

Whether net off of receivables of one GSTIN by another GSTIN of the same company or net-off of receivables with payables of supplier of goods/service would amount to payment to the vendor meeting the compliance requirements of Section 16(4) of CGST Act, 2017 HELD Yes, The Applicant can pay the consideration for inward supplies by way of net off of receivables of one GSTIN by another GSTIN of the same company, or net-off of receivables with payables of supplier of goods/service. The input tax credit is admissible when consideration is paid through book adjustment as detailed above, subject to the other conditions and restrictions prescribed in Sections 16, 17 and 18 of the CGST Act, 2017 and the rules made there under.(2) Whether such adjustments would trigger any nature of supply between the two GSTINs. HELD The arrangement of settlement of dues / payment of consideration for the goods and/or services received by one GSTIN by another GSTIN or payment of consideration by the Head Office in respect of goods and/or services received by different branches having different GSTINS as detailed do not come within the meaning and scope of supply as defined in Section 7 of the CGST Act, 2017. However, the transactions of the nature as detailed in the 6th scenario mentioned in Para 4.2.6 above and discussed in Para 8 A above would constitute separate supplies as defined in Section 7 of the CGST Act, 2017 and each such supply would be liable to GST as applicable for the reasons as discussed in Paras 8.5 to 8.9 above.

ADVANCE RULING No. KER/12/2023, Dated 3rd April, 2023

KERALA AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX DEPARTMENT

Tax Tower, Thiruvananthapuram

BEFORE THE AUTHORITY OF

: Dr. S. L. Sreeparvathy, IRS &

: Shri Abraham Renn S., IRS

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|-----------------------------|--|
| Legal Name of the applicant | M/s. MALABAR GOLD PRIVATE LIMITED |
| GSTIN | 32AADCM9043R1Z0 |
| ARN No. | AD3210210009311 |
| Address | 16/501M, 3rd Floor, Malabar Head Quarters, Montana Estates, Paingottupuram, Peringolam, Kunnamangalam, Kozhikode, Kerala - 673571, |
| Advance Ruling sought for | i) Whether net off of receivables of one GSTIN by another GSTIN of the same company or net-off of receivables with payables of supplier of goods/service would amount to payment to the vendor meet the compliance requirements of Section 16(4) of CGST Act, 2017, ii) Whether such adjustments would trigger any nature of supply between the two GSTINs. |
| Date of Personal Hearing | 20/07/2022 |
| Authorized Representative | Mr. Ajithkumar U, Finance Controller |

1. M/s. Malabar Gold Private Limited (hereinafter referred to as the applicant) has multiple branches and is engaged in the retail and wholesale of jewellery. The applicant transfers gold bars of specified quantities to jewel makers for making ornaments and purchases ornaments from them, where the jewel maker would charge making charges apart from the transaction value of ornaments sold to the applicant. Against the said purchase, the applicant would net off by way of book adjustment the value of gold bars given to them and would ultimately discharge only the value of making charges. On certain occasions, the sale of a gold bar would be made by one - GSTIN of the company, whereas the purchase of ornaments would be made by another GSTIN, on the basis of business requirement but within the same company. Later on, the respective GSTIN would be making book adjustments to square off the receivables/payables. Similar adjustments are done for the purchase of bullion from banks and other vendors, jewellery from jewel makers, certain other goods like stationery, packing material, etc., and availing of many services such as advertisement services, etc. In essence, dues on inward and outward supplies are settled by using the receivables netting method i.e., sales value minus purchase value, and the balance will be paid or received by the GSTIN.

2. At the outset, it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are the same except for certain provisions. Accordingly, a reference made hereinafter to the provisions of the CGST Act, Rules, and the notifications issued thereunder shall include a reference to the corresponding provisions of the KSGST Act, Rules, and the notifications issued thereunder.

