



Dimensions – 72nd Edition

Rulings under GST era

Safset Agencies Pvt Ltd. - Appellate Authority for Advance Ruling, Maharashtra¹

Issue for Consideration

Can the tax liability on paintings, antique jewelleryes, antique watches, collectibles (including books) and antique books purchased from individual users or collectors, be discharged on the basis of rule 32(5) of the CGST Rules, 2017?

Discussion

- The Appellant is a dealer in various goods such as paintings, vintage collectibles, sculptures, classic miniatures paintings, fine writing instruments, vintage timepieces, celebrity memorabilia, aristocratic jewellery and vintage cars. These personal effects are procured from users or collectors on sale on approval basis at a mutually agreed price. After communicating the approval and confirmation of goods procured by the Appellant, they are sold through auctions to the highest bidder on the website of the Appellant. The Appellant issues the sales invoice to the buyers.

- The Appellant had approached the Authority for Advance Ruling (“the Authority”) to seek a ruling on various issues such as classification (HSN code), rates and valuation in respect of the goods being dealt with by the Appellant.
- The Authority vide its order² pronounced its ruling on the applicable HSN code and GST rate. Further, it held that the Appellant cannot apply rule 32(5) of the CGST Rules, 2017, for discharging tax liability on paintings, antique watches, antique jewelleryes, collectibles (including books) and antique books. Accordingly, it was held that the tax is to be paid on the sale value of such goods and not on the difference between the sale value and the purchase price.
- Aggrieved by the order of the Authority to deny the applicability of rule 32(5) of CGST Rules, 2017, the Appellant has filed the present appeal before the Appellate Authority for Advance Ruling (“the Appellate Authority”) on the following grounds:
 - Rule 32(5) of the CGST Rules, 2017, applies in case of buying and selling of ‘second hand goods’ i.e. used goods as such or after minor processing which does not change the nature of

¹ 2020-VIL-35-AAAR

² 2019-VIL-158-AAR



goods and no input tax credit (ITC) has been availed on purchase of goods. The paintings, antique jewellery, antique watches and collectibles are used goods and the Appellant has not performed any process on them. Also, the Appellant has not claimed any ITC on such goods. Accordingly, rule 32(5) should be applicable.

- Since the terms ‘second hand goods’ or used goods’ are not defined anywhere in the GST law or General Clauses Act, 1897, reliance was placed upon various dictionary meanings of these terms.
- Appellant is a player in the secondary market procuring second hand or used goods from individual collectors or users.
- The Authority felt that paintings are not ‘used’ *per se*. There is a subtle difference between the term ‘use’ and ‘consume’. Just because these goods cannot be consumed, it cannot be said that they are not ‘used’. Display of paintings, antiques and collectibles amounts to ‘use’.
- If one takes a view that rule 32(5) of CGST Rules, 2017, applies only where tax is charged by the supplier and ITC is not availed, then, the said interpretation will make the provision redundant, as majority of the second hand goods are procured from individual users or consumers and are not liable to tax as such goods are not sold by them in the course of business.
- The Authority has denied the applicability of rule 32(5) of the CGST Rules, 2017, because of high value of paintings, antiques and collectibles sold by Appellant. However, rule 32(5) does not impose any restriction regarding value and hence, if the goods are second hand or used good the said rule shall apply.
- The observation of the Authority that the goods are not used goods because of the increase in their value over the passage of time is not tenable. The increase in value does not affect the nature of the goods as used goods.
- The Authority is reading certain words or phrases which are not present in statute. It is a well settled position in law that if words

themselves in the statute are unambiguous or precise, they are to be given effect accordingly, irrespective of its consequences and revenue consideration. Once the goods are second hand goods, rule 32(5) should be applicable.

