



**APPELLATE AUTHORITY FOR
ADVANCE RULING, RAJASTHAN
GOODS AND SERVICES TAX**
NCR BUILDING, STATUE CIRCLE, C-SCHEME
JAIPUR - 302005 (RAJASTHAN)
Email : aaarjpr@gmail.com



ORDER NO. 04/2024-25 DATED 23.07.2024

Before the AAAR comprising of :

1. Sh. Mahendra Ranga, Member (Central Tax)
2. Dr. Ravi Kumar Surpur, Member (State Tax)

Name and address of the Appellant	M/s. Hitesh Gwalani (M/s Baba Supplier) B2-16, Behind Gandhi Colony Ballabh Garden, Sudarshan Nagar, Bikaner -334003, Rajasthan
GSTIN/ UID of the Appellant	08CKPPG9845L1Z9
Issues under Appeal	Filed under Section 97(2)(c) determination of time and value of supply of goods or services or both; (e) determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	16.07.2024
Present for the Appellant	Sh. Prafful Gupta, CA, A/R for M/s. Hitesh Gwalani
Details of Appeal	Appeal No. RAJ/AAAR/APP/01/2024-25 dt 06.05.2024 against Advance Ruling No. RAJ/AAR/2023-24/ dated 09.04.2024

(Proceedings under Section 101 of the Central GST Act, 2017 read with Section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are *pari-materia* barring a few exceptions. Therefore, unless a specific mention made to such dissimilar provisions, a reference to the Central GST Act, 2017 should also be read as a reference to corresponding provisions of Rajasthan GST Act, 2017.

The present appeal has been filed under Section 100 of the Central Goods & Service Tax Act, 2017 (hereinafter also referred to as 'the CGST Act') read with Section 100 of the Rajasthan Goods & Services Tax Act, 2017 (hereinafter also referred to as 'the RGST Act') by the Appellant against AAR, Rajasthan Ruling Order No. RAJ/AAR/2023-24/ dated 09.04.2024.



BRIEF FACTS OF THE CASE

The Appellant, M/s Hitesh Gwalani are a supplier of waste papers. The appellant proposed to initiate the business of buying & selling of various goods such as old & used Iron Scrap, used Lead Acid Batteries, used Aluminium utensils & other used Aluminium goods, used brass utensils, used steel utensils, used scrap of copper, used plastic bags & used plastic PET bottles and worn-out tyre tubes etc. All the above mentioned goods are to be purchased from unregistered suppliers. The appellant would subsequently sell them to various manufacturers and will charge GST on the difference between the selling price & purchase price of the above-mentioned goods in accordance with Rule 32(5) of CGST Rules, 2017.

The appellant applied for advance ruling for below mentioned Questions-

- 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 old used Iron Scrap, used Lead Acid Batteries, old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc to manufacturers whether such thus covered under the Margin Scheme notified under Rule 32(5) of the CGST Rules, 2017?*
- 2. 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 used Iron Scrap, used Lead Acid Batteries, old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc. to manufacturers whether the goods when sold outside the state or when sold within the state of Rajasthan qualifies under the Margin Scheme.*

The Appellant desired to get the questions decided under Section 97(2) (c) and (e) of CGST Act, 2017 from the Authority for Advance Ruling and made application in this regard. The matter was heard on 19-02-2024 by the AAR. The Appellant's application was rejected on the technical ground that the Appellant are a supplier of used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc to the manufacturers. The Authority for Advance Ruling held that the above-mentioned items are not covered under the definition of second-hand goods as basically these items are scrap to be consumed/melted for manufacturer of new items and thus the nature of goods changed.

Further, the Authority for Advance Ruling stated in the impugned ruling that Central Government has issued Notification No.8/2018 – Central Tax (Rate) dated 25.01.2018 in respect of Margin Scheme under Rule 32(5) of CGST Rules, 2017. The Authority for Advance Ruling opined that the Margin Scheme is available only with respect to Motor Vehicles. Furthermore, the second question was rejected by the AAR on the grounds that since the Appellant are not eligible to operate under Margin Scheme in term of Rule 32(5) of Central Goods and Services Tax Rules, 2017, therefore, the benefit neither available for intra- state supply of goods nor inter-state supply of goods.