3. The Applicant requested an advance ruling on the following:

3.1 Whether net off of receivables of one GSTIN by another GSTIN of the same company, or net-off of receivables with payables of supplier of goods/ service would amount to payment to the vendor meet the compliance requirements of Section 16(4) of CGST Act, 2017,

3.2. Whether such adjustments would trigger any nature of supply between the two GSTINs.

4. Contentions of the Applicant:

4.1. The applicant submits that they are the flagship company of the Malabar group. It was established in 1993 in Kozhikode, Kerala. It is a bureau of Indian Standards certified Indian jewellery group and has a strong retail network of over 250 outlets spread across 10 countries, 10 wholesale units besides offices, design centres, and factories. They currently rank among the Big 5 jewellery retailers globally and have a presence all over India, the Middle East, and the Far East. Further, they are also vertically integrated, comprising of bullion desk, design centres, manufacturing, distribution, retail, and after-sale services. This enables the applicant's retail division to offer its customers products and services that are unique in addition to unmatched value and quality. Its operations in India are controlled and monitored from the headquarters located in Kozhikode, Kerala, and its international operations from the corporate office located in Dubai, UAE. These operations are further supported by regional offices in other Indian states and across the other countries where it is present. The jewellery arm caters to a global audience supported by a team consisting of personnel from 14 nationalities that are proficient in 50 different languages. It successfully manages multifaceted retail formats with a presence in high streets, reputed malls, department stores, and travel retail.

4.2. The applicant transfers gold bars of specified quantities to jewel makers and purchases ornaments from them, wherein the jewel maker would impose a making charge apart from the transaction value of ornaments sold to the applicant. Against the said purchase, the applicant would net off the value of gold bars given to them and would ultimately discharge only the value of making charges. On certain occasions, the sale of a gold bar would be made by one branch with a GST Identification Number (GSTIN), whereas the purchase of ornaments would be made by a branch holding another GSTIN within the same company. Apart from the specified transactions as given above, there are independent supplies between the different branches of the company with different GSTIN, wherein applicable GST is paid and credit is being availed on such inter GSTIN transactions. It is relevant to note that the supplier raises the invoice in the GSTIN of the concerned branch who has procured/received the goods/services and ITC is availed in compliance with the provisions of Section 16 of CGST Act, 2017, Only the payment either by way of book adjustment / online banking channels is made by the Head Office / another GSTIN, which is a common business practice. The applicant further explains that the above-said book adjustments / net-off of receivable / payables are generally made in various situations (though not exhaustive) listed below;

4.2.1. MPGL Kerala purchases jewellery from various vendors. In consideration of the above purchase, bullion is sold to the vendors. The sale and purchase may be done by branches holding the same or different GSTIN.

4.2.2. MPGL purchases diamonds from MBMG Pvt Ltd for its various branches holding the same or different GSTIN. Invoices are raised in the name of concerned branches, but payments are made from the Head Office.

4.2.3. MGPL purchases bullion from banks and other vendors for its various branches with the same or different GSTIN, Invoices are raised in the name of concerned branches, but payments are made from the Head Office.

4.2.4. M GPL purchases goods (like packing materials, stationery items, etc) from vendors for its various branches holding the same or different GSTIN, The vendors raise invoices in the name of concerned branches, but payments are made from the Head Office.

4.2.5. MGPL avails services (advertisements services etc) from vendors for its various branches holding the same or different GSTIN, The vendors raise invoices in the name of concerned branches, but payments are made from the Head Office;

4.2.6. MGPL purchases old gold from its franchisee showrooms. The above purchases are settled either in cash or by other modes of settlement like an issue of gold ornaments of equal value etc. The above settlements may be done either by the same GSTIN or different GSTIN of the same company.

4.2.7. MGPL Head Office collects franchise fees from its franchisee showrooms, in case of franchise companies having multiple branches, the settlements are made from the head office of the company though invoices have been issued to each unit / GSTIN.

4.2.8. MGPL incurs certain expenses which are used for other branches/franchisees Some of the expenses are identifiable and can be charged to a particular branch/entity. Some other expenses are common; which are charged to all branches and entities based on some factors. MGPL charges the above expenses by issuing GST invoices* In the case of franchise companies having more than one branch, the settlements are made from the head office of the company though invoices have been issued to each showroom,

4.2.9 Other situations in which settlement is made by way of book adjustment.

4.3. Further it is also submitted that to ensure that the appropriate dues are either settled or paid, the company obtains

the statement of account from the jewel maker / supplier for year-end reconciliation and verifies whether the book adjustments and payments are reflected / accounted for. These adjustments/payments are done at the company level and not the GSTIN level, as these are pure settlement of balances and each GSTIN is not required under any provisions of GST Law to settle payment / maintain separate accounts except for the requirement that consideration should be settled, which is factually settled by the Head office / another GSTIN of the company.

