



**RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE
RULING
GOODS AND SERVICES TAX**

**NCR BUILDING, STATUE CIRCLE, C-SCHEME
JAIPUR – 302005 (RAJASTHAN)**

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

Before the Bench of

1. Sh. Satish Kumar Agrawal, Member (Central Tax)
2. Sh. Ravi Jain, Member (State Tax)

ORDER NO. RAJ/AAAR/02/2021-22 DATED 10 . 12.2021

Name and address of the Appellant	: M/s Tej Kumar Jain, A-3, Ashok Vihar, Girdhar Marg, Malviya Nagar, Jaipur
GSTIN/ UID of the appellant	: 082000000059AR2
Issues under Appeal	: Whether the amount paid to the owner of the car and amount incurred for the refurbishment of the said car are includable in the purchase price so as to deduct the same from the selling price of the old and used refurbishment car to arrive as the margin for the purpose of valuation and levy under Notification No. 08/2018-CT (Rate) dated 25.01.2018 ?
Date of Personal Hearing	: 17.11.2021
Present for the appellant	: Sh. Yash Dhadda, CA and Authorised Signatory.
Details of Appeal	: Appeal No. RAJ/AAAR/APP/02/2021-22 against Advance Ruling No. RAJ/AAR/2021-22/04 dated 25.08.2021

(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 same except for certain provisions. Therefore, unless a mention is specifically made to such



dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the same provisions under Rajasthan GST Act, 2017.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (**hereinafter also referred to as 'the CGST Act'**) read with Section 100 of the Rajasthan GST Act, 2017(**hereinafter also referred to as 'the RGST Act'**) by M/s Tej Kumar Jain, A-3, Ashok Vihar, Girdhar Marg, Malviya Nagar, Jaipur(**hereinafter also referred to as 'the appellant'**) against the Advance Ruling No.RAJ/AAR/2021-22/04 dated 25.08.2021

BRIEF FACTS OF THE CASE

3. M/s Tej Kumar Jain, A-3, Ashok Vihar, Girdhar Marg, Malviya Nagar, Jaipur(herein after referred as appellant) has filed appeal against Ruling issued by Authority for Advance Ruling Rajasthan vide order No. RAJ/AAR/2001-22/04 dated 25.08.2021. The Appellant has submitted appeal in this office in hard copy on 30.09.2021. Fee of CGST Rs. 10000/- and SGST Rs. 10000/- have been paid vide Challan dated 25.09.2021. Brief facts of the case are as under:-

3.1 Appellant is planning to start a business in the automobile industry, precisely related with purchase of old and used motor vehicles and then sale of these motor vehicles after refurbishment. The applicant is unregistered under GST at present. The business model planned by the appellant firstly involves purchase of old and used cars mostly from the unregistered persons. However the vehicle can be purchased from the corporate and car dealers also who are registered under GST. That for the purchase of old and used cars, the applicant will deploy an internal inspection team which will inspect the car and prepare the report which will become the basis of the acquisition cost as one of the component of the purchase price. That registration Certificate(RC) will be a compulsory document required while purchasing the car. Since these vehicles are meant for resale hence no other formality under the provisions of the Motor Vehicle Act 1988 is required to be undertaken to secure transfer of title of the vehicle from seller to appellant. That with purchase of such car, considering its condition and with intent to make it marketable to sell in the open market as

"refurbished old/used car", certain cost of refurbishment on said car will be incurred. after undertaking such cost, the refurbished car will be ready for sale and the appellant will display it through physical and electronic modes to invite the bookings. That the apart from such refurbishment cost, cost will also be incurred towards fuel (i.e. petrol and diesel) for the purpose of preparing refurbished old and used car. The said cost is incurred towards:

- a. Getting the car to the applicant's premises, if inspection is done at consumer's place.
- b. Sending the car at mechanic's place (for refurbishment) and getting it back to the applicant's premises.
- c. Sending the car to the parking yard (where car is parked till the time it is not sold).
- d. Cost of 5 liters of fuel in the tank of the car, as it has been decided as a policy matter to fill the tank with 5 litres at the time of selling.

3.2 Mostly individuals shall be prospective and target customers of the appellant however sales shall not be only restricted to them. The appellant will sell old and used refurbished car to the corporate and car dealer customers if they are interested. Appellant shall be in the business of selling old and used refurbished car, hence its purchase and related costs incurred in bringing it to refurbished condition shall be treated as a profit and loss item from the perspective of accounting and inventory of such acquired old/used refurbished car shall not be treated as fixed asset in the books of account, rather it shall be treated as an inventory / stock item and no depreciation under the provisions of Income Tax Act 1961 shall be charged in the books of account or in the Income Tax Return by the appellant. The appellant shall treat such cost of purchase and cost of refurbishment as "acquisition cost" of the inventory of the old and used refurbished car and will show it at the expense side grouped under "Purchases" in the Profit and Loss Account. Appellant does not intend to claim or avail Input Tax Credit of tax charged (if any) on inward supply of motor car (i.e. acquisition) or on refurbishment cost incurred by it.