GROUND OF APPEAL

Being aggrieved with the AAR Order No. RAJ/AAR/2023-24/ dated 09.04.2024, the present appeal has been filed on the following grounds:-

1. That the AAR has erred in law in dismissing the application of the appellant on the technical ground that the appellant is not covered under the definition of Second-Hand Goods. Relevant part of the Rule 32 of the CGST Rules, 2017 is reproduced as under :-

Rule 32(5) CGST 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:

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."

The Notification No.8/2018- Central Tax (Rate) dated 25.01.2018 in respect of Margin Scheme under Rule 32(5) of CGST Act, 2017 clarifies and postulates rate of GST for Old used Motor Vehicles.

2. That the AAR failed to take into consideration **CGST - Applicability of Margin Scheme under GST for Dealers in Second Hand Goods in General and for Dealers in Old and Used Empty Bottles in Particular- Press Release, Dated 15-7-2017**

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. Rule 32(5) of the Central Goods and Services Tax (CGST) 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.

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.

3. That the AAR failed to take into consideration Advance Ruling No. RAJ/AAR/2018-19/35 dated 15-2-2019 passed by AAR, Rajasthan in respect of M/s Shambhu Traders Pvt. Ltd. ,in which it has been held that-

Margin Scheme under GST - Applicability - Supply of used lead acid batteries - Under said scheme, a dealer supplying second hand goods as such or after minor processing not altering nature of goods, is allowed to pay tax on the margin, i.e., difference between value of purchase and sale price, provided ITC is not availed - Instant case, applicant having procured second hand lead acid batteries from various unregistered suppliers and selling them without any further process, fully covered under said scheme - Rule 32(5) of Central Goods and Services Tax Rules, 2017. [Para 5(I)]

Margin Scheme under GST - Inter-State Supplies - Time of Supply and Valuation - Applicability of Central Goods and Services Tax Rules, 2017 - Said Rules

applicable to aforesaid matters in respect of inter-State supplies in terms of Rule 2 of Integrated Goods and Services Tax Rules, 2017 read with Section 20 of Integrated Goods and Services Tax Act, 2017 - Accordingly, margin scheme applicable to inter-State supplies also - Rule 32(5) of Central Goods and Services Tax Rules, 2017 [para 5(H)]

4. That as per the AAR's interpretation in Para 5 of findings, analysis and conclusion, the definition of second-hand goods means any new or used property that has been sold, traded, exchanged, consigned, or otherwise disposed of by its original owner. The appellant would like to explain that the goods purchased by them clearly fall under the definition of second hand goods as explained by the AAR, that they also purchase goods from original owner who are unregistered and sell them to manufacturers without any process.

That the AAR's assumption that all goods for which the Appellant applied for Advance Ruling, is Scrap, is totally without any explanation and grounds.

5. That the appellant proposed to initiate the business of selling of various type of second-hand goods such as old used iron scrap, second hand Lead Acid Batteries, second hand Aluminium utensils & other Aluminium second hand goods, second hand brass utensils, second hand steel utensils, old used scrap of copper, used plastic bags & used plastic PET bottles and second-hand tyre tubes etc. The appellant proposed to start purchase of all above mentioned goods from unregistered supplier. The appellant will subsequently sell them to various manufacturers without any processing and will charge GST on the difference between the Sell price & purchase price of the above-mentioned goods in accordance with Rule 32(5) of GST Rules 2017.
6. That the used goods mentioned above clearly fall under the definition of second-hand goods and it has been already clarified to AAR that the used goods will be supplied to manufacturers without any processing. The AAR decision in case of M/s Shambhu Traders Pvt. Ltd. clearly explained that any used goods can fall under the definition of second-hand goods and can be covered under Rule 32 (5) of CGST rules, 2017. The Appellant also proposed to sell- Used Lead Acid Batteries, old used Iron Scrap, second hand Aluminium utensils & other Aluminium second hand goods, second hand brass utensils, second hand steel utensils, old used scrap of copper, used plastic bags & used plastic PET bottles and second-hand tyre tubes.