4.4. It is further submitted that, as per Sections (93) of CGST Act, 2017 "Recipient' of the supply of goods or services means:

a). where a consideration is pay able for the supply of goods and/ or service, the person who is liable to pay that consideration;

b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and

c) Where no consideration is payable for the supply of a service, the person to whom the service is rendered.

4.5. further as per Section 2(31) of CGST Act, 2017 'consideration' in relation to the supply of goods or services or both include:

a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or bath, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

4.6. It is claimed that as per Section 16 (1)'of CGST Act, every registered taxable person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49 of CGST Act, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

4.7. Further, proviso to 16(2) states that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on a reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax. Further Rule 37 (Reversal of input tax credit in the case of non-payment of consideration) of CGST Rules 2017, provides that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purpose of the second proviso to Section 16(2).

4.8. Further as per Section 25(4) of CGST Act, 2017 distinct person means "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 purpose of this Act", Explanation to Section 15 of CGST Act, 2017 provides, - a) a person shall be deemed to be a related party" if - (i) Such persons are officers or directors of one another's business (v) one of them directly or indirectly controls the other (vi) they are under the common control or management.

4.9. Further Schedule I of the CGST Act, Clause II provides that "supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business shall be treated as supply even if made without consideration",

4.10. As per Section 7(l) of CGST Act, 2017 "supply" includes - a) all forms of supply of goods and services or both such as sale, transfer, barter, exchange, license, rental, lease, or disposal made or agreed to be made for a consideration by a person in-the course or furtherance of business; b) import of-services for a consideration whether or not in the course or furtherance of business; c) the activities specified in Schedule I, made or agreed to be made without a consideration; and d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

4.11. Further as per Section 2 (52); "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crop, grass, and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

4.12. Further, as per Section 2 (102) of CGST Act, 2017 "services" means anything other than goods, money, and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged.

4.13. As per Section 2 (75) of CGST Act, 2017 "money" means the Indian legal 'tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft pay order, traveller cheque, money order, postal or electronic remittance or any other Instrument recognized by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender or another denomination but shall not include any currency that is held

for its numismatic value;

4.14. In the current instance, MGPL purchases diamonds from MBMG Pvt. Ltd, bullion from banks: and other vendors, jewellery from jewel makers, certain other goods like stationery, packing materials etc and avails many services such as advertisement services etc for its various branches. The vendors or service providers issue the invoices to concerned branches / OSTINS and payment for those invoices is made by the Head Office.

4.15. From the above definitions, it is understood that consideration can be paid by any other person other than the recipient also. In the instant case, the goods are delivered to and the services are rendered to various branches of MGPL and the; supplier/vend or raises invoices in the GSTIN of the respective recipient GSTIN. The respective various branches of the MGPL are recipients of goods or/and services, not the person who actually makes the payment, as the definition of the term recipient states that a recipient is a person who is liable to pay consideration, but such consideration could be settled by another person,

4.16. Under GST law, each GSTIN of the same company would qualify as a distinct person, and payment by one GSTIN on behalf of another GSTIN would not trigger any supply, as these are mere transactions in money. The definition of 'goods' or 'services' excludes transactions in money. Only a supply of goods or services is taxable as per the provisions of Section 7 of the CGST Act, 2017. When a particular transaction is neither goods nor services, it is not covered under the definition of supply to levy GST. As regards the requirement to make payment to the supplier of goods/services to comply with the provisions of Section 16 of CGST Act, to avail ITC, it is relevant to analyse whether book adjustment would qualify as payment. Based on the general concept of accounting principles, the books most frequently referred to are the books of account in which business transactions are recorded. Books of account are normally considered to be legal documents. Books of account contain various accounts (say, debtors and creditors). Such accounts mean an account or register of debt or credit in a book. A 'book account' means a book containing a statement in detail of the transactions between parties, including prices, made contemporaneously with the transaction, and entered in a book, Adjustment in finance and accounts means correcting figures or making allowances for charges, credits, etc. It involves alteration in debit or credit balances by way of allowances or charges posted in an account by means of debit or credit notes; it is a process of adjusting financially the sums due or owed.