3.3 Appellant submitted that they will be selling old and used refurbished car and will not claim any ITC, hence for the purpose of discharge of GST on its supply, it is covered by the provisions of Notification No. 8/2018-CT (Rate) dated 25-01-2018 wherein for the purpose of levy of tax, the value is determined as margin. As per the said notification, tax in excess of tax payable on the margin is exempt and according to an Explanation to the notification, the value that represents the margin of supplier shall be the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored.

3.4 Appellant has filed an application for Advance Ruling before the Authority for Advance Ruling in context of the aforesaid Explanation (ii) to understand for the purpose of valuation, whether the amount paid to the owner of the car and amount incurred for the refurbishment of the said car are includable in the purchase price so as to deduct the same from the selling price of the old and used refurbished car to arrive as the margin for the purpose of levy of GST under Notification No. 8/2018-CT (Rate) dated 25.01.2018.

3.5 Authority for Advance Rulings, Rajasthan has answered the question in negative and hold that from the plain reading of Explanation (ii) to the aforesaid Notification it is observed that the Explanation (ii) undoubtedly/clearly used the word "purchase price" not the "purchase cost" of goods. It means only the amount paid by the applicant at the time of purchase of used cars can be considered as "purchase price" there is no provision in the said notification to include the cost of refurbishment in the purchase price. Therefore, we find that there is no reason to include **cost of refurbishment** in the purchase price for calculation of margin.

4 That aggrieved by the ruling, the appellant has filed appeal before this forum on following ground.

4.1 Appellant submitted that the ruling passed by Authority for Advance Rulings is unreasoned and revenue biased since no mind has been applied to the submissions of the applicant and none of the submissions have been disposed of. A single paragraph has been given as findings where no reasoning or backing has been given for the irrational and presumptive interpretation of the provision.

4.1.1 That the applicant has given a detailed analysis of the relevant provisions of law in line with principles of interpretation of statutory interpretation and legal jurisprudence significant for the analysis. However, the Authority has brutally ignored the submissions without application of mind with a revenue biased mindset to ignore any submission which is not incremental for the revenue collection.

4.1.2 That in response to such a detailed analysis, the AAR has given the ruling on basis of a single paragraph only containing a presumptive interpretation that *the Explanation (ii) undoubtedly/clearly used the word "purchase price" not the "purchase cost" of goods and it means only the amount paid by the applicant at the time of purchase of used cars can be considered as "purchase price".*

4.1.3 That however no reference has been given from where it can be inferred that 'purchase price' would mean only the amount paid by the applicant at the time of purchase of goods and will exclude the other costs incurred in relation to procurement of the goods. It appears to be a presumption in vacuum without any reasoning or legal backing.

4.2 Appellant further submitted that it is apparent that the terms purchase price and selling price used in the Explanation have not been defined in the Notification or elsewhere in the statute, hence the same word price being used for sale and purchase in the same context has to be harmoniously interpreted to avoid absurd interpretation of law. Further in absence of a definition, there is an

ambiguity in the interpretation of the terms and in such a case, taking the revenue biased meaning as the only meaning of the term is a presumption bad in law framed by misinterpretation of the statutory principle of literal construction

4.2.1 That it is apparent that under Explanation (ii) computation of margin has been explained as the difference between the selling price and the purchase price and neither of the terms have been defined in the Notification or anywhere else in the CGST Act or the rules made there-under.

4.2.2 That a practical example is enumerated below to explain the ambiguity in this regard:

Purchase		Sale	
Description	Amount	Description	Amount
Amount paid of Mr. X for purchase of old car	100000	Amount charged from Mr. A for sale of old car	150000
Amount paid of Mr. Y for denting and painting of old car to make it refurbished and saleable	20000	Amount charged from Mr. A as Refurbishment Charges	20000
Total	120000	Total	170000

4.2.3 That in the above background, the taxability of sale of old and used refurbished car by the appellant is governed by Notification No. 8/2018 and accordingly the said supply is taxable at the value that represents margin. The AAR ruling has stated a settled jurisprudence principle that "when the words of a

statute are clear, plain and unambiguous, i.e. they are reasonable susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. Moreover, if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense."

