

CGST : Where applicant is a Re-seller and Importer of Sun Glasses, Frames, Lenses, Contact Lenses, etc. having Head Office in West Bengal. Goods, namely, Optical Lenses and Frames for Spectacles and Accessories, are transferred from Head Office in West Bengal to its branches in other States, applicant has option of not supplying goods to its branches under First proviso of Rule 28 and is eligible to value these goods by applying terms of Second Proviso to Rule 28 of CGST Rules, 2017 and, therefore, such goods can be valued in terms of the Cost Price under the Second Proviso to Rule 28 of CGST Rules, 2017, instead of 90% of MRP as required under the First Proviso of same



[2018] 93 taxmann.com 477 (AAR-WEST BENGAL)
AUTHORITY FOR ADVANCE RULINGS, WEST BENGAL
GKB Lens (P.) Ltd., *In re*
VISHWANATH AND PARTHASARATHI DEY, MEMBER
ORDER NO. 07/WBAAR/2018-19
MAY 30, 2018

RULING

1. The Applicant is stated to be a Re-seller and Importer of Sun Glasses, Frames, Lenses, Contact Lenses, etc. having Head Office in West Bengal. Goods, namely, Optical Lenses and Frames for Spectacles and Accessories, are transferred from the Head Office in West Bengal to its branches in other states. Advance Ruling has been sought on whether such goods supplied to the branches in states other than West Bengal can be valued in terms of the Cost Price under the Second Proviso to Rule 28 of CGST Rules, 2017, instead of 90% of MRP as required under the First Proviso of the same Rule.

Advance Ruling is admissible on this question under Section 97(2)(c) of the CGST/WBGST Act, 2017 (hereinafter referred to as "the GST Act").

The officer concerned raises no objection to admission of the Application.

The Applicant declares that question raised is not already decided or pending in any proceedings under the GST Act.

The Application is, therefore, admitted.

2. The Applicant submits that so far the value of the trading goods supplied to branches in states other than West Bengal is being determined at 90% of the MRP of the goods in terms of the First Proviso to Rule 28 of the CGST/WBGST Rules, 2017 (hereinafter referred to as "Rule 28"). The Applicant wants to know whether the value of such supplies can be determined in terms of the Second Proviso to Rule 28, instead. Clarification is also sought by the Applicant regarding the phrase "eligible for full input tax credit", especially in the context of the fact that apart from the trading goods, the Head Office also supplies to these branches non-trading stock like printing & stationery, office equipment, etc. The Applicant states that these non-trading stock are transferred at zero value

3. Rule 28 deals with valuation of a supply when it is made between distinct or related persons. If a person obtains or is required to obtain more than one registration in more than one State and/or Union Territory, then, in accordance to the provisions under Section 25 of the GST Act, each registration shall

be treated as "distinct persons" for the purpose of the GST Act. The Applicant, at the time of Personal Hearing, has informed that separate registrations have been obtained for business establishments in different states. These independently registered business establishments in states other than West Bengal are referred to as "branches" with Head Office in West Bengal.

Supplies to these branches, therefore, qualify as supplies made between the distinct persons, and provisions of Rule 28 will be applicable for valuation of such supplies.

4. Rule 28 provides that the value of a supply to a distinct person shall be the open market value, if available, of such supply.

The First Proviso states that "**Provided** that where the goods are intended for further supply as such by the recipients, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer, not being a related person".

The Second Proviso to Rule 28 states "**Provided** further, that where the recipient is eligible for full input tax credit, the value declared in the Invoice shall be deemed to be the open market value of the goods or services. As input tax credit is not available unless there is an invoice or document of like nature [Section 16(2)(a)], the above proviso has to be interpreted with reference to specific invoices. Hence all Invoices or documents of like nature under Section 16 of GST Act, of goods for further retail sale or for use in the business (non-trading stock such as stationery and office equipment) transferred to branches considered as distinct persons being located in States other than West Bengal, are valid documents eligible for Input Tax Credit.

5. The First Proviso to Rule 28, thus, is clear that where goods are supplied to a recipient for further supply as such, the valuation of these goods when transferred from the supplier to the recipient may, *at the option of the supplier*, be determined at 90% of the price that will be charged by the recipient to its customer, not being a related person. The two clauses important to note in this Proviso are: a) goods received by the recipient are to be sold to a customer not being a related person and b) the determination of value at 90% of the price that will be charged by the recipient to this customer is an *option*. Whether or not the Supplier avails of this option is solely the discretion of the Supplier.

6. The Second Proviso to Rule 28 does *not* mention, unlike the First Proviso, "*where goods are supplied to a recipient for further supply as such*", nor is the Proviso barred to such goods when further supplied as such. In other words, the Second Proviso is applicable for both, goods further supplied to non related customers and to goods *used in and for the course of business*. It is stated that the value declared in the invoices shall be deemed to be the open market value of the goods.

7. Chapter V of the GST Act in Sections 16 to 21 are related to Input Tax Credit. The independently registered business establishments in states other than West Bengal, referred to as "branches" with Head Office in West Bengal, are eligible to avail of Input Tax Credit in terms of Section 16 of GST Act. Again, as per Section 17(1) where the goods (or services, or both) are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to *the purposes of his business*.

In other words, the expression "*where the recipient is eligible for full input tax credit*", is to be considered in the light of Section 17(1) of GST Act, to mean that the recipient will be eligible to take full input tax credit of the amount of tax paid by the supplier as mention in the respective invoice or any other document valid under Section 16(2)(a) of GST Act.

In view of the foregoing we rule as under

RULING

The Applicant has the option of not supplying goods to its branches under the First Proviso of Rule 28 and is eligible to value these goods by applying the terms of the Second Proviso to Rule 28 of GST Act.

The expression "*where the recipient is eligible for full input tax credit*", as used in the Second Proviso to Rule 28 of CGST Rules, 2017, means that the recipient will be eligible to take full input tax credit of the amount of tax paid by the supplier as mentioned in the respective invoice or any other document valid under Section 16(2)(a) of GST Act.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Acts.

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