4.17. The applicant also submitted before the authority the decision of AAR West Bengal in M/s. Seneco Gold Limited (2019 (24) GSTL 688 (App. A.A.R : GST) wherein it is held that "the applicant can pay the consideration for inward supplies by way of setting off-book debt. The GST Act and rules made thereunder does not restrict the recipient from claiming the input tax credit when consideration is paid through book adjustment, subject to the conditions and restrictions as may be prescribed and, in the manner, specified in Section 16 and 49 of the GST Act.1' Further in the case of AAR in M/s. MRF Ltd. (2019 (27) GSTL 578 (App+ AAR - GST)), it was held that "the payment for the purpose of the second proviso to Section 16 (2) can also be made: by book adjustments and law nowhere restricts the payment to be made by cheque or cash mode for the requirement of the second proviso to Section 16 (2) of CGST Act, 2017. The contention by the applicant also makes a valid point that might otherwise be relevant that the proviso to Section 16 (2) does not specify that the entire value of supply has to be paid. The words 'amount towards the value of supply, implies only the amount as agreed between the supplier and the recipient which need not be the entire value of supply. As per the mutual agreement, if such value is reduced, even such reduced payment fulfils the requirement, 'amount towards the value of supply.

4.18. The second proviso to Section 16 (2) of the CGST Act, 2017 provides that 'where a recipient fails to pay to the supplier of goods or services or both, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the ITC availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed. The proviso doesn't prescribe or restrict the mode in which the payment must be made. Payment through adjustment of the books of accounts is a prevalent common practice.

4.19. Payment is a transfer of an asset to the payee for discharging an obligation arising out of transactions involving goods, services, or other legal obligations. The most common asset class used for such payment is money, although other assets unless specifically excluded by law, may be used provided the payee accepts payment by such assets other than money as good and sufficient discharge of the obligation. Of course, in the payer's books of accounts, such transfer will be reported as a reduction in the book value of the asset being transferred.

4.20. The CGST Act, 2017 does not restrict the availment of ITC, where the payment to the vendor is made by mode other than cash or cheque or online banking. Section 49(1) only deals with the way suppliers shall make the payment of tax, interest etc to the Government and not to the supplier of goods or services. Section 49 (2) provides that ITC as self-assessed by the registered person shall be credited to his electronic credit ledger. It doesn't prohibit the applicant from reporting in the return ITC when consideration is paid to the supplier by way of book adjustment. Consideration defined under the CGST Act, 2017 also includes payment made in money or otherwise and the monetary value of any act or forbearance. For example, a mix of money and monetary value of the goods offered together with it is a valid consideration.

4.21. Similarly, if the payee owes the payer a debt, and accepts a reduction in such a debt liability as a valid form of payment, that should also be regarded as a valid 'consideration' for a supply. In other words, reduction in book debt (an asset in the payer's books of accounts) is a valid consideration.'

4.22. The applicant also put forth some of the relevant concepts of Accounting Standards 32, which also play a vital role,

which is explained below;

a financial asset and a financial liability shall be offset, and the net amount presented in the balance sheet when, and only when, an entity:

- a. currently has a legally enforceable right to set off the recognized amount; and
- b. intends either to settle on a net basis or to realize the asset and settle the liability simultaneously,

