

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.	AD271120008652M	
GSTIN Number, if any/ User-id	27AAHCS0308R1ZZ	
Legal Name of Applicant	M/s. Saffron Art Private Limited	
Registered Address/Address provided while obtaining user id	3, Industry Manor, 3 rd Floor, Near Century Bazar, Prabhadevi, Mumbai, Maharashtra 400025	
Details of application	GST-ARA, Application No. 51 Dated 19.11.2020	
Concerned officer	MUM-VAT-E-647, MUMBAI-LTU-004	
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Retail Business
B	Description (in brief)(As per applicant)	Applicant is an Auctioneer. They procure 'Paintings' on approval basis from unregistered and registered persons (seller) and sell the same by auction to the highest bidder.
Issue/s on which advance ruling required		<ul style="list-style-type: none">➤ Classification of goods and/or services or both➤ Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below

NO.GST-ARA-51/2020-21/B-62

Mumbai, dt. 20.05.2022

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. Saffron Art Private Limited the applicant, seeking an advance ruling in respect of the following questions.

1. Classification of second hand or used 'Paintings' [Section 97(2) (a)]
2. Whether for determination of the liability to pay tax on the sale of second hand or used 'Paintings', the applicant can apply Rule 32(5) of CGST & MGST Rules, 2017 ?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to

any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

2.1 M/s. Saffron Art Private Limited, the applicant, registered under GST Act vide GSTN 27AAHCS0308R1ZZ, procure 'Paintings' on approval basis from unregistered and registered persons and sells the same by auction to the highest bidder.

2.2 Applicant displays the 'Paintings' on its website and conducts a sale thereof by way of online auction, to highest bidder. Assumption of the applicant is that its suppliers have brought the 'Paintings' second hand or used, and then offered for sale to applicant. Thereof, for determination of the liability to pay tax on the sale of second hand or used 'Paintings' the Applicant can apply Rule 32(5) of CGST & MSGST Rules, 2017 and pay tax on difference between selling price and purchase price as prescribed by the aforesaid Rules.

2.3 Presently, the applicant is charging CGST @6% and MSGST @6% on the entire price for which the second hand or used 'Painting' is sold.

B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS

2.4 Applicant purchases and sells second hand or used 'Painting'. No ITC is being availed on the purchases of such 'Paintings'. Therefore Rule 32(5) of CGST & MSGST Rule, 2017 is applicable to sale of such 'Paintings' and tax shall be paid by the applicant on the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored.

2.5 According to applicant, Schedule II Entry No. 236 Chapter heading 9701 covers "Paintings' drawings and pastels, executed entirely by hand, other than drawings of heading 4906 and other than hand-painted or hand-decorated manufactured articles, collages and similar decorative plaques". Therefore, the second hand or used 'Paintings' sold by the applicant will attract tax at the rate specified by Schedule II-Entry No. 236 Chapter Heading 9701.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The jurisdictional officer has submitted reply dated 27.04.2022 which is taken on record and considered.

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 07.12.2021. The Authorized representative of the applicant, Shri. Deepak Bapat, Advocate, was present and made submissions for admission of the

subject application. Jurisdictional officer Shri. Chandrashekhar Thakur, Deputy Commissioner, MUM-VAT-E-647, LTU-04 was also present. The jurisdictional officer was directed to file written submission within a weeks' time.

4.2 The application was admitted and called for final e-hearing on 26.04.2022. The Authorized representative of the applicant, Shri. Deepak Bapat, Learned Advocate was present. The Jurisdictional officer, Shri. Chandrashekhar Thakur, DC, MUM-VAT-E-647, LTU-04 was also present. The jurisdictional officer was once again directed to file written submission within two days. We heard both the sides.

05. OBSERVATIONS AND FINDINGS:

5.1 We have gone through the facts of the matter, documents on record and submissions made by the applicant.

5.2 The applicant has submitted that they purchase and sell second hand or used 'Painting' and do not avail ITC on the purchases of such 'Paintings'. Therefore, according to the applicant, the provisions of Rule 32(5) of CGST & MSGST Rule, 2017 are applicable to sale of such 'Paintings' and tax shall be paid on the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored.

5.3 In an earlier case decided by this Authority on an application filed by M/s Astaguru Auction House Private Limited, this office vide Order No. GST-ARA-40/2020-21/B-27 dated 08.03.2022 has held that **Paintings** are classifiable under Heading 9701 and the applicant was liable to pay GST of 12%. In the said case also, as in the present case, the applicant was dealing amongst other goods, in second hand paintings and it was also held that the provisions of Rule 32 (5) of the CGST Rules were applicable to the applicant in respect of second hand goods.

5.4 We have no reason to deviate from the said ruling since in the instant case also the applicant is dealing only in second hand paintings i.e. applicant is buying second hand paintings and selling the same on their website to the highest bidder and no input tax credit is being availed on the purchases of such 'Paintings', therefore the Provisions of Rule 32(5) of CGST Rules will be applicable in the instant case also.

06. In view of the above discussions, we pass an order as under:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1:- Classification of second hand or used 'Paintings' [Section 97(2) (a)]

Answer: - The 'Paintings are classifiable under Heading 9701 of the GST Tariff.

Question 2:- Whether for determination of the liability to pay tax on the sale of second hand or used 'Paintings', the applicant can apply Rule 32(5) of CGST & MGST Rules, 2017 ?

Answer: - Answered in the affirmative. The provisions of Rule 32(5) of CGST Rules will be applicable to applicant in respect of second hand i.e. used paintings which are purchased by them and then sold.



RAJIV MAGOO
(MEMBER)

T. R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

Note: - An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.