That the Press release dated 15/07/2017 and the AAR Order in respect of M/s Shambhu Traders Pvt. Ltd. clearly explains that if the conditions of Rule 32(5) are fulfilled than the registered taxpayer is eligible for availing benefit under the margin scheme. The definition of second-hand goods is not mentioned in GST Act, 2017 but from above Ruling and official Press Release of GST department, it proves that margin scheme prescribes the conditions for eligibility only that used goods can be of any category until and unless nature of goods does not get changed. Therefore, it is very aptly clear from above explanation that the appellant are eligible for Margin Scheme as per Rule 32(5) of CGST rules, 2017.

That the AAR in Para No.8 mentioned that Margin Scheme under Rule 32(5) of CGST Rules, 2017 is available only to Motor Vehicles as per Notification No.08/2018- Central Tax (Rate) dated 25.01.2018. However, the AAR before passing the impugned Order failed to take into consideration Advance Ruling No. KAR ADRG 35/2021 dated 9.7.2021 in respect of M/s Aadhyaa Gold Pvt. Ltd., & KAR ADRG 15/2020 dated 23.03.2020 in respect of M/s Attica Gold Pvt. Ltd.

both passed by AAR, Karnataka. In the case of M/s Aadhyaa Gold Pvt. Ltd., it has been held that:-

- Valuation (GST) - Old and used jewellery purchased from unregistered individuals and sold as such after subjecting to cleaning and polishing without changing its nature and form - Applicability of Rule 32(5) of Central Goods and Services Tax Rules, 2017 for valuation thereof - Provisions of aforesaid Rule applicable only if assessee dealing in buying and selling of second hand goods, making taxable supplies but not availing input tax credit (ITC) on purchase of such goods - Supply of second-hand jewellery being taxable under Sl. No. 13 of Schedule V to Notification No. 1/2017-CT (Rate) and assessee having neither availed ITC on its purchase nor subjected to melting to convert it into bullion/new jewellery but undertaken only cleaning and polishing without changing its form and nature, provisions of Rule 32(5) ibid would apply for determination of value of such supply - Section 15 of Central Goods and Services Tax Act, 2017. [Paras 9.1 to 9.5, 11]

Further, in the case of M/s Attica Gold Pvt. Ltd., it has been held that:-

Sale of second hand goods - Difference between Sale and purchase price - Purchase of used jewellery and sale after cleaning and polishing them - No conversion into bullion or new jewellery - No change in form or nature of goods - Subject to condition of invoicing them as "second hand jewellery", valuation of supply of second hand jewellery to be made as prescribed in sub-rule (5) of Rule 32 of Central Goods and Services Tax Rules, 2017. [paras 6.3, 6.4, 6.5, 8]

Input Tax Credit - Purchase of second hand goods on marginal scheme - If applicant purchases second hand jewellery from registered person, applicant eligible to claim input tax credit on such inward supplies - If he claims input tax credit against such inward supplies he would not be eligible for margin scheme of valuation as prescribed in sub-rule (5) of Rule 32 of Central Goods and Services Tax Rules, 2017 for outward supplies of such second hand jewellery. [paras 7, 7.1, 8]

Therefore, above AAR, Rulings clearly proves that margin Scheme under Rule 32(5) is not limited to Motor vehicles only and Notification No. 08/2018 – Central Tax (Rate) dated 25.01.2018 is specific Notification for Motor Vehicles only and it does not prescribe any condition for availing benefit under the Margin Scheme under Rule 32(5) as whole.