4.23. When an entity has the right to receive or pay a single net amount and intends to do so, it has, in effect, only a single financial asset or financial liability. In other circumstances, financial assets and financial liabilities are presented separately from each other consistently with their characteristics as resources or obligations of the entity, A right of set-off is a debtors legal right, by contract or otherwise, to settle or otherwise eliminate all or a portion of an amount due to a creditor by applying against that amount an amount due from the creditor. In unusual circumstances, a debtor may have a legal right to apply any amount due from a third party against the amount due to a creditor provided that there is an agreement between the three parties that clearly establishes the debtor's right of set-off An entity's intentions with respect to the settlement of particular assets and liabilities may be influenced by its normal business practices, the requirements of the financial markets, and other circumstances that may limit the ability to settle net or to settle simultaneously. The aforesaid meaning of consideration provides the scope and ambit for modes of payment. It includes any payment made or to be made, whether in money or otherwise. The term 'otherwise' is very wide and it would include all modes of payment i.e. netting off receivable and payable in books of accounts, barter, exchange etc as well. Further, for the purpose of GST compliance, the terms of the arrangement between the parties to the contract gain importance and if such arrangement allows book adjustment which has the effect of reduction of any dues, it would qualify as payment. Any receivables or payables by different GSTINs will be adjusted / settled by the head office, as a prudent business practice. This is further substantiated by the practice of verification of the supplier statements to ensure that the book adjustments/payments are correctly accounted for by the supplier and the dues are settled by both parties. Therefore, the net-off of receivables of one GSTIN by another GSTIN of the same company or net-off of receivables by the same GSTIN with payable of supplier of goods/service would amount to payment to the vendor and meet the compliance requirements of Section 16(2) of CGST Act, 2017 in all the scenarios listed in the questions. The GST Act and rules do not restrict the claiming of ITC when consideration is paid through book adjustment.

4.24. Further, the arrangement of settlement of dues by another GSTIN would not trigger any nature of supply between the two GSTINs, as these are mere transactions in money and there is no underlying supply between the GSTIN on account of such book adjustment or payment.

5. PERSONAL HEARING:

The applicant was granted an opportunity for a personal hearing on 20/07/2022 via virtual mode. Sri Ajith Kumar. U, Finance Controller, Authorized Representative of the applicant attended the personal hearing. The representative reiterated the contentions made in the application.

6. REMARKS OF JURISDICTIONAL OFFICER:

The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The jurisdictional officer has not submitted any remarks and hence it is presumed that the jurisdictional officer has no specific comments to offer. It is also construed that no proceedings are pending on the issue against the applicant.

7. Discussions and Findings;

7.1 . The matter was examined in detail. The application is admissible under Section 97 of the CGST Act. The issue raised before the authority is "Whether net off of receivables of one GSTIN by another GSTIN of the same company, or net-off of receivables with payables of supplier of goods/service would amount to payment to the vendor meeting the compliance requirements of the second proviso to sub-section (2) of Section 16 of the CGST Act, 2017 and whether such book adjustments of amount payable by one GSTIN by another GSTIN would amount to supply between the two GSTINs".

7.2. The relevant provisions of Section 16 of the CGST Act that provides for the eligibility and conditions for taking Input Tax Credit reads as follows:-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person,

(2) Notwithstanding anything contained in this section, no registered person shall be 'entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of

outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

(b) he has received the goods or services or both.

Explanation,- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services,-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

PROVIDED that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

PROVIDED FURTHER that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input, tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

PROVIDED ALSO that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax. payable thereon.

7.3. The second proviso to subsection (2) of Section 16 specifies that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services with tax payable thereon. The provision clearly limits the entitlement of the recipient to input tax credit only to transactions where he has paid the 'consideration-for the supply received, along with the tax payable thereon. Such input tax may be provisionally credited to the recipient's electronic credit ledger, but the same will be reversed in: terms of the second proviso to section 16(2) by an equivalent amount being added to his output tax liability unless he makes the payment within one hundred and eighty days from the date of issue of the invoice. It is, therefore, clear that no input tax credit is admissible unless the recipient pays the supplier the consideration for the supply received.

7.4. The term 'consideration', as defined under clause (31) of section 2 of the CGST Act reads as follows;

"Consideration' in relation to the supply of goods or services or both includes,-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of in response to, or for the inducement of the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

PROVIDED that a deposit given in respect of the supply of goods or services or both, shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

7.5. Accordingly, from the above definition it is revealed that the term consideration includes, in relation to the supply of goods or services, any payment, made or to be made, whether in money or otherwise, and also the monetary value of any act or forbearance. Thus, definition of 'consideration' is an inclusive definition which covers in its ambit any form of payment. Therefore, if the payee owes the payer a debt, and accepts a reduction in such a debt liability as a valid form of payment, that should also be regarded as a valid 'consideration' for a supply.