4.2.4 Now, if the most common and ordinary sense is applied in the above scenario and one is asked to compute the margin in the whole transaction, the obvious answer would be Rs. 50,000 computed as difference between Rs. 170000 and Rs. 120000. Hence the ruling by AAR is not in accordance with the principle enumerated by it.

4.2.5 That the Notification exempts the tax in excess of tax payable on value that represents margin. The margin in its ordinary commercial sense can undoubtedly be calculated in the above manner only. The Explanation in the Notification further also explains such manner of computation of margin only by stating that margin shall be the difference between the selling price and the purchase price. Hence, clearly in its ordinary sense, the selling price and purchase price should include the related charges incurred or recovered at both the ends.

4.2.6 That further in case, it appears that the terms purchase price and selling price are not having a clear meaning, i.e. the terms are not susceptible to only one meaning and there are more than one contrary meanings possible for the terms, then a harmonious interpretation of the terms shall be made to avoid absurdity in implementation of the provision of the statute.

4.2.7 That when the term price has not been defined and has been used twice in the context of both purchase and sale with the same stroke of pen. Apparently, it will not be at enable view to hold that selling price will include the refurbishment charges recovered from the customer beyond the amount

particularly charged for the sale of old car and on the other hand, the purchase price will not include the refurbishment charges paid to vendors in addition to the amount paid particularly for and at the time of purchase of old car. As clearly evident, it will be absurd to give contrary meanings to the same word price in case of sale and purchase.

4.2.8 That in case the view taken by the AAR regarding price is applied in case of selling price, since the word price has been used, only the amount paid or payable at the time of supply of the goods can be considered as price and any other charges in relation to the supply of such goods do not form part of price, then selling price will only be the amount charged for sale of old car excluding any refurbishment cost recovered from the customer.

4.2.9 That further as per the concept of valuation as per Section 15 of the Act, transaction value is the price actually paid or payable for a supply of goods or services and that should be the value of supply as per Sec. 15(1) of the Act in case parties are not related and the price is the sole consideration for the supply.

4.2.10 That if the wrong understanding of the AAR for the term price is applied to the said provision, then Section 15(1) will not be applicable in all the cases where consideration for the supply includes any other charges beyond the basic price of goods paid or payable at the time of supply, since in such case price will not be the sole consideration. Such an interpretation will make the mother provision for valuation of supplies in the statute unworkable.

4.2.11 Hence the appellant understands that the term price includes every amount paid or payable for the transaction of supply as a whole and includes any charges paid or payable in relation to the transaction and hence such amounts are included in value of supply by the virtue of Sec. 15(1) only.

4.2.12 That the view is in line with the principle laid down by the Hon'ble Supreme Court in the case of M/S. MSCO, Pvt. Ltd vs Union Of India & Ors on 31 October, 1984 that

But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it.

4.3 Appellant further submitted That the Authority has taken a revenue biased view only on the ground that the statute has not clearly defined the terms purchase price and it has erred to understand that only in absence of a clear definition, need for interpretation and an Advance ruling has arisen and hence analysis must be made by interpreting the terms selling price and purchase price on some rational basis in line with the legal jurisprudence significant for the subject.

4.3.1 That the ruling states that there is no provision in the said notification to include the cost of refurbishment in the purchase price. Therefore, we find that there is no reason to include cost of refurbishment in the purchase price for calculation of margin. However, the Authority has erred to observe that since there is no provision in the statute to exclude the costs of refurbishment as well, hence contextual interpretation has to be given to the term purchase price.

4.3.2 That on perusal (ii) to the notification, it is clear that margin is identified as difference between the selling and the purchase price. However on further perusal it is clear that meaning of word selling price and purchase price has not been given in the explanation or anywhere in the notification. Thus it becomes important to bring out the contextual meaning of the word selling price and purchase price used in the notification.

4.3.3 That in case of Maheshwari Fish Seed Farm vs T. Nadu Electricity Board And Anr on 16 April, 2004 it was by the Hon'ble Supreme Court that

It is settled rule of interpretation that the words not defined in a statute are to be understood in their natural, ordinary or popular sense. According to Justice Frankfurter, "After all, legislation, when not expressed in technical terms, is addressed to common run of men, and is, therefore, to be understood according to sense of the thing, as the ordinary man has a right to rely on ordinary words addressed." (Wilma E. Addison v. Holly Hill Fruit Products, 322 US 607, at p.618). In determining, therefore, whether a particular import is included within the ordinary meaning of a given word, one may have regard to the answer which everyone conversant with the word and the subject-matter of statute and to whom the legislation is addressed, will give if the problem were put to him.