8. That the Hon'ble High Court, Delhi in the case of M/s Max Healthcare Institute Ltd. vs Union Of India (2024)16 Centax 177 (del.) held that if reply of assessee is not taken into consideration while passing impugned Order than that is clear violation of Natural Justice.

The AAR in Para 2 of the Finding, Analysis, and Conclusion held that applicant is engaged in purchasing and selling Iron Scrap, used lead acid batteries old used aluminium utensils, used old steel utensils scrap and old used scrap of copper etc. However, they did not take the liberty in studying the AAR application filled by the Appellant reasonably which clearly stated that they are proposing to start selling used goods to manufacturers. The appellant did not mention in the application as well as in the hearing that they will sell used goods to manufacturers after processing. Instead, the Appellant clearly mentioned in Point B Para 5 of Interpretation and Understanding of Applicant on question raised (In Brief) that old used Iron Scrap, used Lead Acid Batteries, old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles



and second hand tyre tubes etc are used goods and no processing shall be done on such goods.

9. For the second question raised before the AAR, the Appellant submitted that- Rule 2 of the IGST Rules, 2017, read with Section 20 of the IGST Act, 2017 prescribes that certain provisions of CGST Act, 2017 shall mutatis mutandis apply in relation to IGST. The subject pertaining to 'time and value of supply' is also covered under Section 20 of IGST Act, 2017, hence the rules made under CGST Act in relation to valuation of a supply is applicable to IGST Act as well. 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 Appellant are of the view that they are entitled to make inter-state supplies of old used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, used old steel utensils scrap & old used scrap of copper used waste plastic bags, used plastic PET bottles while operating under the Margin Scheme.

10. That the impugned order passed by the AAR is bad in Law and deserves to be quashed.

PERSONAL HEARING

11. A personal hearing was held in the matter on 16.07.2024. Sh Praful Gupta, CA and Sh Ashish Gwalani, CA (authorized representatives of the Appellant) appeared for the hearing. They reiterated the submissions dated 06.05.2024 contained in their appeal.

DISCUSSION AND FINDINGS

12. We have carefully considered the material evidence available on records including the oral submissions made by the authorized representative of the appellant at the time of personal hearing held on 16.07.2024. Additionally, we have gone through the impugned Ruling issued by the Advance Ruling Authority, Rajasthan.
13. We note that the appellant have sought advance ruling on the following questions:-
 - (i) *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 old used Iron Scrap, used Lead Acid Batteries, old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc to manufacturers whether such thus covered under the Margin Scheme notified under Rule 32(5) of the CGST Rules, 2017?*
 - (ii) *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 used Iron Scrap, used Lead Acid Batteries, old used Aluminium utensils & other Aluminium Scrap, old used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc, to manufacturers whether the goods when sold outside the state or when sold within the state of Rajasthan qualifies under the Margin Scheme.*
14. We note that, for question No. 1, the AAR, Rajasthan held that the appellant are not covered under the Margin Scheme notified under Rule 32(5) of the CGST Rules,

2017. The AAR, Rajasthan observed that though the definition of second hand goods is not prescribed under GST but as per the common trade parlance, the definition of same is as under-

"Second hand goods means any new or used property that has been sold, traded, exchanged, consigned or otherwise disposed of by its original owner."

14.1 Further, The AAR, Rajasthan observed that the applicant is dealing with used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, used old Steel utensils scrap & old used scrap of copper, old used Brass utensils and other scrap, used waste plastic bags & used plastic PET bottles, therefore it cannot be covered under the definition of Second Hand Goods as basically these items can be termed as scrap which are to be consumed/melted for manufacture of new item and thus the nature of goods is changed.

14.2 Further, the AAR, Rajasthan also mentioned that the Central Government has issued Notification No.8 /2018 (Central Rate) dated 25.01.2018 in respect of Margin Scheme under Rule 32(5) of CGST Act,2017. The AAR concluded that benefit of Margin Scheme is available only with respect to Motor Vehicles only where as the items to be dealt with by the applicant such as used Iron Scrap, used Lead Acid Batteries old used Aluminium utensils & other Aluminium Scrap, used old Steel utensils scrap & old used scrap of copper, old used Brass utensils and other scrap, used waste plastic bags& used plastic PET bottles are different from Motor Vehicles.

