

**TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING**  
**(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act**  
**2017)**

A.R.Appeal No. 7/2019/AAAR

Date:13.11.2019

**BEFORE THE BENCH OF**

**1. Thiru M. AJIT KUMAR, MEMBER**

**2. Dr. T.V.SOMANATHAN, MEMBER**

**ORDER-in-Appeal No. AAAR/09 /2019 (AR)**

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section  
101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.

2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only

(a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;

(b). On the concerned officer or the jurisdictional officer in respect of the applicant.

3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.

4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void sb-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	Specsmakers Opticians Private Limited, 20,Kannadasan Street, T.Nagar, Chennai – 600 017
GSTIN or User ID	33AAPCS6371Q1ZH
Advance Ruling Order against which appeal is filed	Order No. 27/AAR/2019
Date of filing appeal	03.09.2019
Represented by	
Jurisdictional Authority-Centre	Chennai South Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST), T.Nagar Assessment Circle.
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- made vide challan No.SBIN19093300010691 dated 03.09.2019

**At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.**

The subject appeal has been filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 by M/s. Specsmakers Opticians Pvt Ltd (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AAPCS6371Q1ZH. The appeal is filed against the Order No.27/AAR/2019 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The appellant are carrying on business activities in respect of spectacle frames, sun glass lenses, contact lenses as well as reading lenses. They procure these items locally as well as by way of import. The appellant have their main office in the State of Tamil Nadu and have branches in various States outside Tamil Nadu. The goods procured / imported are transferred to various branches for subsequent supply to customers by those branches.

2.1. Under GST Law, supply to branches outside the State is considered as supply between distinct persons and accordingly, appropriate tax is to be paid. The appellants are required to adopt value as per Rule 28 of CGST Rules, 2017. Rule 28 provides for various options. Since the branches of the appellant located in various other States are eligible to take full Input tax credit in respect of supplies made to them, the appellant wanted to adopt price as per the second proviso to Rule 28 for payment of tax for such transfers. The appellant sought the authority for advance ruling to determine the value to be adopted in respect of transfer to branches located outside the State.

3. The Original Authority has ruled as follows:

The value in respect of supply of goods i.e. Lenses, Frames, Sun Glasses, Contact Lenses as well as Reading Glasses, Complete spectacles by the applicant to distinct persons being branches outside the state of Tamil Nadu shall be the open market value of such supplies that is available as per of Rule 28(a) and Explanation (a) to Chapter IV of CGST/TNGST Rules 2017 read with Section 15 of the CGST/TNGST Act 2017. Where the goods are intended for further supply as such by the recipient, the applicant has the option to adopt an amount equivalent to ninety percent 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 as the value of such supplies to the distinct recipient as per proviso to Rule 28 and Explanation (a) and (b) to Chapter IV of CGST/TNGST Rules 2017 read with Section 15 of the CGST/TNGST Act 2017.

4. Aggrieved by the above decision, the Appellant has filed the present appeal. The grounds of appeal are as follows:

- In paragraph 4.3 of the order, the Authority has observed that once Rule 28(a) is applicable, Rule 28(b) or (c) cannot be used by the appellant for determining the value of the supply of goods between distinct persons. The appellant do not have any dispute with this stand and it is not their case that valuation as per Rule 28(b) or (c) is to be considered. The appellant are concerned only with the application of provisos contained in Rule 28 to the facts and circumstances of their case.

- In paragraph 4.4 of the order, the Authority has observed that recipients (branches) in other states further supply such goods to their customers without any further value addition, i.e. they are supplied as such. The appellant submit that they have not made any specific averment to that effect in their application. While sun glasses are further supplied as such, spectacle frames are fixed with lenses depending, upon customers requirements and then, supplied. Thus, it is the case of the appellant that under both these situations, their branch offices located outside the State are entitled for full input tax credit for such supply received by them.
- Rule 28 contains two provisos and each proviso is to take care of a particular situation. The first proviso is applicable in a case where the goods are intended for further supply as such by the recipient. The second proviso is applicable to a situation where the recipient is eligible for full input tax credit.
- The first proviso refers to ninety percent 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 refers to a situation where any value declared in the invoice is to be treated as open market value when recipient is eligible for full input tax credit. Thus, these two provisos cater to different situations and lower authority erred in holding that they have to be only sequentially applied.
- With regard to the second proviso, when full input tax credit is available, it is provided that the value declared in the invoice is to be treated as open market value of the goods or services. In other words, there is no requirement that these provisos should be applied only sequentially. They are provided to take care of different situations and taking into account the fact that the open market value is specifically defined in Chapter IV or CGST Rules, 2017, the value declared in the invoices in respect of cases where the recipient is eligible to take full input tax credit will be the value relevant for payment of tax when the goods are transferred to the branch.
- The observations made in paragraph 4.5 by the authority to the effect that the supplier may adopt the value higher than the open market value,

