



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

AAR No.05/AP/GST/2020 dated:24.02.2020

1	Name and address of the applicant	M/s Shilpa Medicare Limited, Survey No 207,Modavalasa Village, Denkada Mandal, Vizianagaram-531162 (A.P)
2	GSTIN	37AADCS8788F1ZR
3	Date of filing of Form GST ARA-01	14.08.2019
4	Date of Personal Hearing	23.10.2019
5	Represented by	Sri Muralidhar, Tax Consultant
6	Jurisdictional Authority –Centre	Superintendent Vizianagaram South, CGST Vizianagaram Division
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a notification issued under the provisions of this Act; and d) admissibility of input tax credit of tax paid or deemed to have been paid; e) determination of the liability to pay tax on any goods or services or both;

ORDER

(Under Sub-Section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and Sub-Section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s Shilpa Medicare Limited.,(hereinafter referred to as applicant), registered under the Goods & Services Tax.

2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or APGST Act would be mentioned as being under the GST Act.



3. Brief Facts of the case:

M/s Shilpa Medicare Limited under takes Research & Development work in Active Pharmaceutical Ingredient (API) & formulation molecules & manufacture of formulation products in small quantity for R & D purpose.

R&D centre is involved in formulation & Analytical development and also method validations for analytical tools. Formulation research centre is concentrated in developing generic equivalents and super generics to reference listed Drugs for Global Market like USA, Europe and Row for injectable and oral formulations used for the treatment of cancer and other indications like Multiple sclerosis, Hypertension, CNS disorders, Anti-Diabetics, Myasthenia gravis, Ogilvie syndrome, Ulcerative colitis urinary retention, liver diseases, HIV, smoking cessation, Alopecia, and eye disorders etc.,

M/s. Shilpa Medicare Limited unit at survey No.207, Modavalasa Village, Denkada Mandal, Vizianagaram, Andhra Pradesh-531162 vide GST No.37AADCS8788F1ZR undertakes R& D work and the whole business will be shifted to M/s. Shilpa Medicare Limited, Plot No.29-A5, Avverahalli Industrial Area, Bengaluru, (Bangalore) Rural, Karnataka -562117, which is ongoing concern vide GST No.29AADCS8788F1ZO.

The applicant stated that they filed GST returns for the month of Jan-19 with input Credit balance as mentioned below, as on 29.07.2019;

Input IGST-2,29,24,118.00, Input CGST-50,50,789.00 and Input SGST-35,40,668.00

The applicant submits that they would like to file ITC -02 to enable the Bengaluru Unit to avail the input credit of Vizianagaram Unit.

4. Questions raised before the authority:

1. Whether the transaction would amount to supply of goods or supply of services or supply of Goods & Services?"
2. Whether the transaction would cover Sl.No.2 of the Notification No.12/2017 – Central Tax (Rate) dated 28.6.2017?
3. Can we file GST ITC-02 return and transfer unutilised ITC from Vizianagaram, Andhra Pradesh unit to Bengaluru, Karnataka Unit?

On Verification of basic information of the applicant, it is observed that the applicant falls under Central jurisdiction, i.e. Superintendent, Vizianagaram South, Vizianagaram CGST Division. Accordingly, the application has been forwarded to the jurisdictional officers and a copy marked to the State tax authorities to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017.

In response, no remarks are received from the jurisdictional officer concerned, but the state tax authorities responded mentioning that there are no proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.



5. Applicant's Interpretation of Law and Facts:

The applicant refers to Notification No.12/2017- Central Tax (Rate) 28th June 2017, Column No.3 of the table which gives the description of the services. Serial number 2 of the Notification provides for "**Services by way of transfer of a going concern, as a whole or an independent part thereof**". This indicates that the activity of transfer of a going concern constitutes a supply of service. The Notification further provides Nil rate of Tax on such a supply.

The applicant requested for a clarification whether the transfer of capital assets would cover Sl.No.2 of the above-mentioned Notification.

6. Record of Personal Hearing:

The authorized representatives of the applicant, Sri Muralidhar, tax consultant appeared for Personal Hearing on 23.10.2019 and reiterated the submission already made in the application.

7. Discussion and Findings:

We have examined the issues raised in the application and the submissions made by the authorised representative of the applicant as well, regarding the classification, tax liability of the transaction involved and the transferability of unutilised input tax credit in the case of ongoing concern.