- After considering the submissions of the Appellant, the Appellate Authority observed as follows:
 - Dictionary meanings of the terms ‘second hand’ or ‘used’ are synonymous. Goods can be called second hand or used when they are not new. The Appellant, being an auctioneer, sells personal effects or such other goods in an auction which have not come in the market for the first time and therefore it is called a secondary market.
 - The Authority has allowed the benefit of rule 32(5) on old cars, old watches and jewellery but denied the benefits on paintings, antique jewellery and watches without giving any reason as to why they should not be treated as ‘used’.
 - It seems that the Authority has denied the benefit in case of paintings, antique jewellery and watches by observing that they are high value products and cannot be regarded as second hand or used goods.
 - Classification of goods cannot affect the applicability of rule 32(5) of the CGST Rules, 2017. There is nothing in the rule to state that it is not applicable to valuable or precious objects or antiques. 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 that meaning.
 - Art paintings are not brought from artists themselves. They are bought from individual art collectors. Antique pieces are also second hand and used by people before they come in the market.
 - Since all the conditions of rule 32(5) of CGST Rules, 2017, are fulfilled and the rule can be applied to paintings, antique jewellery and antique watches bought from individual users or collectors.



- For the collectibles and antique books, there were not any specific details provided by the Appellant before the Authority and also in the present appeal and accordingly, the question in respect of the same is not being answered.

Ruling

The Appellate Authority modified the ruling pronounced by the Authority to the extent of allowing the discharge of tax liability by applying rule 32(5) of CGST Rules, 2017, in the case of sale of antique jewellerys, antique watches and paintings.

Dhruva Comments:

The ruling has given correct interpretation to the words second hand / used goods and would encompass antiques and paintings brought from art collectors. Further, the CBIC had issued a press release dated July 15, 2017 to state that the margin scheme under rule 32(5) should be available to a registered person dealing in second hand goods and who satisfies the conditions of rule 32(5).

M/s CMS Info Systems Limited - Appellate Authority for Advance Ruling, Maharashtra³

Issue for Consideration

Can Input Tax Credit (“ITC”) be availed on the purchase of Cash Carry Vans (“CCVs”) used for transportation of cash?

Discussion

- The Appellant undertakes the activities of managing cash circulation by transporting cash from currency chest to bank branches and cash pick-up and delivery from and to dedicated banks.
- Cash is transported in CCV. The Appellant purchases motor vehicles and after requisite fabrication gets them converted into CCV. The

Appellant pays GST on the purchase and fabrication. However, ITC is not availed on such GST payment.

- The CCVs are sold as scrap when its further usage is not possible. In certain cases, these CCVs are also hired by the Appellant.
- The Appellant had approached the Authority for Advance Ruling (“the Authority”) to determine whether sale of CCV as scrap after usage would attract GST and, if yes, whether ITC can be availed on purchase of CCV which is used for cash transportation business.
- The Authority vide its order⁴, held that disposal of CCVs post usage would attract GST. In respect of admissibility of ITC on purchase of CCV, the members of the Authority had a difference of opinion and therefore, referred the matter to the Appellate Authority for Advance Ruling (“the Appellate Authority”).
- The Appellate Authority vide its order⁵ held that the Appellant is not eligible for the ITC on CCVs. Accordingly, the Appellant had filed a writ petition before the Bombay High Court, which vide its order⁶, set aside the order of Appellate Authority and directed the Appellate Authority to decide the matter after considering all the submissions of the Appellant.
- The Appellant had raised the following contentions in respect of the eligibility of ITC on CCVs:
 - As per section 17(5)(a)(ii) of the CGST Act, 2017, ITC is not eligible on motor vehicles **except** when they are used for transportation of **goods**. The definition of goods⁷ excludes money.
 - “Money” as defined under section 2(75) of the CGST Act, 2017 means Indian legal tender or any foreign currency only when used as consideration to settle the obligation or exchange with Indian legal tender of another

³ Order no. MAH/AAAR/SS-RJ/04A/2018-19 dated October 31, 2019

⁴ Ruling no. GST-ARA-08/2017/B-II dated March 19, 2018

⁵ Order no. MAH/AAAR/SS-RJ/04/2018-19 dated August 6, 2018

⁶ 2019 (7) TMI 615 – Bombay High Court

⁷ Section 2(52) of the CGST Act, 2017 defines “goods” as every kind of movable property other than money and securities but includes actionable claims,



denomination would be considered as 'money'. In the instant case, the currency transported by the Appellant is for the purpose of carrying out the business of maintaining ATMs, and hence the Appellant is not using the money as a consideration for settling any obligation. Thus, currency transported is 'goods' and not 'money'.

