on the judgement of the Honourable Supreme Court in the case of M/s. Hiralal Ji Vs The State of Madhya Bharat (AIR 1966 SC 1546) wherein the honourable Supreme court upheld the decision given by the High court in favour of assessee and stated that since there is only change in the form and not in nature, VAT is not applicable on converting scrapped iron into bars. The applicant has also stated that this rule of interpretation is followed in many judgments like

- a. State of Gujarat Vs. Shah Veljibhai Motichand (AIR 1969 23 STC 288 Guj.)
- b. Pyarelal Malhotra Vs. Joint Commercial Tax Officer [(1971) IIMLJ 176, 1970 26 STC 416 Mad]
- c. State of Tamil Nadu Vs. Annai Industries [(1994) 94 STC 393 (Mad)]
- d. P.J.A. Manoj Vs. State of Kerala dated August 2006 [(2007) 10 VST 432 Ker]

PERSONAL HEARING / PROCEEDINGS HELD ON 21.02.2023

7. Sri V. Sudhindranath, Advocate and Duly Authorised Representative appeared for personal hearing

proceedings held on 21.02.2023 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. We have considered the submissions made by the applicant in their application for advance ruling. We have also considered the issues involved on which advance ruling is sought by the applicant and the relevant facts along with the arguments made by their authorized representative and also their submissions made during the time of hearing.

10. The Applicant has sought to know whether the applicant purchasing second hand gold in the form of jewellery / parts of jewellery, from unregistered individuals and sells to registered / unregistered dealers, after melting the same, in the form of lumps / irregular shapes of gold has to pay GST as per Rule 32(5) of CGST Rules, 2017.

10.1 For this we invite reference of Rule 32(5) of CGST Rules, 2017 which is reproduced below:

"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. "

10.2 The above rule stipulates the method by which the value of supply of second hand goods is arrived and is applicable only if 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

c) Where no input tax credit has been availed on the purchase of such goods.

11. In the instant case, the applicant is purchasing second hand gold in the form of jewellery from unregistered individuals and supplies to registered / unregistered persons in the form of lumps after melting the same. One of the conditions to apply rule 32(5) for their outward supplies is that supply made by the supplier must be a taxable supply. The applicant is into supply of gold, which is a taxable supply and hence the first condition is satisfied.

11.1 Now let us verify whether the Applicant satisfies the second condition mentioned supra at para 10.2.

The applicant states that they purchase the used old gold jewellery from the unregistered persons and if they are marketable, they supply the same after cleaning and polishing it. On the other hand, the jewellery / parts which are non-marketable, the applicant is melting it into gold lump / irregular shapes and supply the same.

11.2 Now let us look into the classification of gold jewellery and gold lumps. We observe from Custom Tariff Act 1975 that chapter 71 covers 'Natural Or Cultured Pearls, Precious Or Semi-Precious Stones, Precious Metals, Metals Clad With Precious Metal, And Articles Thereof; Imitation Jewellery; Coin'

In terms of Chapter Notes 4(A), the expression "precious metal" means silver, gold and platinum.

Tariff heading 7113 covers Articles Of Jewellery And Parts Thereof, Of Precious Metal Or Of Metal Clad With Precious Metal as under:

TARIFF ITEM	DESCRIPTION OF GOODS
7113	ARTICLES OF JEWELLERY AND PARTS THEREOF, OF PRECIOUS METAL OR OF METAL CLAD WITH PRECIOUS METAL
	Of precious metal whether or not plated or clad with precious metal:
7113 11	Of silver, whether or not plated or clad with other precious metal:
7113 11 10	Jewellery with filigree work
7113 11 20	Jewellery studded with gems
7113 11 30	Other articles of Jewellery
7113 11 90	Parts
7113 19	Of other precious metal, whether or not plated or clad with precious metal :
7113 19 10	Of gold, unstudded
7113 19 20	Of gold, set with pearls
7113 19 30	Of gold, set with diamonds
7113 19 40	Of gold, set with other precious and semiprecious stones
7113 19 50	Of platinum, unstudded
7113 19 60	Parts
7113 19 90	Other
7113 20 00	Of base metal clad with precious meta

11.3 . Tariff heading 7108 covers 'Gold (Including Gold Plated With Platinum) Unwrought Or In Semi-Manufactured Forms, Or In Powder Form' as under:

TARIFF ITEM	DESCRIPTION OF GOODS
7108	GOLD (INCLUDING GOLD PLATED WITH PLATINUM) UNWROUGHT OR IN SEMI-MANUFACTURED FORMS, OR IN POWDER FORM
	Non-monetary
7108 11 00	Powder

7108 12 00	Other unwrought forms
7108 13 00	Other semi-manufactured forms
7108 20 00	Monetary

11.4 From the above it is clear that tariff heading 7113 pertains to jewellery and parts thereof of precious metal which includes gold jewellery, and tariff heading 7108 pertains to gold in unwrought or semi-manufactured forms such as gold lumps or irregular shapes of gold. Gold jewellery are a distinct category of article having distinct characteristics and is not same as gold lumps. When the applicant melts the gold jewellery into gold lumps, the nature of goods changes in as much as the characteristics of the articles and the classification changes. Since the processing done by the applicant changes the nature of goods, they do not satisfy the second condition mentioned supra at para 10.2 and hence not eligible to avail the benefits of Rule 32(5) of CGST Rules, 2017.

12. In view of the foregoing, we pass the following

RULING

i. The applicant purchasing second hand gold in the form of jewellery / parts of jewellery, from unregistered individuals and selling to registered / unregistered dealers, after melting the same, in the form of lumps / irregular shapes of gold, cannot pay GST on the margin difference between the sale price and purchase price as stipulated in Rule 32(5) of CGST Rules, 2017.

ii. The HSN Code for Old Gold Jewellery is 7113 and after melting into gold lumps or irregular shapes of gold the HSN Code is 7108.

(Dr. M.P.Ravi Prasad)

Member

Place: Bengaluru

Date: 15-05-2023

(Kiran Reddy T)

Member