The issue at hand is to decide whether the transaction of the applicant would amount to supply of goods or supply of services or supply of goods & services.

From the record we find that the business of the applicant i.e., Shilpa Medicare Limited of Andhra Pradesh unit, as a whole along with the capital assets is being transferred as going concern to Shilpa Medicare Limited of Karnataka Unit for a monetary consideration. The applicant had submitted no documentary evidence proving that the transaction is a going concern except for his categorical declaration in the application as such. Taking into consideration the facts as put forth by the applicant, the following series of observations are made to arrive at a conclusion finally.

Now we look into the issue whether this transaction would constitute a 'supply' primarily.

Section 7 (1)(a) of the CGST Act, 2017 defines the scope of supply which reads as under:

*7. (1) For the purposes of this 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;*

In the instant case the activity of the 'transfer' is made for a consideration, but neither in the course of the business nor for the furtherance of the business. A going concern is a onetime affair made where the business is sold including assets in entirety or an independent part thereof. Even though this transaction does not amount to a 'supply' as per definition, but qualified to be one under the scope of supply as it is backed by the term 'includes' in Section 7(1) of the CGST Act, 2017. Thus, in the broadened interpretation of the term 'includes', this activity is brought under the scope of supply.



Now we determine whether 'ongoing concern' is to be treated as 'supply of goods' or 'supply of services'.

Part 4 (c) of Schedule II of the CGST Act, 2017 refers to the 'transfer of business assets' which reads as under:

4. Transfer of business assets

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

- (i) the business is transferred as a going concern to another person; or*
- (ii) the business is carried on by a personal representative who is deemed to be a taxable person*

A plain reading of the above clarifies that the transfer of business assets is 'supply of goods'. But in the instant case the business in its entirety is transferred or sold along with capital assets. Thus, it disqualifies the 'going concern' to be grouped under 'supply of goods' as per the above-mentioned clause 4(c).

The definition of services under Section 2(102) of CGST Act, 2017 reads as

(102) "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;

Thus, the definition of services qualifies 'anything other than goods' as service. In this context it is obvious that the 'going concern', which was excluded from list of 'supply of goods' as discussed above, would automatically fall under 'supply of services'.

Further, the description of services under Sl.No.2 of Chapter 99 of Notification No.12/2017 – Central Tax (Rate) dated 28.6.2017 provides for "Services by way of transfer of a going concern, as a whole or an independent part thereof" as nil rated. Hence, the transaction is not liable to tax.

Now we decide whether the applicant can file GST ITC-02 return and transfer unutilised ITC from Vizianagaram, Andhra Pradesh unit to Bengaluru, Karnataka Unit.

We find from the facts presented by the applicant that there is input tax credit unutilised under different heads of CGST and SGST and IGST in its Andhra Pradesh unit. In this regard it is observed that section 18(3) of CGST Act, 2017 provides as under;

Section 18 Availability of credit in special circumstances

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

Further, Rule 41 of CGST Rules provides as under;



Transfer of credit on sale, merger, amalgamation, lease or transfer of a business

(1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee: Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

(2) The transferor shall also submit a copy of a certificate issued by a practicing-chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

(3) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

It evident from the above that in case of sale or transfer, the transferor can transfer unutilised input tax credit to the transferee, which is lying in his electronic credit ledger, by filing Form GST ITC-02.

In view of the observations stated above, the following ruling is issued.

RULING

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

Question: Whether the transaction would amount to supply of goods or supply of services or supply of goods & services?"

Answer: Supply of services.

Question: Whether the transaction would cover Sl.No.2 of the Notification No.12/2017 – Central Tax (Rate) dated 28.6.2017?

Answer: Affirmative.

Question: Can we file GST ITC-02 return and transfer unutilised ITC from Vizianagaram, Andhra Pradesh unit to Bengaluru, Karnataka Unit?

Answer: Affirmative.

**Sd/-D. RAMESH
MEMBER**

**Sd/- M.SREEKANTH
MEMBER**

//t.c.f.b.o//




Assistant Commissioner (ST)
Assistant Commissioner (State Tax)
D/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

TO

1. M/s Shilpa Medicare Limited, Survey No 207, Modavalasa Village, Denkada Mandal, Vizianagaram-531162 (A.P) **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Vizianagaram West Circle, Vizianagaram Division. **(By Registered Post)**
2. The Superintendent, Central Tax Vizianagaram South, CGST Vizianagaram Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P)
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035 (A.P). **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