- Accordingly, the CCVs are being used for the transportation of goods and the ITC should be eligible in terms of section 17(5)(a)(ii) of the CGST Act, 2017.
- Section 2 of the CGST Act, 2017, which defines the various terms used in the Act, begins with the expression "*In this Act, unless the context otherwise requires, -*". By placing reliance on the said expression, it could be emphasised that the meaning assigned to 'money' provided under section 2(75) of the CGST Act, 2017, needs to be understood in the context as goods of the customer banks are transported and not money as defined in the section since the said currency cannot be used as money as understood in the common parlance.
- Rule 138(14) of the CGST Act, 2017, specifically excludes certain goods in respect of which e-way bill is not required to be generated. The excluded goods include 'currency'. This further substantiates that the currency transported by the CCV is 'goods'.
- Sl. no. 117 of the exemption notification⁸ provides full exemption from levy of GST when rupee notes are sold to Reserve Bank of India. This also substantiates that currency is 'goods'.
- The certificate of registration and certificate of fitness issued under the Motor Vehicle Act, 1988 have also regarded the CCVs as 'goods carrier' and 'goods vehicle' which implies that the CCV are used for transportation of goods.
- After taking into account the directions of the High Court and considering the submissions of the Appellant, the Appellate Authority agreed with the contentions of the Appellant and held that the money being transported in CCVs is goods and

accordingly, would not be covered within the exclusion prescribed under section 17(5)(a)(ii) of the CGST Act, 2017. Hence, ITC would be available.

Ruling

The Appellant is eligible to claim ITC of GST paid on the purchase and fabrication of the motor vehicles (CCVs) used for carrying cash.

Dhruva Comments:

Based on the recommendations made by the GST Council in its 28th meeting, a press release dated July 21, 2018 was issued wherein it was stated that the scope of ITC is being widened, and ITC would be eligible on motor vehicles used for transportation of money. Post the amendment in section 17(5) of the CGST Act, 2017 (w.e.f. February 1, 2019), the restriction is only on motor vehicles used for transportation of passengers subject to certain exceptions.

Notifications under GST law

Extension of time limits

- The Government vide notification no. 35/2020-Central Tax dated April 3, 2020 had notified that the time limit for undertaking various compliances whose due dates fell between March 20, 2020 and June 29, 2020 and if such compliances have not been completed, then the time limit in such cases shall stand extended to June 30, 2020. Now, the Government has issued notification no. 55/2020-Central Tax dated June 27, 2020 to extend the compliance period from June 29, 2020 to August 30, 2020 and the time limit to undertake the compliance from June 30, 2020 to August 31, 2020.
- The Government vide notification no. 46/2020-Central Tax dated June 9, 2020 had notified that where a notice was issued for rejection of a refund claim and the time limit for issuance of the order in terms of section 54(5) and (7) of the CGST Act,

⁸ Notification no. 2/2017-Central Tax (Rate) dated June 28, 2017



2017, fell between March 20, 2020 and June 29, 2020, then the time limit for issuance of the order shall be extended by 15 days after the receipt of the reply to the notice from the registered person or June 30, 2020, *whichever is later*. Now, the Government has issued notification no. 56/2020-Central Tax dated June 27, 2020 to extend the period from June 29, 2020 to August 30, 2020 and period from June 30, 2020 to August 31, 2020.

Dhruva Comments:

These extension of time periods were very much needed due to lockdown in the country on account of the COVID-19 pandemic.