4.3.4 That however in case of CGT vs. Getti Chettiar [1971] 82 ITR 599(SC) it was held by the Hon'ble Supreme Court that

The dictionary gives various meanings for those words but those meanings do not help us. We have to understand the meaning of those words in the context in which they are used. Words in a section of a statute are not to be interpreted by having those words in one hand and the dictionary in the other. In spelling out the meaning of the words in a section, one must take into consideration the setting in which those terms are used and the purpose that they are intended to serve.

4.3.5 That on the basis of aforesaid principle laid down by the Hon'ble Apex Court of India it is clear that when meaning of a word is not given in the statute

its contextual meaning needs to be understood to interpret the provision of the law.

4.3.6 That in this background, it is pointed out that there is an undisputed fact that appellant will be engaged in the business where it will procure old and used cars, refurbish it and then sell it as old and used second hand refurbished car. The refurbishment activity on the car is the essential ingredient of the business of the applicant. If it will not undertake the same or will not have competence to do so, then it cannot survive in the business at all. Further the cost of such refurbishment is not standard and will depend upon the condition of the car and the judgment of the applicant.

4.3.7 That further, when the car will be sold in the market to the customer, the said customer shall be made aware in advance the various types of the refurbishment activities which have been undertaken on such car. The customer will be made aware about necessary corrections and activities which have been undertaken to ensure the car is usable and the customer shall be able to reap its benefit while using the same. Hence in the open market it is very evident between the prospective customer and the applicant or other players that car which is being sold is not just an old or used car but certain refurbishment activities in form of goods and work has been undertaken.

4.3.8 That in fact during the course of refurbishment, the property of goods used in the undertaking such refurbishment for instance, replaced tyre, wiper, seat cover, paint etc also passes on to the customer as a part and parcel of the car only. The buyer will not be charged anything separately for such refurbishment. Hence all the cost of refurbishment is part and parcel of the cost of the old and used refurbished car.

4.3.9 That hence in this factual background it is brought on record that use of word "purchase price" in the explanation (ii) to the notification must be read in the context of old used and refurbished cars for which the term "sale price" used

in the notification. Any amount which shall be charged by the applicant for supply of old and refurbished car to the customer will be sale price in given case. Hence for the purpose of deriving the margin, the total cost incurred by the applicant to procure the "refurbished old and used car" shall contextually become the "purchase price".

4.3.10 That it is pointed out that since applicant shall not be just selling an old or used car but rather it shall be selling the refurbished old and used car hence all the necessary cost and prices paid by the applicant to receive goods or related services along with the car from the owner of car or otherwise shall become the "purchase price of such old and used refurbished car".

4.3.11 That in case of State of Karnataka vs Sri Chamundaeswari Sugar Ltd reported in 2008 7 SCC 469 it was held by the Hon'ble Supreme Court that

15. The definition of "Sale" (in Section 2(t) of the Act) is relevant. It refers to transfer of the property in goods by one person to another in the course of trade or business "for cash or for deferred payment or other valuable consideration". "Purchase price" is well-known expression in commercial transactions. Every purchase involves a corresponding sale. The purchase money or purchase price for property is the price to be paid for it. Speaking technically, acquires by "words of purchase" and is a "purchaser" when he obtains title in any other mode than by descent or devolution of law.

17. In the Sale of goods Act and also in the Central Sales Tax Act or in any of the sales tax laws made in the several States, the definition includes the sale of goods, and not to the purchase of goods. That must be so because the sale of a commodity must include within its ambit the concept of sale as well as purchase. It is not possible to conceive of a sale of goods without a buyer.

4.3.12 That thus on basis of above it is evident that meaning of sale can be used as inference to arrive at meaning of purchase. In fact, normal meaning of the word 'purchase' is acquisition for money or for any consideration. That is the primary meaning. In Concise Oxford Dictionary, apart from the two meanings "buy, acquire", another meaning given to the word "purchase" is "procure". The word "procure" consists of much wider import than the word "purchase". In the same dictionary, the word "procure" has been given the meaning as "obtained by care or effort acquire".

4.3.13 That on reading of above, it is evident that purchase includes making an effort to bring goods to a location and condition where they are for use or for onward sale.

4.4 That the notification for exempting value above margin for supply of motor vehicles is a special notification which is clearly brought with the intent that a person dealing in such goods should be made liable to pay tax on the margin to eradicate double taxation.

4.4.1 That rate of GST (CGST) on supply of motor car, is notified under Schedule IV of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 and further by invoking powers of exemption under Section 11(1) of the Act, the Central Government has issued Notification No. 8/2018-C.T. (Rate), dated 25-1-2018 effective rates of CGST on old and used Motor vehicles have been notified. Such notification has been enclosed and marked as Annexure-3.

