SAFSET AGENCIES PRIVATE LTD (Astaguru.com)

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-86/2018-19/B-7, Mumbai, dated 15/01/2019 (the final digit o… Dated **15.01.2019**

Q Questions Before the Authority

- Q 1.1: Whether the applicant is dealing in second hand goods, and whether tax is to be paid on the difference between selling price and purchase price as stipulated in Rule 32(5) of the CGST Rules, 2017?
- Q 1.2: The classification and HSN code of the goods listed in the 'Issues for Determination' table, and the GST rates applicable to such goods.

F Facts

The applicant is an auctioneer that buys goods such as paintings, antiques, collectibles, vintage cars, jewellery and watches on approval from registered and unregistered sellers, often under an 'on approval' contract. It then lists them online and sells them to the highest bidder, with ownership passing on issue of the sale invoice. It claims no input tax credit on the purchases and wants to know how to classify and value these goods.

H Ruling

Q 1.1: Whether Rule 32(5) (difference between selling and purchase price) applies to the applicant's goods	**Yes, but only for old cars, old jewellery and old watches**	The order says liability is discharged on the difference only in respect of these three categories
Paintings bought from individual art collectors	**Heading 9701; 12% GST on sale value**	The order treats paintings as not second hand, so Rule 32(5) is not applied
Old cars	**Heading 8703; 18% under Notification 8/2018 CT (Rate)**	Rule 32(5) applies, subject to the conditions of Notification 8/2018 being satisfied, which the applicant did not show
Old jewellery	**Heading 7113; Rule 32(5) applies**	The order does not state the rate in its answer; the applicant's own table gives 3%
Antique jewellery of age exceeding 100 years	**Tariff item 9706 00 00; 12% GST on sale value**	Rule 32(5) does not apply
Old watches	**Headings 9101/9102; 18% on difference between sale and purchase price**	Rule 32(5) applies to old watches
Antique watches of age exceeding 100 years	**Tariff item 9706 00 00; 12% GST on sale value**	Rule 32(5) does not apply
Collectibles (general)	**Cannot be answered**	The applicant gave no specifics of the goods

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Collectibles (books)	**Cannot be answered**	Printed books fall under Chapter 49 subheadings; the residuary entry applies only to goods not otherwise specified
Antique books	**Books over 100 years old: tariff item 9706 00 00 at 12%. Under 100 years: appropriate Chapter 49 heading**	No specifics were given, so the question cannot be fully answered
Collectibles and memorabilia (clothing, sporting equipment, autographed items and similar)	**Residuary entry, Serial No. 453 of Schedule III, at 18%**	Rule 32(5) is held not applicable to such items in the sample case discussed

The authority held that the applicant's liability is to be discharged on the difference between selling price and purchase price under Rule 32(5) only for old cars, old jewellery and old watches. For the other categories it classified the goods under specific HSN headings, with the applicable rate on sale value. It declined to answer for collectibles, collectible books, and general collectibles and memorabilia, because the applicant had not given specifics.

R Reasoning

The authority read Rule 32(5) of the CGST Rules as applying where a taxable supply is made by a person dealing in second hand goods without availing input tax credit on the purchase, so that the value is the margin. It held that the margin basis applies to old cars, old jewellery and old watches, subject to Notification 8/2018 CT (Rate) for cars. Items within the specific headings for antiques over 100 years (tariff item 9706 00 00), paintings (heading 9701) and new goods were classified under those headings at the sale value, so Rule 32(5) does not apply to them. For collectibles and memorabilia the authority said the goods were not specified and the residuary entry at Serial No. 453 of Schedule III may apply, and it declined to answer without details. The order relies on the notification and the tariff headings, and says the rate schedule explanation follows the Customs Tariff rules of interpretation.

P Provisions Relied On

- Section 97(2) of the CGST Act, 2017 (scope of advance ruling; clauses (a), (c) and (e) invoked)
- Section 98 of the CGST Act, 2017 and the MGST Act, 2017 (procedure and order)
- Section 15(5) of the CGST Act, 2017 (valuation as prescribed)
- Rule 32(5) of the CGST Rules, 2017 (value of supply for second hand goods)
- Notification No. 1/2017 CT (Rate) dated 28.06.2017 (HSN headings and rates, including Serial No. 453 of Schedule III)
- Notification No. 8/2018 CT (Rate) dated 25.01.2018 (reduced rate for old and used motor vehicles)
- GST Tariff headings 9701, 8703, 7113, 9706 00 00, 9101/9102, 4901 and Chapter 49

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! For the Practitioner

This order is useful for an auctioneer or dealer in used personal effects. It confirms that the margin-based valuation under Rule 32(5) is available for old cars, old jewellery and old watches, and that antiques over 100 years old, and paintings bought from artists or collectors, attract full sale-value tax at the stated rates. It does not decide the position for general collectibles, collectible books or memorabilia, which the authority refused to answer for want of specifics. A dealer relying on the order should check the conditions of Notification 8/2018 and whether input tax credit was availed on purchase.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> ara_order_86_2018_maharashtra_sapl.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: +91 94594 56700 | sales@patronaccounting.com | patronaccounting.com