14.3 Thus the AAR, Rajasthan held that the items to be dealt with by the applicant do not qualify to be Second Hand Goods and therefore the applicant is not eligible to operate under the Margin Scheme in term of Rule 32(5) of Central Goods and Service Tax Rules, 2017 read with corresponding provisions of SGST Rules, 2017.

14.4 For the second ruling sought by the applicant, the AAR Rajasthan held that it is established that the applicant is not eligible to operate under Margin Scheme in term of Rule 32(5) of Central Goods and Service Tax Rules, 2017 read with corresponding provisions of SGST Rules, 2017 as the items to be dealt with by them do not qualify to be Second Hand Goods, the benefit is neither available for intra state supply of goods nor inter-state supply of goods.

15. The Appellant have preferred an appeal before us on the following grounds:-

- That the AAR erred in law in dismissing the application of the appellant on the technical ground that the activity of the appellant does not cover under the definition of Second-Hand Goods in compliance of Rule 32(5) CGST Rules, 2017 and misinterpreted the Notification No. 08/2018 –Central Tax (Rate) dated 25.01.2018. The AAR also not considered the press release Dated 15-7-2017 wherein applicability of Margin Scheme under GST for dealers in second hand goods in general and for dealers in old and used empty bottles has been prescribed.
- The appellant relied upon the Advance Ruling No. RAJ/AAR/2018-19/35 dated 15-2-2019 passed by AAR, Rajasthan in respect of M/s. Shambhu Traders Pvt. Ltd., in which it has been held 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".



C) Further, the appellant relied upon the Advance Ruling No. KAR ADRG 35/2021 dated 9-7-2021 in respect of M/s Aadhyा Gold Pvt. Ltd., & KAR ADRG 15/2020 dated 23.03.2020 in respect of M/s Attica Gold Pvt. Ltd. both passed by AAR, Karnataka. The AAR held in both cases that –
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, 2017."

D) That the appellant contested that they purchase goods from original owner who are unregistered and sell them to manufacturers without any process and their goods qualify as second hand goods.

E) That the appellant relied upon the Hon'ble High Court, Delhi in the case of M/s Max Healthcare Institute Ltd. vs Union Of India (2024)16 Centax 177 (del.) wherein it was held that if reply of assessee is not taken into consideration while passing impugned Order than that is clear violation of Natural Justice.

F) That the appellant contested that Rule 2 of the IGST Rules, 2017, read with Section 20 of the IGST Act, 2017 prescribes that certain provisions of CGST Act, 2017 shall mutatis mutandis apply in relation to IGST. The subject pertaining to 'time and value of supply' is also covered under Section 20 of IGST Act, 2017, hence the rules made under CGST Act in relation to valuation of a supply is applicable to IGST Act as well. 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.

16. Before deciding as to whether the goods for which advance ruling have been sought are covered under margin scheme or not. The first question for decision is whether or not the goods other than second hand Motor vehicles as notified under the Notification No. 08/2018 – Central Tax (Rate) dated 25.01.2018 are eligible for margin scheme or not?

We find that the Notification No. 8/2018- Central Tax (Rate) dated 25.01.2018 has not been issued under Rule 32(5) of CGST Rules, 2017. GST rate in case of sale of second hand goods will be the same as applicable on original products new product except in case of second hand /used motor vehicles on which different GST rate are specifically notified by the Government vide Notification No. 8/2018- Central Tax (Rate) dated 25.01.2018. The intention of Government to issue notification No. 8/2018- Central Tax (Rate) dated 25.01.2018 is not to limit Motor Vehicles as second hand goods to cover under margin scheme rather to give separate rate on sale of such second hand motor vehicles. Thus, we hold that the benefit of margin scheme is not limited to second hand Motor vehicles only but it is available to all other goods as well subject to condition that subject goods qualify as second hand goods.