4.4.2 That according to such notification if ITC is not claimed on the inward supplies of goods by a registered person and it is supplying (selling) old and used motor vehicles as classified under Chapter 87 of the First Schedule to the Customs Tariff Act, 1975, then CGST is payable at the rate of 6% or 9%, as the

case maybe on the value represents margin of the supplier (i.e. registered person).

4.4.3 That the wordings used in the Notification No. 08/2018-CT(Rate) dated 25-01-2018 are reiterated for the sake of reference

S. No.	Chapter, Heading, Sub-heading or Tariff item	Description of Goods	Rate
(1)	(2)	(3)	(4)
1.	8703	Old and used, petrol Liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven motor vehicles of engine capacity of 1200 cc or more and of length of 4000 mm or more. Explanation. - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under.	18%
2.	8703	Old and used, diesel driven motor vehicles of engine capacity of 1500 cc or more and of length of 4000 mm Explanation. - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under.	18%

3.	8703	Old and used motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles. Explanation. - For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm. and above.	18%
4.	87	All Old and used Vehicles other than those mentioned from S. No. 1 to S. No.3	12%

4.4.4 That in the Explanation to the said notification, where depreciation under the provisions of the Income Tax Act 1961 is not claimed, then the margin is required to be determined in accordance with the provisions of the Explanation (ii). The said explanation (ii) is read as under:

(ii) *in any other case, the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored.*

4.4.5 That on perusal of the above, it is evident that given notification is specifically applicable for supply of old and used motor vehicle. In given case the applicant shall be only buying old and used motor vehicles as explained in the facts. The refurbishment shall only make used old and used motor vehicle saleable but it will not change the nature and the popular name or use of such vehicle. Hence sale of old or used motor vehicle as such or after refurbishment shall anyways keep the nature of motor vehicles as old and used (popularity known as second hand cars). Thus when the supplier will supply the same, if it satisfies the other conditions, it shall be able to claim benefit of given notification.

4.4.6 That further it is clarified at the initiation only that the cost incurred on the refurbishment of acquired old and used motor car does not change the nature of the motor car at all. It is in fact widely known as sold in the market as old and used refurbished motor car only. In fact, if such activity of refurbishment is not done (whose requirements and gravity changes from case to case basis), then the car would not be saleable at all in the market.

4.4.7 That if only purchase cost of car is considered as purchase price for the purpose of calculating margin and whereas for calculating sale price the value of total amount including the refurbishment recovery is also considered then the margin derived from such method shall be faulty and will lead to double taxation.

4.4.8 That in fact recently in the case of **The Commissioner of Central Excise, Customs and Service Tax, vs M/s Sai Service Station Ltd reported in 2017 (7) GSTL 17** it was held by the Kerala High Court that, in similar facts matrix, the Hon'ble High Court noted that

26. In its books of account, the dealer reflects the 'refurbishment charges': the expenses, that is, the cost of spares, labour, denting and painting work, etc., incurred by the dealer for renovating the used car. Though it refurbishes both the True-Value and the Non-True-Value cars, the dealer refurbishes the True-Value vehicles as per the MSIL guidelines. It collects the refurbishment charges separately from the buyer, besides the cost of the used cars. In short, the selling price of the used car includes the cost of the used car, the refurbishment charges, the management fee, free service and warranty, besides business margin.

4.4.9 That the intention of given notification needs to be understood in correct perspective which is to avoid double taxation. Normally GST is charged on the transaction value of the goods. However, in respect of old and used goods, a person dealing in such goods is required to pay tax on the margin, i.e. the difference between the value at which the goods are supplied and the cost 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.

4.4.10 That hence when applicant would incur the cost towards the procurement it would pay GST (as maybe applicable) and may also pay GST while incurring the refurbishment cost, if applicable. However, since ITC is not available under the given notification hence if deduction of refurbishment expenses is not given then it shall lead to a situation of double taxation and hence would defeat the whole purpose of the notification as such.

4.4.11 That by drawing inference from the same, concept of price is not prevalent under GST. However, the concept of ITC on inward supplies is prevalent and tax is based on the philosophy of value addition. Further the notification also clearly brings out that tax is payable on margin. Hence in given case, the margin to be earned by the applicant shall be truly reflected only when deduction of refurbishment cost is given along with other procurement cost from selling price. Hence in light of the spirit of given notification the cost of refurbishment is required to be included in the purchase price as mentioned in the notification.