which will lead to accumulation of input tax credit and that is not the intention of taxation based on value addition. At best, these are only surmises and secondly, when the first supply is made, the appellants cannot choose to adopt a value higher than the open market value only for the purpose of enabling their branch offices to get more credit. Since at the first instance, if a higher value has to be adopted they have to pay higher tax, such a course is unwarranted as well as unnecessary. Thus, the observations in paragraph 4.5 made by the lower authority are misplaced.

- It is only with the intention to avoid blocking of capital / funds, the legislature has provided a situation, where when the distinct person is eligible to take full input tax credit and is going to make further supply, then, in respect of initial supply, it is not necessary to adopt only open market value and pay higher tax and block such tax amounts. In such a situation, till the credit is used by branch offices, the credit amount will remain accumulated. On the other hand, when full credit is taken at a lower value and further supply is made at a higher value at the point of supply, the branch offices will utilize the credit and also pay additional tax based on the open market value at the time of making further supply.
- The appellant will be entitled to adopt any value range for supply of these items to their branches when their branches are entitled to take full credit of the tax paid and such values, therefore, adopted by the appellant are to be treated as open market value for the purposes of CGST Act and Rules.

PERSONAL HEARING:

5. The Appellant was granted personal hearing as required under law before this Appellate Authority on 10<sup>th</sup> October 2019. The appellant sought adjournment vide their letter dated 9<sup>th</sup> October 2019. Another opportunity was extended on 08.11.2019. The Authorized representatives of the Appellant S/Shri. S. Murugappan, R. Mansoor Ilahi, Advocates and J. Venketramanan, CFO of the appellant company appeared for hearing. They reiterated the written submissions filed along with the Appeal. They also furnished copy of the decision of West Bengal Authority for Advance Ruling [ 2018(13) G.S.T.L 343 (AAR-GST)] and that of Appellate Authority [ 2018 (17) G.S.T.L 698 (App.AAR-GST)] in respect of GKB lens Pvt. Ltd citing similus.

## DISCUSSION:

6. We have carefully considered the various submissions made by the Appellant and the applicable statutory provisions. The issue before us relates to determination of value to be adopted in respect of supply to distinct persons of the appellant in the course of business.

6.1 We find that the appellant, has claimed before the Lower Authority that applying the Second Proviso to Rule 28 of CGST Rules for supplies to distinct persons for further supply, it is sufficient that they pay the tax at the time of supply of goods from the State of Tamilnadu on the value arrived by taking into account the cost price in tax invoice as the recipient is eligible for full credit of tax paid. The Lower Authority in the ruling in Para 4.5 has observed that

.....if a taxpayer can skip all the provisions under Rule 28(a) to ( c), in spite of them being specifically mentioned as the value which “**shall**” be adopted, then in no scenario will any taxpayer ever use Rule 28 (a) to ( c). Both provisos are to be read together and not independently, i.e., the applicant cannot choose whichever proviso is favourable to them. Therefore the applicant shall adopt the “Open market Value” as per Rule 28 (a) as the same is available for the supplies made to the distinct recipient outside the State. Instead of the available open market value, the applicant can also opt to value the same at 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. If the recipient is eligible for full input tax credit, such a value shall be deemed to be the open market value.”

6.2 The appellant aggrieved by the interpretation of the Lower Authority and the ruling that the value to be adopted shall be the open market value of such supplies that is available as per Rule 28(a) and Explanation (a) to Chapter IV of CGST/TNGST Rules 2017 read with Section 15 of the CGST/TNGST Act 2017, has filed the present appeal. The main ground of appeal is that Rule 28 contains two provisos and each proviso is for taking care of a particular situation and there is no requirement that these provisos should be applied sequentially.

6.3 It is to be understood that the executive cannot impose tax. It is a statutory function. The proper test in interpreting a Section or a Rule in a taxing statute is to

understand as to what its language, according to its natural meaning, fairly and squarely states. There is no room for any intendment or presumption. Accordingly, we intend to look fairly at the language used.