Further, we find that in the AAR rulings relied upon by the appellant, second hand goods other than second hand Motor vehicles have also been held as second hand goods, thus, these Rulings are squarely applicable in this case and we hold that the benefit of margin scheme is available to all second hand goods and not limited to Second Hand Motor Vehicles only. The same facts have also been narrated in Press Release dated 15.07.2017.

17. Further, in order to ascertain whether any goods is covered under Margin Scheme or not, it is imperative to go through the relevant provisions, contained in Rule 32(5) of the CGST Rules, 2017 as under :-

"(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.

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.

18. We note that the definition of second hand goods has not been defined in GST law but as per the common trade parlance, the same may be described as under:-

Second-hand goods refer to items that have been previously owned and used by someone other than the manufacturer. The key aspect of second-hand goods is that they are still in usable condition and retain their original form and function. The value of second hand goods is influenced by their condition, brand, and demand in the used goods market.

Similarly definition of scrap is also not defined in GST law but as per common trade parlance, the same may be described as under:-

Scrap refers to waste material or remnants of products that are left over after the manufacturing process or that are no longer functional. These materials are typically recycled to recover parts or materials for future use. For instance, scrap metal might be melted down and reformed into new metal products. Additionally, the value of scrap is generally determined by the material's potential for recycling and reuse.

The primary issue in this case revolves around the distinction between second-hand goods and scrap. It is a settled principle of jurisprudence that when the words of a statute are unambiguous and only one reasonable meaning can be given to it, then the courts are bound to give effect to that meaning. Such words have to be interpreted in their natural and ordinary sense. It is evident from the above that the key difference lies in the usability of the items; scrap requires processing to be useful again, whereas second hand goods are ready for immediate use by a new owner. Additionally, the value of scrap is generally determined by the material's potential for recycling and reuse, while the value of second hand goods is influenced by their condition, brand, and demand in the used goods market.



19. As regards their contention that they purchase goods from original owner who are unregistered and sell them to manufacturers without any process and their goods qualify as second hand goods is not tenable for the reasons discussed as below:-

We note that the appellant mentioned in the appeal that they proposed to initiate the business of selling of various types of second-hand goods to various manufacturers such as

- (i) old used Iron Scrap,
- (ii) used Lead Acid Batteries,
- (iii) old used Aluminium utensils & other Aluminium Scrap,
- (iv) old used brass utensils and other scrap,
- (v) used old steel utensils scrap,
- (vi) old used scrap of copper,
- (vii) used waste plastic bags,
- (viii) used plastic PET bottles etc.

In light of the appellant's intent to acquire goods from unregistered suppliers and subsequently supply these goods to various manufacturers, it becomes apparent that the goods in question are either unusable or intended for recycling as scrap. The recycling of metal scrap and used materials is a crucial aspect of sustainable manufacturing and environmental conservation. Metal scraps from various sources, while not usable in their original form, provide valuable raw material for manufacturers when recycled. This process conserves natural resources and reduces the carbon footprint associated with mining and processing new metals. Similarly, used metal utensils, plastic bags, and bottles, which have reached the end of their life cycle as consumer products are not discarded as waste but are collected and processed to reclaim the materials they contain.

As already stated the reference to second hand goods in the margin money scheme is to such goods whose pre & post sale/disposal usage remains the same. For instance a second hand car shall be used in the same way as a new car. Used jewellery shall be worn the same way as new jewellery. Thus mere change of ownership is not sufficient to bring the term them as second hand goods & under the purview of Rule 32(5) of the CGST Rules, 2017. There is one more requirement i.e. continuity of usage. The judgement & references relied upon the appellant conform to the above test. However, the items which are subject matter of the Ruling do not qualify the test.