4.4.12 That similar view has been held in case of **Indian Oil Corporation vs State of Assam and Ors reported in 2007 11 SCC 693** where it was held that

b A. Sales Tax — Double taxation — Determination of — Resolution of Government dated 16-12-1977 requiring a dealer to sell products at prices fixed by Government which included "surcharge" to be collected from dealers and deposited in "oil pool account" — Appellant Company purchasing petroleum products from a refinery and paying sales tax on such products — Vide government resolution Company had to sell its products at fixed prices inclusive of surcharge component — Sales tax levied on appellant at the first point of sale as the sale price charged exceeded 40% of the purchase price — Appellant Company's sales tax liability determined on the second sale or resale of tax-paid goods deeming it the first point of sale — Appellant contending "sale price" for the purpose of the Act should be determined after reducing the amount of "surcharge" paid into "oil pool account" — High Court held "surcharge was not statutory collection but was collected under executive instructions and cannot be excluded while calculating the 'sale price'" — Whether amounting to double taxation — Permissibility of — Held, resale price in the instant case exceeded 40% of the purchase price, therefore, the resale price was deemed to be the first point sale — S. 8(1) did not envisage double taxation in the same State — Appellant Company having paid sales tax on purchase of petroleum products from BRPL the sales tax would be leviable only on the difference of the resale price and purchase price — Appellant only under obligation to pay sales tax only on the difference between purchase price and the entire sale price — Directing the appellant Company to pay sales tax on the entire amount resold would amount to double taxation — Assam General Sales Tax Act, 1993 (12 of 1993) — S. 8(1)(a) — Assam General Sales Tax Rules, 1993 — R. 12 — Taxation — Double taxation — Determination of

4.5 That the rationale has also been validated in various advance rulings that activities which do not change the nature of goods would be allowed and the goods sold shall remain used and old goods for purpose of valuation under Rule 32(5) of CGST Rules which has similar provision.

4.5.1 That in various orders passed by various AARs also it has been held that activities of repairing or cleaning or polishing which does not change the nature of goods would be allowed and the goods sold shall remain used and old goods. Such goods are commonly known as "Second Hand Goods" also in the popular sense.



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4.5.2 That in fact for valuation of sale of second hand goods under GST, there is specified Rule 32(5) of the CGST Rules 2017 which brings out that minor processing which does not change the nature of goods is carried out on used goods, then they shall remain Second hand goods. The said fact has been tested and affirmed in various AAR orders such as

- a. Attica Gold Pvt Ltd 2020 (36) G.S.T.L. 445 (A.A.R. - GST - Kar.)
- b. Shambhu Traders Pvt Ltd 2019 (23) G.S.T.L. 293 (A.A.R. - GST)

4.6 That the old and refurbished cars sold by the applicant are inventory of the applicant and not its fixed assets, hence the treatment should be in line with Explanation (ii) and not Explanation (i) to the Notification.

4.6.1 That now, since the explanation to the said notification defines margin in both the scenarios i.e. when depreciation under the IT Act 1961 has been claimed on the motor cars to be sold or when depreciation under the IT Act 1961 is not claimed on the motor cars to be sold, hence same needs to be referred in given case.

4.6.2 That it is pointed out that whether depreciation is to be claimed under the provision of Section 32 of the IT Act 1961 upon a motor vehicle is dependent upon the fact that whether such motor vehicle has been treated as a fixed asset or not by the person claiming the benefit of given notification.

4.6.3 That whether a motor vehicle is a fixed asset or not, depends upon the facts and circumstances of each case. Only in the cases where the motor vehicle has been acquired with an intention to use in the business but not to resale then in accordance with the accounting principles, the same motor vehicle is treated as a fixed asset, both in the books of account and also under the provisions of

Section 32 of the IT Act 1961. In such a situation, depreciation at specified rate is claimed on such motor vehicle.

4.6.4 That an important point for given consideration is that when a motor vehicle is treated as fixed asset then the intention of its owner is to use such motor vehicle in the course of business for a reasonable duration of time which mostly extends upto the life of such motor vehicle. The motor vehicle is procured with an intention to possess and use it for a period of more than 1 year at least. The intention to procure such motor vehicle is never to earn profit by selling it in the market. Only when such asset is not of use or better alternative of same is available for the user at its replacement cost, then the said motor vehicle which is an asset, is sold or disposed off in the open market, either to another user or to those who are in the business of buying and subsequently selling such used and old motor vehicle.

4.6.5 That in aforesaid case, any cost incurred on the repair or refurbishment of such cars which are held as fixed asset and on which the depreciation is claimed is only to ensure that its use in the business is effective. However such refurbishment is never undertaken to enhance the sale value of the such motor car as selling of such motor car is never an aim while procuring or repairing it. Hence the cost of repair or refurbishment has no relationship whatsoever with the further supply of such used motor car.

