

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 40/ 2022

Dated: 27.10.2022

Present:

1. Dr. M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri. Kiran Reddy T
Additional Commissioner of Customs & Indirect Taxes Member (Central)

1.	Name and address of the applicant	M/s. ATTICA GOLD PRIVATE LIMITED, No.11/4, Ground Floor, Queens Road, Bengaluru-560 001.
2.	GSTIN or User ID	29AANCA2059B1ZS
3.	Date of filing of Form GST ARA-01	10-08-2022
4.	Represented by	Shri Muniraju P.R., Chartered Accountant
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Taxes, Bengaluru North GST Commissionerate, North Division-3, RANGE-AND3
6.	Jurisdictional Authority - State	ACCT, LGSTO-020, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act through debit from Electronic Cash Ledger vide reference No DC2906220005524 Dated 02.06.2022

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Attica Gold Private Limited, No.11/4, Ground Floor, Queen's Road, Bengaluru-560001 (hereinafter referred to as 'The applicant'), having GSTIN 29AANCA2059B1ZS have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant is a Private Limited Company registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services



Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively). The applicant is engaged in the business of sale of used gold Jewellery (second-hand goods).

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

- i. *Whether Applicant who is under Marginal Scheme can claim Input Tax Credit on the expenses like Rent, Advertisement expenses, commission, Professional expenses and other like expenses?*
- ii. *Whether ITC is allowed to be claimed on Capital Goods for the Applicant under Marginal Scheme?*

4. **Admissibility of the application:** The question is about the “Admissibility of input tax credit of tax paid or deemed to have been paid” and hence is admissible under Section 97(2) (d) of the CGST Act 2017.

5. **BRIEF FACTS OF THE CASE:** The applicant furnishes some facts relevant to the issue:

5.1 The applicant states that they are into sale of second hand goods i.e used gold jewellery which they are buying from individuals who falls under the category of unregistered dealers. Hence, they follow “Marginal Scheme” for discharging the GST liability under Rule 32(5) of the CGST Rules 2017 which 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 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.

5.2 The applicant states that a person dealing with the second-hand goods is allowed to pay the tax on margin i.e., the difference between the value at which the goods are supplied and the price 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 economic supply chain. (Rule 32(5) of the CGST Act 2017 read with Notification No.10/2017-Central Tax (Rate), New Delhi, dated 28th June, 2017).

5.3 The applicant states that input tax on various expenses like advertisement, rent, professional charges, and other expenses are claimable as per Section 16 of the GST Act where all the conditions are satisfied without which business cannot be run.

6. Applicant's Interpretation of Law:

6.1 The applicant submits that as a registered dealer they satisfy the conditions laid down u/s.16 of the GST Act in order to claim the input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course of furtherance of his business.



Section.16 reads as under:

16. Eligibility and conditions for taking input tax credit. —

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37

(b) he has received the goods or services or both.

[Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

6.2 Further, the applicant states that they have single vertical business and incurs expenses like rent, advertisement, professional expenses, logistic expenses etc to run the business and without which business will not run. These expenses are very much required to generate the business and direct in nature to this business.



PERSONAL HEARING / PROCEEDINGS HELD ON 18-08-2022

7. Shri Muniraju P.R, Chartered Accountant and Duly Authorised Representative appeared for personal hearing proceedings held on 18-08-2022 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling. We have also considered the issues involved on which advance ruling is sought by the applicant and relevant facts & the submissions made by their learned representative during the time of hearing.

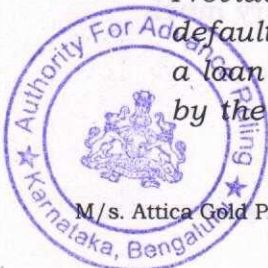
10. The applicant states that they are into sale of second hand goods i.e used gold jewellery which they are buying from individual persons and hence they following "Marginal Scheme" for discharging the GST liability under Rule 32(5) of the CGST Rules 2017. The Applicant wants to know whether they can claim Input Tax Credit on the expenses like Rent, Advertisement expenses, commission, Professional expenses and other like expenses while being under Marginal Scheme.

11. Now we invite reference of Rule 32(5) of the CGST Rules 2017. The same is reproduced below:

Rule 32. Determination of value in respect of certain supplies.-

- 1)
- 2)
- 3)
- 4)
- 5) *Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, 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.

11.1 Rule 32(5) says that, a taxable supply 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. If the value of such supply is negative, then it shall be ignored. We can see that the rule 32(5) clearly bars availment of input tax credit on the purchase of those second hand goods which he is supplying, however there is no restriction on the availment of input tax credit in respect of input services or capital goods.

12. Now we invite reference of section 16 of CGST Act 2017, and the same is reproduced below:

Section 16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

1[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

2[Explanation.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting



as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

3[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

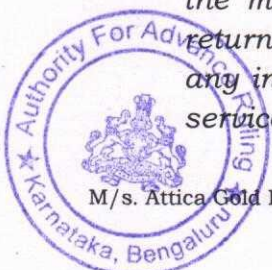
Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of



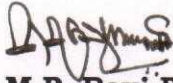
which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

12.1 After going through section 16 of CGST Act 2017 i.e Eligibility and conditions for taking input tax credit we can see that there is no bar on the registered tax payer to claim input tax credit on input services and corresponding expenses like Rent, Advertisement expenses, commission, Professional expenses, other like expenses and capital Goods while being under Margin Scheme (Rule 32(5) of CGST Rules). Hence we find that the Applicant can claim input tax credit on the expenses in respect of input services and capital goods subjected to section 16 to 21 and rules 36-45 of CGST Act and Rules 2017.

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

RULING

- i. Applicant who is under Marginal Scheme can claim Input Tax Credit on the expenses like Rent, Advertisement expenses, commission, Professional expenses and other like expenses subject to section 16 to 21 and rules 36-45 of CGST Act and Rules 2017.
- ii. ITC can be claimed on Capital Goods by the Applicant under Marginal Scheme subject to section 16 to 21 and rules 36-45 of CGST Act and Rules 2017.



(Dr. M.P. Ravi Prasad)

Member

MEMBER

Place: Karnataka Advance Ruling Authority
Bengaluru - 560 009

Date: 27.10.2022

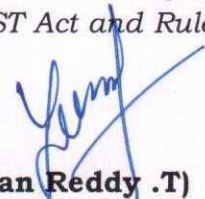
To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Taxes, Bengaluru North GST Commissionerate, North Division-3, RANGE-AND3, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-020, Bengaluru.

5. Office Folder.



(Kiran Reddy .T)

Member

MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