7.6. The relevant provisions of Section 12 and 13 of the CGST Act, 2017 which governs the time of supply of goods and time of supply of services is reproduced below;

SECTION 12 - Time of supply of goods.- (1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of goods shall be the earlier of the following dates, namely:

(a) the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply;

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Explanation 1. - For the purposes of clauses (a) and (b), "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment

Explanation 2.- For the purposes of clause (b), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely: -

(a) the date of the receipt of goods; or

(b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

SECTION 13 Time of supply of services - (1)The liability to pay tax on services' shall arise at the time of supply as determined in accordance with the provisions of this section

(2) The time of supply of services shall be the earliest of the following dates, namely:-

(a) the date of issue of invoice by the supplier[^] if the invoice is issued within the period prescribed, under section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation- For the purposes of clauses (a)-and (b),-

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) "the date of receipt of payment*" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank, account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid, on reverse charge basis, the time of supply shall be the earlier of the following dates, namely: -

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply.

7. On a plain reading of the above referred provisions namely; Explanation 2 to sub-section (2] and clause (b) of sub-section (3) of Section 12 and Explanation (ii) to sub-section (2) and clause (a) of sub-section (3) of Section 13 it is evident that the entry in the books of accounts of the supplier / recipient is recognised as a mode of payment under GST law.

7.8. Therefore, on a combined reading of the above referred provisions and the definition of consideration in Section 2 (31) of the CGST Act, 2017 it is evident that the settlement of the mutual debts through book adjustment by netting off of receivables of one GSTIN by another GSTIN of the same company, or net off of receivables with payables of supplier of goods/service is a valid mode of payment of consideration for the receipt of goods and / or services and it satisfies the requirement of the second proviso to sub-section (2) of Section 16 of the CGST Act, 2017.

8. The next question to be answered is whether such book adjustments of amount payable by one GSTIN by another GSTIN would amount to supply between the two GSTIN s? The applicant has enumerated nine different circumstances [stated to be not exhaustive] in which the settlement is made by way of netting off or book adjustments in respect Of goods and / or services supplied /received by different GSTINJs either by the same GSTIN or by other GSTINs. Therefore, the different scenario in which such payment is made as explained by the applicant has to be considered and analysed in detail for answering the questions. The circumstance / scenario listed as the 9th item [Para4.2.9 above] namely; "Other situations in which settlement is made by way of book adjustment"; is a very vague one which can be subjected to multiple: interpretations and hence no ruling can be issued on the goods and services tax liability or eligibility of input tax credit related to such transactions in the absence of complete information regarding the nature of the transactions that are perceived to be covered under the category by the applicant Therefore, we proceed to analyse arid decide the taxability only in respect of the transactions that are specifically enumerated in the eight different circumstances / scenario [Para 4.2.1 to 4.2.8 above] as listed by the applicant in their application.

8.1. The provisions regarding the meaning and scope of supply are contained in Section 7 of the CGST Act, 2017; which reads as follows;

(1) For the purposes of Ms Act, the expression. - "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration

Explanation. -For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without consideration;

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (If they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1)

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject, to the provisions of sub-sections (1) (1A) and (2) the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods;

8.2. Further Paragraphs 1 and 2 of Schedule I of the CGST Act, 2017 are reproduced below:

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION.

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25t when made in the course or furtherance of business.

8.3. In cases of scenarios covered under Paras 4.2.1 to 4.2.5 and 4.2.7 to 4.2.8 above where there is only arrangement of settlement of dues / payment of consideration for the goods and / or services received by one GSTIN by another GSTIN or payment of consideration by the Head Office in respect of goods and/or services received by different

branches having different GSTIN's. the transaction involved is mere transaction in money and there is no separate supply of goods or services other than the supplies already received by the respective GSTIN's. Therefore, such transactions do not come within the meaning and scope of supply as defined in Section 7 of the CGST Act, 2017 and accordingly no liability for payment of GST arises on account of such transactions.

