

Tax alert: Stock transfers should be valued at the actual open market value if available even when recipient is eligible for ITC – Tamil Nadu AAR

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Summary

The Tamil Nadu Authority for Advance Ruling (AAR), in a recent case, has ruled in respect of valuation of inter-state stock-transfer between distinct persons and held that in cases where actual open market value (OMV) is available, valuation should be done on the basis of such actual OMV even in case where the recipient is eligible for full input tax credit. However, the AAR held that in such cases, an applicant has an option to value goods at 90% of price charged from an unrelated customer. With regards to the calculation of OMV in terms of proviso to Rule 28 of the CGST Rules, 2017, the AAR held that both the provisos are to be read together and not independently.

Facts of the case

- The Applicant¹ is a trader of lenses, frames, sunglasses, contact lenses, reading glasses and complete spectacles which it imports as well as locally procures.
- The goods imported are resold by the Applicant and are also transferred to their branches located outside the State for subsequent supply to ultimate customers.
- In the present case, as the branches are distinct persons, the Applicant discharges applicable GST while supplying the goods to their branches outside the State.
- The Applicant has sought an advance ruling to determine the value to be adopted in respect of the transfer to branches located outside the State.
- It may be noted here that the GST valuation rules² provides three options, viz open market value (OMV), value of like goods if OMV not available, value as determined by other Rules³, for determining the value in respect of supplies to distinct/ related persons. These options are further governed by the following two provisos:

Situation	Valuation
Where the goods are	At the option of the supplier, the value shall be

Situation	Valuation
intended for further supply as such by the recipient	90% of the price charged for the supply of like goods by the recipient to an unrelated customer.
Where the recipient is eligible for full input tax credit	Value declared in the invoice shall be deemed to be the OMV of the goods.

Applicant's contentions

- The Applicant contended that despite availability of actual OMV (price charged from unrelated parties), its case would be governed by the second proviso, ie where the recipient is eligible for full input tax credit (ITC), the value declared in the invoice shall deem to be the OMV of the goods or services.
- It accordingly argued that value declared in the invoice should be treated as the OMV of the goods.
- With regards to the applicability of the aforementioned provisos, the Applicant argued

¹ M/s. Specs-makers Opticians Private Limited
² Rule 28 of CGST Rules 2017

³ 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

that both provisos should not be read together and are independent⁴.

- The Applicant further contended that if the transfer of goods from the state of Tamil Nadu is also to take place on the basis of market value, then though the branch office outside the state will be eligible to claim ITC on such payments, the entire amount will be locked up in credit and will be utilised only when further supplies take place from the branch offices. Thus, it argued that taxes should be paid on the cost price of goods as declared in the tax invoice.

Tamil Nadu AAR's observations and ruling

- The AAR rejected the Applicant's plea that it is sufficient to pay tax at the time of supply of goods on the value arrived at by taking into account the cost price in the tax invoice while dispatching the supplies to other States.
- The AAR observed that the Applicant supplies same goods to both unrelated recipients in Tamil Nadu and its branches outside Tamil Nadu at the same time, hence there exists an OMV for such supplies being made to distinct persons who are branches of the Applicant.
- The AAR stated that there is no necessity to go further down other proviso⁵ as they are to be read sequentially and are also applicable only when OMV is not available. Once the first proviso is applicable, the second proviso cannot be used by the Applicant for determining the value of the supply of goods between distinct persons.
- The AAR further observed that recipients in other states further supply such goods to their customers without any further value addition, repackaging, labeling, etc., ie they are supplied as such in such a scenario, the valuation rules

give an option to the supplier, ie the Applicant to adopt 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 as the value at which the supplier, ie the Applicant supplies to his distinct/related branch in another state.

- Thus, the AAR held that if the Applicant does not use the option provided to adopt an amount equivalent to 90% of the price charged for further supply of goods of like quantity and quality by recipient to his customer not being related person as value of supply, he has to supply goods at OMV.
- The AAR further clarified that both the provisos are to be read together and not independently, ie the Applicant cannot choose whichever proviso is favourable.

Our comments

It is quite common for businesses having a PAN-India presence to transfer its stock from one state to their units located in other states to cater to orders from different geographical locations. Under the erstwhile indirect tax regime, such stock transfers were not subjected to tax. However, with the shift of taxable event from 'sales' to 'supply', stock transfers came under the purview of GST. Valuation provisions pertaining to stock transfer as provided under the GST law plays a crucial role in determining the correct value and the tax payable thereof. This ruling should provide clarity on the valuation of inter-state stock transfers.

Though the AAR's decision is applicable only to the Applicant, it would act as a guiding tool for other taxpayers.

⁴ The Applicant also submitted the orders of the West Bengal AAR and the Appellate Authority for Advance Ruling in a similar issue in respect of M/s GKB Lens Private Limited

⁵ Rule 28(b) or (c) of the CGST Rules

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