In view of the above, we hold that the items in question fall within the realm of scrap not second hand goods, rendering them ineligible to operate under the margin scheme as per Rule 32(5) of the CGST Rules, 2017, in so far as the goods are considered scrap.

20. We also note that the appellant has relied upon the Hon'ble High Court, Delhi in the case of M/s Max Healthcare Institute Ltd. vs Union Of India (2024)16 Centax 177 (del.) wherein it was held that if reply of assessee is not taken into consideration while passing impugned Order than that is clear violation of Natural Justice. We note that the AAR has considered the written as well as oral submissions of the appellant. The AAR has also provided the appellant with a chance of personal hearing. Thus, we find that the AAR has afforded the appellant a proper opportunity and duly considered his response in the matter, thus, there is no violation of principle of natural justice.

21. The second question posed by the appellant is whether they are eligible for benefit of Margin Scheme for intra state supply or inter-state supply of goods, we note that

the Margin Scheme under the CGST Rules, 2017, specifically Rule 32(5), is designed to prevent double taxation on the supply of second-hand goods. It allows the GST to be levied only on the margin, which is the difference between the selling price and the purchase price of the goods. However, for goods to qualify under this scheme, they must be second-hand, used, or have undergone minor processing that does not change their nature. Additionally, the input tax credit should not have been claimed on these goods. Since the appellant's goods do not meet the criteria of second-hand goods, they are not eligible for the benefits of the Margin Scheme for either intra-state or inter-state supply of goods. This interpretation is congruent with the provisions and the intent of the GST framework to facilitate a fair taxation process while avoiding undue tax burdens on the circulation of second-hand goods. We hold that since the appellant is not eligible to operate under margin scheme in term of Rule 32(5) of the CGST Rules, 2017 with corresponding provisions of SGST Rules, 2017 as the goods are not qualified as second hand goods, thus the benefit is neither available for intra state supply of goods nor inter-state supply of goods.

22. In light of above, we pass the following order:

ORDER

- 1) We hold that selling of old used iron scrap, used lead acid batteries, old used Aluminium utensils & other Aluminium Scrap, old & used brass utensils and other scrap, used old steel utensils scrap, old used scrap of copper, used waste plastic bags & used plastic PET bottles etc are not covered under the Margin Scheme notified under Rule 32(5) of the CGST Rules, 2017.
- 2) We also hold that since the appellant is not eligible to operate under margin scheme in term of Rule 32(5) of the CGST Rules, 2017 with corresponding provisions of SGST Rules, 2017 as the goods are not qualified as second hand goods, thus, the benefit is neither available for intra state supply of goods nor inter-state supply of goods.



(Mahendra Ranga)
Member (Central Tax)
(Mahendra Ranga)
Member, AAAR (Central Tax)



23.7
(Dr. Ravi Kumar Surpur)
Member (State Tax)
(Dr. Ravi Kumar Surpur)
Member, AAAR (State Tax)

SPEED POST

To

M/s Hitesh Gwalani (M/s Baba Supplier)
C/o CA Praful Gupta
A-214, Janki Villa, HBL Nagar,
Behind Mittal Hospital,
Ajmer-305004, Rajasthan

L. No. IV (16)01/AAAR/RAJ/2024-25 /2036
Copy to:-

Date: 24.07.2024

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle,
Jaipur.



2. The Chief Commissioner of SGST, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Commissioner, CGST Commissionerate, Jodhpur.
4. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
5. The Deputy/Assistant Commissioner, CGST Division-F, Bikaner (CGST Commissionerate Jodhpur).
6. The Assistant Commissioner, State Tax Ward-III, Circle – B, Divisional Kar Bhawan, Bikaner, Rajasthan.
7. M/s Hitesh Gwalani (M/s Baba Supplier), B2-16, Behind Gandhi Colony Ballabh Garden, Sudarshan Nagar, Bikaner -334003, Rajasthan.
8. The web-manager - www.gstcouncil.gov.in
9. Guard File.

