



**#GSTCASE-60- IN A SUPPLY BETWEEN RELATED PARTIES, ITC IS NOT AVAILABLE TO RECIPIENT OF GOODS/SERVICE IF VALUE DECLARED BY SUPPLIER IN INVOICE/DEBIT NOTE IS ZERO.
(SECOND PROVISO TO RULE 28)**

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#GSTCase-60- In a supply between related parties, ITC is not available to recipient of goods/service if value declared by supplier in invoice/debit note is zero. (Second Proviso to Rule 28)

AAAR Ruling:- Assistant Commissioner, CGST & CX 97 taxmann.com 636 (AAAR-WEST BENGAL)

AAR Ruling reviewed: GKB Lens (P.) Ltd., In re 93 taxmann.com 477/68 GST 314 (AAR-West Bengal) -Department has preferred an appeal against the order of AAR.

1. Facts:

M/s GKB Lens Pvt. Ltd., holding GSTN No. 19AACCG3446M1ZA having its Head Office in West Bengal (hereinafter referred to as "the Respondent"), transfers goods, namely, Optical Lenses and Frames for Spectacles and Accessories, from Head Office in West Bengal to its branches in other States.

2. Relevant Provision:

Rule 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent-Second proviso to Rule 28 of CGST Rules provide that

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.

3. Decision by AAR:

The applicant has the option of not supplying goods to its branches under the First Proviso of Rule 28 and is eligible to value these goods by applying the terms of the Second Proviso to Rule 28 of GST Act.

4. Contention by the Petitioner Department:

Appeal was filed by the department against Advance Ruling regarding availability of Input Tax Credit on stock transfer from the Head Office of M/s GKB Lens Pvt. Ltd. to its branches in other States at Zero Value. During the course of the hearing the Respondent submitted a copy of a tax invoice issued by the Head Office, which may be considered as a prototype invoice, as evidence of no tax being charged on supplies made at zero value.

According to the Appellant "*the wordings of the Ruling, dated 30.05.2018 has created an impression that the recipient would be eligible for Input tax Credit if the supplier paid the tax.*" Instead of those wordings the WBAAR should have declared in no uncertain terms that no input tax credit would be available for supply at Zero Value.

It was further submitted and stated that the Respondent has no objection to any clarification being added to the aforementioned Advance Ruling regarding the non-admissibility of credit of Input Tax on goods supplied at zero value.

5. Observation by AAAR:

Section 16 of CGST Act provides that input tax credit is available only when the recipient is in possession of a tax or



debit note issued by the supplier registered under the GST Act, and in case of a supply between distinct and unrelated persons, as between Head Office and Branches, the value declared in the invoice shall be deemed to be the open market value of the goods or services supplied. It is therefore clear that if the value declared in such invoice is zero no input tax credit is available to the recipient.

6. Held:

The question raised by M/s GKB Lens Pvt. Ltd. was correctly answered by the Authority of Advance Ruling. However, it may be clarified that no input tax credit is available to the recipient of goods/service if the value declared by the supplier in the invoice/debit note is zero.

7. Comment:

The ruling analyses Second proviso to Rule 28. Second proviso to Rule 28 provides 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.

Now supposedly, take an Example, X Ltd has its Head office at Jaipur and branch office at Mumbai. X Ltd transfers goods from Jaipur to Mumbai. What would be the fair market value of the goods transferred between Jaipur to Mumbai. Second proviso to Rule 28 provides that if Mumbai office is eligible for full input tax credit of the goods transferred from Jaipur to Mumbai then the value provided in the invoice would be the Fair Market Value.

Ruling of AAR in the GKB Lens (P.) Ltd., In re 93 taxmann.com 477/68 GST 314 (AAR-West Bengal) also affirmed the view. However, the analysis of the ruling was taken a step ahead and an interpretation was made that if the eligibility of the recipient for credit in respect of such supply is proved then it is immaterial that at what value invoice is raised by the supplier. Even a zero-value invoice would be considered as value of taxable supply.

For example, if eligibility of Mumbai office for tax charged by Jaipur Office can be established as per provisions of Section 16 read with Section 17 and 18 of CGST Act then even a zero-value invoice would be considered as value of the goods for Section 15. Thus, no tax would be paid by the supplier and without charging any tax from the recipient, goods would be transferred from Jaipur to Mumbai.

AAAR has clarified that if a zero-value invoice is raised from say Jaipur to Mumbai, then in such case as no tax is charged on invoice and therefore there would be no credit which would be available for the recipient to claim. In such cases, as no tax charged on invoice therefore recipient is eligible for no input tax credit; therefore second proviso to Rule 28 would not be applicable in such cases.

Second proviso to Rule 28 would only be applicable wherein some value in respect of the supply is shown in the invoice or to put it differently Second proviso to Rule 28 to be applicable, some value on the invoice has to be shown.

Further, in my view whatever value has been shown in the invoice, a suitable calculation for arriving at the value should also be available with the supplier to hold that value as shown in Invoice is covered by Second Proviso to Rule 28.