4.6.6 That in such cases, the motor car is being sold at nominal price or at written down cost. If the condition of the car is good then the person may incidentally earn some gain or profit but it is never the targeted activity.

4.6.7 That on the other side, the case of the applicant does not fall in above category of users and it is not intending to acquire the motor vehicle to use it for running the business. Rather the applicant intends to procure the old and used motor vehicles and by applying its expertise and skills, would incur refurbishment cost at the time of procurement only with a view to sell it in the open market to earn profit from the same.

4.6.8 That for the applicant, the holding period of such asset is never anticipated and intended to be of more than a year. In fact the applicant and other such players of the trade intend to possess the motor vehicle only for the purpose of display and as an inventory i.e. procurement and refurbishment for the purpose of selling it further and to earn margin.

4.6.9 That further the cost of refurbishment is directly related to the appreciation in the sale value and in turn margin of the applicant on which it is liable to pay the tax. The more and better the cost of refurbishment, the higher the margin and in turn higher the tax to the exchequer. It has already been stated in the facts of the advance ruling that applicant is required to undertake the various types of cost at the time of refurbishment and same will be done by the professional who analyses the requirement and components of the refurbishment.

4.6.10 That in fact the registered persons covered by the provisions of explanation (i) to the notification i.e. who claim depreciation under the IT Act 1961 on cost of motor vehicle generally supplies such used and old motor vehicle to the persons like the applicant in given case who only procure the used and old vehicle. That is why the margin for the purpose of given notification in case of applicant is governed by the provisions of explanation (ii) to the notification which is different from the situation covered under Explanation (i) where generally cars used as asset are sold.

4.7 That the sale of old and used refurbished motor car is governed by the provisions of a statute by which applicant is bound to incur the cost of refurbishment and provide the car in a refurbished and working condition.

4.7.1 That in addition to the above, the sale of old and used refurbished motor car is governed by the provisions of the Sales of Goods Act 1930. As per Section 16 of the said, following is relevant for understanding

16. Implied conditions as to quality or fitness.—Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:—

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose: Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality: Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

4.7.2 That in case of applicant, the quality of old and used refurbished car is governed by Section 16(3) of the aforesaid Act wherein the applicant shall be bound to make available and old and used by working car to the customer. In case the old and used car is not working properly then as per usage of trade, the customer may raise quality claim of non-working parts or features of the car (old and used) as promised. To ensure such compliance the applicant is required to undertake the refurbishment cost along with the car procured by it. Hence without same the sale may be treated as invalid in accordance with the provisions of the Sales of Goods Act 1930.

PERSONAL HEARING

5. A virtual hearing in the matter was held on 17.11.2021. Sh. Yash Dhadda, Authorized Representative of the appellant has attended hearing on 17.11.2021. They reiterated the submissions already made under grounds of appeal.

DISCUSSION AND FINDINGS:

6.1 We have carefully gone through the Appeal papers filed by the Appellant, the Ruling of the AAR, Rajasthan, written as well as oral submissions made by the authorized representative(s) of the appellant, at the time of personal hearing held on 17.11.2021.

6.2 We find that the Appellant has planned business of purchase and sell of used/old cars. To make car marketable in the open market as refurbished old/used car, he will be required to incur some expenses. Purchase and related costs incurred in bringing it to refurbished condition shall be treated as a profit and loss item from the perspective of accounting and inventory of such acquired old/used refurbished car shall not be treated as fixed asset in the books of account, rather it shall be treated as an inventory / stock items and no depreciation under the provisions of Income Tax Act 1961 shall be charged in the books of account or in the Income Tax Return by the appellant. The appellant shall treat such cost of purchase and cost of refurbishment as "acquisition cost" of the inventory of the old and used refurbished car and will show it at the expense side grouped under "Purchases" in the Profit and Loss Account. Appellant does not intend to claim or avail Input Tax Credit of tax charged (if any) on inward supply of motor car (i.e. acquisition) or on refurbishment cost incurred by it.

6.3 Authority for Advance Rulings, Rajasthan held that *from the plain reading of Explanation (ii) to the Notification No. 8/2018 –Central Tax (Rate) dated 25th January, 2018 that it is observed that the Explanation (ii) undoubtedly/clearly used the word "purchase price" not the "purchase cost" of goods. It means only the amount paid by the applicant at the time of purchase of used cars can be considered as "purchase price", there is no provision in the said notification to include the cost of refurbishment in the purchase price. Therefore, we find that there is no reason to include **cost of refurbishment** in the purchase price for calculation of margin.*

6.4 Before examining the contention of the appellant, it is imperative to reproduce Notification No. 8/2018 –Central Tax (Rate) dated 25th January, 2018

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 the central tax on intra-state supplies of goods, the description of which is specified in column (3) of the Table below, falling under the tariff item, sub-heading, heading or Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as are given in corresponding entry in column (2), from so much tax as specified in Schedule IV of Notification No. 1/2017-Central Tax (Rate), as is in excess of

the amount calculated at the rate specified in the corresponding entry in column (4), of the said Table, on the value that represent margin of the supplier, on supply of such goods.

