

**AUTHORITY FOR ADVANCE RULING
TAMIL NADU ADVANCE RULING AUTHORITY
PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-600 006.**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Ms. Manasa Gangotri Kata, IRS Joint Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai
2. Thiru S. Vijayakumar, M.Sc., Joint Commissioner (CT) / Member (FAC),
Office of the Joint Commissioner (ST),
Enforcement / Inter-State Investigation Cell, Chennai-6.

ORDER No. 27 /AAR/2019 DATED: 24.06.2019

GSTIN Number, if any / User id	33AAPCS6371Q1ZH
Legal Name of Applicant	M/s. Specs-makers Opticians Private limited
Registered Address/Address provided while obtaining user id	No.20, Kannadasan Street, T.Nagar, Chennai-600017
Details of Application	GST ARA-01 Application Sl. No. 57 dated:28.11.2018
Concerned Officer	State: The Assistant Commissioner(ST) T.Nagar Assessment Circle, Centre: Chennai South Commissionerate Division: T Nagar
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Retail Business
B Description (in Brief)	Trading of lenses, Frames, Sun glasses, Contact lenses as well as Reading glasses, Complete Spectacles.
Issue/s on which advance ruling required	Determination of time and value of supply of supply of goods
Question(s) on which advance ruling is required	The value to be adopted in respect of transfer to branches located outside the state.

Note : Any Appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

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.

M/s. Specs-makers Opticians Private Limited, No.20, Kannadasan Street, T.Nagar, Chennai-600017 (hereinafter called the Applicant or the Company) is registered under the applicable provisions of the CGST 2017 and TNGST 2017 vide registration number 33AAPCS6371Q1ZH. They have preferred an application seeking Advance Ruling on

“The value to be adopted in respect of transfer to branches located outside the State.”

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted the copy of Challan evidencing payment of application fees of Rs.5,000/-each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2. The Applicant has stated that they import as well as locally procure Lenses, Frames, Sun Glasses, Contact Lenses as well as Reading Glasses, Complete spectacles and are engaged in re-selling them. They have their office in Tamil Nadu at Chennai. They also have branches outside the state of Tamil Nadu and the goods imported and re-sold by the applicant 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, they are required to discharge the CGST/SGST/IGST as applicable while supplying the goods to their branches outside the State. Rule 28 of GST rules, 2017, provides three options for determining the value in respect of supplies to distinct/ related persons. These options are governed by two provisions. The applicant is of the view that the second provision is applicable to their case, i.e., 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. Hence, in their view if the second provision is applied it is sufficient that they pay tax at the time of supply of goods from the state of Tamil Nadu on the value declared by taking into account the cost price in the tax invoice while dispatching the supplies to other states. The goods received by the recipient are further sold or supplied to the consumers/customers based on the market price.

At that time, the applicant's branch office outside the Tamil Nadu State pays the applicable tax under GST provisions on the basis of the actual sales value to the customers at which these are supplied to them. The applicant has further stated 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 input tax credit on such payments, the entire amount will be locked up in credit and will be utilized only when further supplies take place from the branch offices. In view of the above the applicant has sought advance ruling to determine the value to be adopted in respect of transfer to branches outside the state.

3. The Authorized Representative of the Applicant was heard in the matter on 11.03.2019. They stated that they are trading spectacle frames, lens, sunglasses and accessories which are procured locally or imported. The goods are transferred as such to their branches in other states who further sell to their customers. They stated that they are eligible under second proviso of Rule 28 of Valuation Rules/CGST Rules under which they can declare any value in the invoice of transfer to other related party. They also stated that they are covered under CGST Rules 28(a) as the open market value is known, but they want to use Proviso 2 and not Proviso 1. They stated that both Proviso should not be read together and are independent. They submitted the orders of the West Bengal AAR and the Appellate Authority for Advance Ruling West Bengal in a similar issue in respect of M/s GKB Lens Private Limited.

4. We have gone through the submissions made by the Applicant. The question before us relates to determination of value to be adopted in respect of transfer to branches located outside the State, i.e., to distinct persons of the same PAN. The applicant claims that applying the second proviso to Rule 28 of CST Rules on such supplies, it is sufficient that they pay the tax at the time of supply of goods from the State of Tamil Nadu on the value arrived by taking into account the cost price in the tax invoice while dispatching the supplies to other States. The claim as we observe is that the value need not be as per first proviso to Rule 28, even though such price be available.

4.1 From the submissions, before us, we find that the applicant imports as well as locally procure Lenses, Frames, Glasses, Contact Lenses, etc and is engaged in re-selling them. The applicant has branches outside Tamil Nadu where, the

applicant transfers these goods for further selling from these branches. These branches are distinct persons as per GST Law.

Section 25 of CGST Act states

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

Accordingly, the applicant and his branch office outside Tamil Nadu are distinct persons and should have separate GST registrations.