7. Before proceeding further, Rule 28 of the CGST/TNGST Rules 2017 and the Explanation to Chapter IV of the rules are examined as under:

28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.-

*The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-*

- (a) be the open market value of such supply;*
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;*
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:*

*Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent 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:*

*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.*

*Explanation.-For the purposes of the provisions of this Chapter, the expressions-*

- (a) "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;*
- (b) "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.*

7.1 The rule is applicable for arriving at the value when the supplies are between distinct or related persons. The sub-rule (a) state to apply the 'Open market Value of such supply" and by the explanation (a) to Chapter IV, the said value is the value adopted for similar supply at the same time in respect of supplies to unrelated buyer. Sub-rule (b) and (c ) are applicable in cases where such 'Open Market Value' is not available. Examining the provisos to the Rule, it is clear that Proviso 1 provides for adopting 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, in cases of 'as such supply' and the second proviso states that when the recipient is eligible for full input tax credit, the value declared in the invoice is to be treated as Open Market Value.

7.2 In the case at hand, it is accepted by the appellant and the Lower Authority, that the sub-rule (b) and (c ) cannot be used for the reason that 'Open market value' is available. The claim of the appellant is that when the recipient is eligible for the credit, as per the second proviso to the Rule 28, the invoice value shall be the 'Open Market Value' and they need not apply the 'Open Market Value' as per the Explanation or to adopt an amount equivalent to ninety percent of the price charged by the recipient to the unrelated buyer as ruled by the Lower Authority. The appellant's view is that both the provisos are independent catering to different situations. It is also stated by the appellant that with the intention to avoid blocking of capital / funds, the legislature has provided a situation, where when the distinct person is eligible to take full input tax credit and is going to make further supply, then, in respect of initial supply, it is not necessary to adopt only open market value and pay higher tax and block such tax amounts.

7.3 We find that there is no specific regulation in the said Rules, that the rules are to be applied seriatim. Further looking at the construction of the said rule, it is evident that when an 'Open Market Value' is available, sub-rule (b) and (c ) may not be applicable but the same is not the case in respect of the provisos. Proviso 1 entitles the appellant to value at 90% of the ultimate sale value to the unrelated customer at the initial supply at his option in cases of 'as such supply'. A plain reading of this proviso gives an option to the person supplying to distinct or related

person and do not mandate that the value of supply should be 90% of the ultimate sale value, even in such a scenario. Proviso 2 states that when the tax paid is available as full input tax credit, then the invoice value is the 'Open Market Value'. Considering the constructions of the rule as above, we find that the law provides the taxpayer an option to adopt 90% of the price charged as value to be adopted initially (i.e., supply between distinct persons) and in the alternative, in case of full Input tax being available to the recipient as credit, the invoice value is declared as 'Open market value'. There is nothing to show that the second proviso is subordinate to the first. It independently deals with a scenario where the recipient is eligible for full input tax credit.

7.4 Applying the above, to the specific facts and circumstances of the case at hand, we hold that when the supply is to the distinct person of the appellant and the recipient is eligible for full Input tax credit, the second proviso provides the value declared in the invoice to be the 'open market value' for such transaction. Also the second proviso does not restrict its application as in the first proviso, which is to be applied for cases of 'as such supply' only. Therefore, the appellants may adopt the value for supply to distinct person as provided under Proviso 2 to Rule 28 of the CGST/TNGST Rules 2017.

8. Accordingly, we set aside the ruling of the Original Advance Ruling Authority and rule as under

#### RULING

The appellant is eligible to adopt the value as per Second Proviso to Rule 28 of the CGST/TNGST Rules 2017, at the time of supply of goods from the State of Tamilnadu in the terms of the scenario discussed, in as much as the recipient distinct person is eligible for full Input Tax credit as required under the said proviso.

(T.V.SOMANATHAN)

Commissioner of Commercial Tax  
Tamilnadu, Member AAAR

**APPELLATE  
AUTHORITY FOR  
ADVANCE RULING**

13 NOV 2019

**GOODS AND SERVICE TAX  
Chennai-5, Tamilnadu.**

(M. AJIT KUMAR)

Pr.Chief Commissioner of GST & Excise  
Chennai Zone/Member AAAR

To

M/s. Specs makers Opticians Private Limited,  
No. 20 Kannadasan Street, T.Nagar  
Chennai 600017 /By SPAD/

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