TABLE

No.	Chapter, Heading, Sub- heading or Tariff Item	Description of Goods	Rate
(1)	(2)	(3)	(4)
1.	8703	Old and used, petrol Liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven motor vehicles of engine capacity of 1200 cc or more and of length of 4000 mm or more. <i>Explanation.</i> - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made thereunder.	9%
2.	8703	Old and used, diesel driven motor vehicles of engine capacity of 1500 cc or more and of length of 4000 mm. <i>Explanation.</i> - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under.	9%
3	8703	Old and used motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles. <i>Explanation.</i> - For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm. and above.	9%
4.	87	All Old and used Vehicles other than those mentioned from S. No. 1 to S. No. 3	6%

Explanation — For the purposes of this notification, -

- (i) in case of a registered person who has claimed depreciation under section 32 of the Income-Tax Act, 1961 (43 of 1961) on the said goods, the value that represents the margin of the supplier shall be the difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply, and

where the margin of such supply is negative, it shall be ignored; and

(ii) in any other case, the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored.

2. This notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the Input tax credit of Value Added Tax or any other taxes paid, on such goods.

6.5 The aforesaid Notification exempts the goods specified in column (3) falling under heading/Tariff Item as specified in column 2 from so much of tax as is in excess of amount calculated at the rate specified in the corresponding entry in column 4 of the table to the said notification on the value that represent margin of the supplier on supply of such goods. As per explanation - (ii), margin of supplier shall be the difference between the selling price and the purchase price.

6.6 Thus from the plain reading of the explanation-(ii) to the aforesaid Notification it is observed that the explanation (ii) undoubtedly/clearly used the word "purchase price" not the "purchase cost" of goods. It means only the amount paid by the applicant at the time of purchase of used cars can be considered as "purchase price".

6.7 The appellant has contended that there should be value of supply as per Section 15(1) of the Act, in case of parties is not related and the price is the sole consideration for the supply. In this regard, it is found that the words used in explanation No. (ii) of Notification No. 8/2018 -Central Tax (Rate) dated 25th January, 2018 is "the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price". In this notification No. 8/2018 -Central Tax (Rate) dated 25th January, 2018 the value has been specially defined, therefore, value as defined in Section 15 (1) of the Act, cannot be taken for the purpose of value under this notification.

6.8 The appellant's main thrust is that to calculate margin, purchase cost should be treated as purchase price. We observe that our legislature has wisely used the word purchase price to calculate the margin as benefit of notification will not be available, if the appellant has availed input tax credit. We find that the availment of this notification No. 8/2018 -Central Tax (Rate) dated 25th January, 2018 is optional. If the appellant wishes to avail Input tax credit on the components used in the refurbishment of the old and used car, they can very well avail the same without availing benefits of the said notification. However, if the benefit of the notification No. 8/2018 -Central Tax (Rate) dated 25th January, 2018 is to be availed, then the conditions for the same have to be followed.

6.9 Therefore, in view of the above discussion, we hold that from the plain reading of the explanation (ii) to the notification No. 8/2018 –Central Tax (Rate) dated 25th January, 2018, it is noticed that the explanation (ii) clearly used the word 'purchase price' not the 'purchase cost' of the goods. It means only the amount paid at the time of purchase of used and old cars can be considered as 'purchase price' for the purpose of this notification.

6.10 The appellant has also placed reliance on various case laws passed by various Advance Ruling authorities. We are of the opinion that each case has to be examined individually in the backdrop of several factors. Further, the appellant has also placed reliance of various case laws passed by courts related to other act. We observe that there is no need to discuss the same in view of clear provisions of CGST ACT.

7. Accordingly, appeal filed by the appellant is disposed off in above terms.

(Satish Kumar Agarwal)
Member (Central Tax)


(Ravi Jain)
Member (State Tax)

SPEED POST

To
M/s Tej Kumar Jain
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F. No. IV (16)02/AAAR/RAJ/2021-22/ 3494-98 Date. 14.12.2021

Copy to:-

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle, Jaipur.
2. The Chief Commissioner of SGST, Rajasthan, KarBhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Principal Commissioner, CGST Commissionerate, Jaipur.
4. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, KarBhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
5. Guard File.


(Shiv Kumar Gupta)
Superintendent