Reduction / Waiver of late fees in respect of late filing of Form GSTR-3B

- The Government vide notification no. 52/2020-Central Tax dated June 24, 2020 had amended notification no. 76/2018-Central Tax dated December 31, 2018 (“original notification”) and had accordingly notified waiver of late fees payable on filing of Form GSTR-3B for the period February 2020 to July 2020 in respect of certain tax payers subject to the returns being filed within the prescribed due dates [*kindly refer to our alert dated June 26, 2020⁹ in this context*].
- The Government has now again amended the original notification vide notification no. 57/2020-Central Tax dated June 30, 2020 (w.e.f. June 25, 2020) to state that:
 - Late fees in excess of ₹500 (CGST + SGST) shall be waived for the period February 2020 to July 2020 in respect of the notified tax payers, if return in Form GSTR-3B is filed till September 30, 2020. Further, late fees shall be fully waived if the tax payable in the return is Nil.
 - Tax payers having an aggregate turnover of more than ₹5 crores in the preceding FY, who have not furnished the returns in Form GSTR-3B for the period May 2020 to July 2020 by the

due dates, then, late fees in excess of ₹500 (CGST + SGST) shall be waived subject to the returns being filed by September 30, 2020. Further, late fees shall be fully waived if the tax payable in the return is Nil.

Facility for filing Nil return in Form GSTR-1 using Short Messaging Service (SMS)

The Government vide notification no. 58/2020-Central Tax dated July 1, 2020 has substituted rule 67A of the CGST Rules, 2017 to provide the taxpayers with the facility of filing Nil return in Form GSTR-1 using SMS facility and verifying the same with a registered mobile number based one time password. Further, Nil return shall mean there is Nil or no entry in all the tables of Form GSTR-1 for the tax period.

Dhruva Comments:

Previously, the facility was available only in respect of filing return in Form GSTR-3B¹⁰ which has now been made applicable to Form GSTR-1 also.

⁹ [Click here for the alert dated June 26, 2020](#)

¹⁰ Notification no. 38/2020-Central Tax dated April 5, 2020 read with Notification no. 44/2020-Central Tax dated June 8, 2020





ADDRESSES

Mumbai

11th Floor, One IndiaBulls Centre,
Tower 2B, 841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahlanagar, Corporate Road,
Ahmedabad - 380 015
Tel: +91-79-6134 3434

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560 001
Tel: +91-80-4660 2500

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122 002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart, Baner,
Pune - 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai

WTS Dhruva Consultants
U-Bora Tower 2, 11th Floor, Office 1101
Business Bay P.O. Box 127165
Dubai, UAE
Tel: + 971 56 900 5849

KEY CONTACTS

Dinesh Kanabar

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Ritesh Kanodia

ritesh.kanodia@dhruvaadvisors.com

Niraj Bagri

niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

WTS Dhruva Consultants recognised as **Best Newcomer Firm of the Year 2020 Europe** - International Tax Review

“India Tax Firm of the Year” 2017, 2018, and 2019 - International Tax Review's Asia Tax Awards

“India Tax Disputes and Litigation Firm of the Year” 2018 - International Tax Review's Asia Tax Awards

Dhruva Advisors has been consistently recognised as a **Tier 1 Firm in India for General Corporate Tax** by the International Tax Review's in its World Tax Guide.

Dhruva Advisors has also been consistently recognised as a **Tier 1 Firm in India for its Transfer Pricing practice** in the International Tax Review's Transfer Pricing Guide.

Dhruva Advisors in 2019 for the first time ranked as a **Tier 1 Firm in India for Indirect Taxes** in International Tax Review's Indirect Tax Guide.

Best Newcomer of the Year 2016 - ASIA - International Tax Review's Asia Tax Awards

Disclaimer:

The information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and professional opinions. Before acting on any matters contained herein, reference should be made to subject matter experts, and professional judgment needs to be exercised. Dhruva Advisors LLP cannot accept any responsibility for loss occasioned to any person acting or refraining from acting as a result of any material contained in this publication