8.4. However, the cases covered under the 6th scenario [Para 4.2.6] are different. The activity is described as follows;

"MGPL purchases old gold from its franchisee showrooms. The above purchases are settled either in cash or by other modes of settlement like an issue of gold ornaments of equal value etc. The above settlements may be done either by the same GSTIN or different GSTIN of the same company."

8.5. In the above scenario where the franchisee supplies old gold to the applicant and a distinct person supplies new gold ornaments of equal value as consideration to the franchisee of the applicant on behalf of the applicant and the applicant reimburses the consideration to the distinct person by book adjustment; there are in effect two supplies. The first supply is the supply of old gold by the franchisee to the applicant and the second supply is the supply of new gold ornaments of equal value made by the distinct person, to the franchisee on the direction of the applicant.

8.6. In the above scenario it is pertinent to refer to the provisions of Section 10 of the IGST Act, 2017 that prescribes the place of supply of goods other than the supply of goods imported into or exported from India and also the provisions of Section 7 of the IGST Act, 2017 that defines inter-state supply. As per Clause (b) of subsection (1) of section 10 ibid; where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person";

8.7 , Section 7 of the IGST Act, 2017; defines inter-state supply as follows;

"Subject to the provisions of Section 10, supply of goods, where the location of the supplier and the place of supply are in-

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

Shall be treated as a supply of goods in the course of inter-State trade or commerce".

8.8 Section 8 of the IGST Act, 2017; defines intra-state supply as follows;

(1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply namely: -

- (i) supply of goods to or by a special .Economic Zone developer or a Special Economic Zone unit;
- (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
- (iii) supplies made to a tourist referred to in section. 15.

(2) Subject to the provisions of section 12, supply of services where the location of the: supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation I.-For the purposes of this Act, where a person has,-

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory/ and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.

Explanation 2. - A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

8.9. In view of the? provisions as discussed above, in cases where the franchisee supplies old gold to the applicant and

a distinct person supplies new gold ornaments of equal value as consideration to the franchisee of the applicant on behalf of the applicant, there is a supply of gold ornaments from the distinct person to the applicant, and further, another distinct supply of such ornaments from the applicant to the franchisee; attracting goods and services tax in terms of Section 7 of the CGST Act read with Section 10 of the IGST Act in respect of each such supply, and the nature of tax applicable has to be determined in accordance with the provisions of Section 7 and 8 of the IGST Act, 2017.

RULING

In view of the observations stated above, the following rulings are issued:

Question 1. Whether net off of receivables of one GSTIN by another GSTIN of the same company or net-off of receivables with payables of supplier of goods/service would amount to payment to the vendor meeting the compliance requirements of Section 16(4) of CGST Act, 2017.

Ruling: Yes, The Applicant can pay the consideration for inward supplies by way of net off of receivables of one GSTIN by another GSTIN of the same company, or net-off of receivables with payables of supplier of goods/service. The input tax credit is admissible when consideration is paid through book adjustment as detailed above, subject to the other conditions and restrictions prescribed in Sections 16, 17 and 18 of the CGST Act, 2017 and the rules made there under.

Question 2. Whether such adjustments would trigger any nature of supply between the two GSTINs.

Ruling: The arrangement of settlement of dues / payment of consideration for the goods and / or services received by one GSTIN by another GSTIN or payment of consideration by the Head Office in respect of goods and / or services received by different branches having different GSTINs as detailed do not come within the meaning and scope of supply as defined in Section 7 of the CGST Act, 2017. However, the transactions of the nature as detailed in the 6th scenario mentioned in Para 4.2.6 above and discussed in Para 8 A above would constitute separate supplies as defined in Section 7 of the CGST Act, 2017 and each such supply would be liable to GST as applicable for the reasons as discussed in Paras 8.5 to 8.9 above.

Sreeparvathy S. L.
Joint Commissioner of Central Tax
Member

Abraham Renn S.
Additional Commissioner of State Tax
Member