They import as well as locally procure Lenses, Frames, Sun Glasses, Contact Lenses as well as Reading Glasses, Complete spectacles and supply the same in Tamil Nadu and also supply to their branches located outside the State for subsequent supply to ultimate customers.

4.2 We find that under GST, branches which are situated outside the state are treated as distinct person. Hence, in the above case the supply between the applicant and the branches is considered as a supply between distinct persons, the fact of which is not disputed by the applicant also. The issue is on the adoption of the value for supply of the goods procured by them to their branches outside State. Value of supply of goods and services are defined under Section 15 of CGST Act, 2017, which is as below:

Section 15

15. (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this Act,—

(a) persons shall be deemed to be “related persons” if—

(i) such persons are officers or directors of one another’s businesses;

(ii) such persons are legally recognised partners in business;

- (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family;
- (b) the term "person" also includes legal persons;
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

In the case at hand, the applicant has branches outside the state of Tamil Nadu, hence, both are said to be related as per the explanation to Section 15. The supply is also to distinct person and therefore the value to be adopted is governed by rules prescribed as per Section 15(4) of CGST Act.

The same is provided under Rule 28 of CGST Rules, 2017, which is as under:

Rule 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.

4.3 As per Rule 28(a), it is clear that for supply between distinct persons, the value **shall** be the ‘open market value’ of such supply. As per Explanation (a) to Chapter IV of CGST Rules, 2017 , Determination of value of supply, ‘Open Market Value’ of a supply of goods 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. In the instant case the applicant supplies the same goods i.e. Lenses, Frames, Sun Glasses, Contact Lenses as well as Reading Glasses, Complete spectacles to both recipients in Tamil Nadu and its branches outside Tamil Nadu. As per the applicant, there are supplies being made to such unrelated recipients within Tamil Nadu who are being supplied at the same time of such supply for which price is the sole consideration. Thus, there exists an ‘open market value’ for such supplies being made to distinct recipients who are branches of the applicant in different states/ Union territories. Thus , there is no necessity to go further down to Rule 28(b) or (c) as they are to be read sequentially and are also applicable only when ‘open market value’ is not available. Once Rule 28(a) is applicable, Rule 28(b) or (c) cannot be used by the applicant for determining the value of the supply of goods between distinct persons.

4.4 In the case at hand, the applicant states that their recipients in other states further supply such goods to their customers without any further value addition, re-packaging, labeling etc. I.e. they are supplied as such. In such a scenario, Rule 28 gives an option to the supplier, i.e. 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 .i.e. the applicant supplies to his distinct/related branch in another state. Explanation (b) to Chapter IV of CGST Rules, 2017 gives the definition of “*supply of goods or services or both of like kind and quality*” as means any other supply of goods made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods first mentioned, is the same as, or closely or substantially resembles, that supply of goods. In the instant case, the applicant has the option to adopt a value which is 90% of supplies made by the branch outside Tamil Nadu to an unrelated customer which are made under similar circumstances in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods supplied to the branch recipient by the applicant. If the applicant does not use this option for supplies to the recipient who further supplies to their customers as such, he has to supply at ‘open market value’ which is available as per Rule 28(a).

4.5 There is a further proviso to Rule 28 which states 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. This further proviso has to be read along with the proviso above. In the event the applicant chooses the option in the first proviso, the value of his supplies to distinct recipients outside state will not be at open market value. In such a case, if the recipient is eligible for full input tax credit, the value in the invoice, i.e. the value after exercising the option in the first proviso, will now be deemed to be the open market value.

The applicant contends that he can skip Rule (a) and also not exercise the option at the proviso to Rule 28 and go directly to the further proviso. The applicant states that he may include any value while invoicing to the recipient as the recipient is eligible for full input tax credit as per the further proviso to Rule 28. If that were the case, the applicant may use a value much higher than the open market value to pass on input tax credit to his branch office outside the state or he may use a much lower value than even his cost price, which will lead to accumulation of input tax credit for the applicant, which is not the intention of a taxation based on value addition. Further, 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.

5. In view of the above discussions, we rule as under:

RULING

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.

K. Manasa 24/6/19

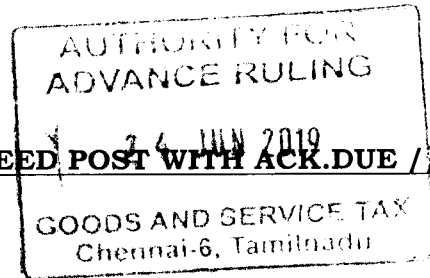
Ms. Manasa Gangotri Kata, IRS
Member, CGST

Shri. Kurinji Selvaan V.S. 24.06.2019

Shri. Kurinji Selvaan.V.S., M.Sc.,(Agri),M.B.A,
Member, TNGST

To

M/s. Specs-makers Opticians Private limited
No.20, Kannadasan Street, T.Nagar,
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5. Master File/ Spare – 2.

